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Indexes of the Foreign Exchange Value of the Dollar

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At the end of 1998, the staff of the Federal Reserve Board introduced a new set of indexes of the foreign exchange value of the U.S. dollar.[1] The staff made the changeover, from indexes that had been used since the late 1970s, for two reasons. First, five of the ten currencies in the staff's previous main index of the dollar's foreign exchange value were about to be replaced by a single new currency, the euro. Second, developments in international trade since the late 1970s called for a broadening of the scope of the staff's dollar indexes and a closer alignment of the currency weights with U.S. trade patterns.

Exchange rate indexes aggregate and summarize information contained in a collection of bilateral foreign exchange rates. Choices concerning the exchange rates to include, the formula to use in combining the component exchange rates into a single number, and the weights to assign the exchange rates in an index all depend importantly on the objectives of the index. The main objective of the staff's current indexes is to summarize the effects of dollar appreciation and depreciation against foreign currencies on the competitiveness of U.S. products relative to goods produced by important trading partners of the United States. The staff also uses some of the indexes—those that track the dollar's moves against only the major foreign currencies—to gauge financial market pressures on the dollar.

To capture the evolving nature of international trade patterns, the staff's current exchange rate indexes allow changes in the component exchange rates and their weights. The currency weights in the dollar indexes are based on annual trade data, vary by year, and have been updated annually since 1998. Although the set of exchange rates in the indexes has remained unchanged so far, the staff will continue to review whether changes in composition or methodology are needed to ensure that the indexes adequately reflect ongoing developments in international trade patterns.

Several practical aspects of the design and implementation of the current indexes—the choice of index formula, the design of currency weights, and the selection of currencies—are discussed in this article. The article also reviews the performance of the indexes over the past twenty-five years and discusses the three minor methodological changes that the indexes have undergone since their introduction.

Choice of Index Formula

The practice followed by the staff of the Board and by that of several other central banks, international organizations, and private-sector financial institutions is to use exchange rate indexes that are geometrically weighted averages of bilateral exchange rates.[2] The Board staff's nominal dollar exchange rate index at time t, I_t, is

$$I_t = I_{t-1} \times \prod_{j=1}^{N(t)} \left(e_{j,t}/e_{j,t-1}\right)^{w_{j,t}},$$

1. See Michael P. Leahy (1998), "New Summary Measures of the Foreign Exchange Value of the Dollar," *Federal Reserve Bulletin*, vol. 84 (October), pp. 811–18. That article, the time series of the dollar indexes, and the time series of the currency weights are available on line at the Board's public website (www.federalreserve.gov). Values of the dollar indexes for recent months and years also appear in table 3.28 of the monthly *Statistical Supplement to the Federal Reserve Bulletin* and are available through several financial news services. Earlier *Bulletin* articles on exchange rate indexes include B. Dianne Pauls (1987), "Measuring the Foreign Exchange Value of the Dollar," vol. 73 (June), pp. 411–22; Peter Hooper and John Morton (1978), "Summary Measures of the Dollar's Foreign Exchange Value," vol. 64 (October), pp. 783–89; and "Index of the Weighted-Average Exchange Value of the U.S. Dollar: Revision" (1978), vol. 64 (August), p. 700.

2. For more information on various index forms and their mathematical properties, see W. Erwin Diewert (1987), "Index Numbers," in John Eatwell, Murray Milgate, and Peter K. Newman, eds., *The New Palgrave: A Dictionary of Economics*, vol. 2 (New York: Stockton), pp. 767–80. For descriptions of the sterling and euro exchange rate indexes currently used, for example, by the staff of the Bank of England and the European Central Bank, see Birone Lynch and Simon Whitaker (2004), "The New Sterling ERI," *Bank of England Quarterly Review* (Winter), pp. 429–41; and "Effective Exchange Rate of the Euro" (2004), *European Central Bank Monthly Bulletin* (September), pp. 68–72.

where I_{t-1} is the value of the index at time $t-1$, $e_{j,t}$ and $e_{j,t-1}$ are the prices of the U.S. dollar in terms of foreign currency j at times t and $t-1$, $w_{j,t}$ is the weight of currency j in the index at time t, $N(t)$ is the number of foreign currencies in the index at time t, and $\sum_j w_{j,t} = 1$.[3] Because the weights are based on annual data on international trade, they are constant within a calendar year, as is explained later in more detail.

The staff chose geometric rather than simple arithmetic averaging for its exchange rate indexes because under geometric averaging, proportionately equal appreciation and depreciation of a currency has the same numerical effect (though of opposite sign) on the index. In an arithmetically averaged exchange rate index, such changes result in an upward bias in the index for the dollar. The upward bias is less of a problem if major components move in the same direction, but this condition is often not met by bilateral exchange rates.[4]

If a currency depreciates persistently—for example, because of high domestic inflation—an exchange rate index that includes that currency will increase markedly even if the currency's weight is small.[5] When inflation experiences abroad differ significantly from those in the United States, real rather than nominal exchange rates are more informative for measuring changes in trade competitiveness. The staff's real exchange rate indexes are obtained by replacing the nominal exchange rates, $e_{j,t}$, with their real counterparts, $e_{j,t} \cdot p_t / p_{j,t}$, where p_t and $p_{j,t}$ are consumer price indexes for the United States and economy j.[6]

3. The formula allows both the number of exchange rates in the index and the weights of the exchange rates to vary over time. Calculating the index is simplified considerably, of course, if the number of currencies and the currency weights remain unchanged. In such a case, the index calculations are said to "telescope"—that is, the net change in the index over a period depends only on the net changes in the bilateral exchange rates but not on the trajectories of the rates.

4. The staff has used geometrically averaged exchange rate indexes since 1978. The Laspeyres and Paasche indexes are examples of arithmetically averaged indexes.

5. For an illustration of the effects of currency depreciation on a nominal index, see the later discussion of the evolution of the staff's broad nominal dollar index over the past twenty-five years.

6. The set of internationally traded goods may not be well approximated by the baskets of goods purchased by consumers in various countries. In general, producer price indexes tend to be better measures of inflation for gauging changes in real international competitiveness. Unfortunately, producer price indexes are not as widely available as consumer price indexes. Consumer price indexes have the important additional advantage of being available at monthly frequencies and with little delay for most economies of interest, including all economies whose currencies are in the exchange rate indexes.

DESIGN OF CURRENCY WEIGHTS

To create an operational exchange rate index, one must not only choose a formula for aggregating bilateral exchange rates into a single number but also devise methods for calculating the weights of those currencies and for selecting the currencies to be included in the index. Because the staff's exchange rate indexes are intended primarily to measure the competitiveness of U.S. goods in international trade, the exchange rates in the indexes are those of economies that figure importantly in international trade with the United States. These economies can be important either because the United States imports substantial amounts of goods from them or because the United States exports products that compete with goods produced in those economies. Exchange rates influence competitiveness because they affect the relative prices of goods as perceived by sellers and buyers. The weights associated with each of the currencies are designed to reflect the importance of the respective economies for trade competition.[7]

Competition in traded goods occurs in both domestic and foreign markets. In U.S. markets, goods that are produced abroad and are imported to the United States compete with domestically produced goods. To capture this form of trade competition, economy j's share of total U.S. merchandise imports is chosen as that economy's bilateral import weight during period t:

$$\mu_{US,j,t} = M_{US,j,t} \Big/ \sum_{j=1}^{N(t)} M_{US,j,t},$$

where $M_{US,j,t}$ represents the merchandise imports from economy j to the United States in year t.[8] Because trade patterns generally move little over short periods of time, the staff chose to base the import weights (and the other measures of trade competition introduced in the next two paragraphs) on annual rather

7. The staff's system of currency weights is based on a stylized model of international trade in differentiated products. For an overview of that model, see Leahy, "New Summary Measures"; for a full exposition, see Anne K. McGuirk (1986), "Measuring Price Competitiveness for Industrial Country Trade in Manufactures," IMF Working Paper WP/87/34 (Washington: International Monetary Fund). This trade model suggests that only trade in differentiated products is affected by exchange rate fluctuations, and it also implies that all international trade in undifferentiated products (and hence in most primary commodities) should be excluded to obtain the appropriate currency weights.

8. Unfortunately, data limitations make the consistent exclusion of most commodities from bilateral merchandise trade statistics impractical. However, the calculations exclude imports of crude oil to the United States.

than higher-frequency trade data to simplify the index calculations. Therefore, the weights are constant within a calendar year.

Tradable goods produced in the United States compete with those from economy j in two additional ways. First, economy j may be a direct purchaser of U.S. products. This form of trade competition is measured by that economy's U.S. bilateral export share:

$$\varepsilon_{US,j,t} = X_{US,j,t} \Big/ \sum_{j=1}^{N(t)} X_{US,j,t},$$

where $X_{US,j,t}$ represents the merchandise exports from the United States to economy j in year t.[9]

Second, U.S.-produced goods may also compete with goods produced in economy j if the United States and economy j both export goods to buyers in third-market economies. To measure this form of competition, the staff calculates third-market competitiveness weights. These weights are defined as

$$\tau_{US,j,t} = \sum_{k \neq j, k \neq US}^{N(t)} \varepsilon_{US,k,t} \cdot \mu_{k,j,t} \big/ \left(1 - \mu_{k,US,t}\right),$$

where $\mu_{k,j,t}$ is the fraction of economy k's merchandise imports from country j in year t and where $k \neq j$. The multiplicative factor $1/(1 - \mu_{k,US,t})$ ensures that the weights sum to 1.[10] The U.S. third-market competitiveness weight of economy j is a weighted average of the third-market economies' U.S. bilateral export shares, where the weights are given by j's bilateral shares of those economies' imports.[11] Hence, the U.S. third-market competitiveness weight of economy j is large if economy j figures prominently in the imports of those economies for which the United States has large bilateral export weights.

The overall, or combined, weights of the currencies in the dollar indexes are calculated as the following linear combination of the three submeasures of the degree of trade competition:

$$w_{j,t} = \tfrac{1}{2}\mu_{US,j,t} + \tfrac{1}{2}\left(\tfrac{1}{2}\varepsilon_{US,j,t} + \tfrac{1}{2}\tau_{US,j,t}\right).$$

The coefficients of the three submeasures were chosen to give equal importance to competition from imports in U.S. markets and to competition from U.S. exports in foreign markets.[12] In addition, equal importance is given to the bilateral export weights and to the weights that summarize competition in third markets.[13]

Selection of Currencies

The staff selected currencies for inclusion in three indexes: the broad index, the major currencies index, and the other important trading partners (OITP) index. The following sections describe these indexes and the associated processes of currency selection.

The Broad Index

The currencies chosen for inclusion in the broad dollar index in 1998 were determined pragmatically as those of economies whose bilateral shares of U.S. imports or exports exceeded ½ percent in 1997, the latest year for which complete annual trade data were then available. On the basis of this criterion, the staff selected twenty-six currencies. Anticipating the adoption of the euro at the end of 1998 by eleven member countries of the European Union (EU), the staff designed the index so that a single weight for the euro could capture the influence of the dollar–euro exchange rate on trade competition between the United States and the euro area.[14]

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9. The computations of the bilateral export weights exclude U.S. exports of gold and military goods. For the first few years after the current indexes were introduced, the computations also excluded U.S. agricultural exports, but the staff decided in 2002 to drop that exclusion. This methodological change is discussed in more detail later in this article.

10. In principle, the bilateral import weights $\mu_{k,j,t}$ for $k \neq US$ should exclude oil imports (and, ideally, other primary commodities) to ensure symmetric treatment with the U.S. bilateral import weights. However, data limitations make this adjustment infeasible for several countries that are major U.S. trading partners. Therefore, the bilateral import weights used by the staff in its calculations of U.S. third-market competitiveness weights include oil imports.

11. The U.S. third-market competitiveness weight of economy j can also be interpreted as a weighted average of j's bilateral shares of the third-market economies' imports, where the weights are given by those economies' U.S. bilateral export shares.

12. This choice is somewhat arbitrary. Changing the relative importance of the three submeasures of the degree of trade competition obviously affects the overall currency weights and hence may affect the exchange rate indexes. Although varying the relative importance of the three submeasures would have affected the trajectories of the dollar indexes somewhat during the 1970s and the early 1980s, such variations mattered fairly little from about 1985 on, at least when some appreciable weight is given to each of the three submeasures. The staff therefore chose to maintain its current set of weights on the three submeasures.

13. Empirical work done in 1998 with the staff's trade model showed that an equal weighting of the two measures of export competitiveness performed well in explaining U.S. core exports, and this performance provided a rationale for giving equal importance to these two measures. Core exports are merchandise exports other than agricultural goods, computers, and semiconductors.

14. The shares of the eleven initial euro-area countries in U.S. imports and exports were summed to obtain the bilateral import and export weights of the aggregate euro-area economy for the years

1. Share of U.S. imports, by economy, 1997 and 2003

Percent except as noted

Economy	1997	2003	Change (percentage points)
Canada	19.55	17.78	−1.77
Euro area	14.18	16.22	2.04
China	7.77	13.53	5.76
Mexico	9.70	10.90	1.20
Japan	15.21	10.49	−4.72
United Kingdom	3.82	3.31	−.51
Korea	2.88	3.27	.39
Taiwan	4.08	2.80	−1.28
Malaysia	2.23	2.24	.01
Brazil	1.18	1.41	.23
Thailand	1.58	1.35	−.23
Singapore	2.50	1.34	−1.16
India	.91	1.14	.23
Israel	.92	1.13	.21
Switzerland	1.06	.97	−.09
Sweden	.90	.96	.06
Philippines	1.31	.89	−.42
Indonesia	1.09	.81	−.28
Hong Kong	1.29	.79	−.50
Australia	.53	.54	.01
Russia	.53	.47	−.06
Colombia	.33	.32	−.01
Chile	.29	.32	.03
Venezuela	.21	.17	−.04
Argentina	.21	.16	−.05
Saudi Arabia	.07	.07	.00
Total	**94.33**	**93.38**	**−.95**

NOTE. Imports exclude oil. Here and in the following tables, components may not sum to totals because of rounding.

SOURCE. International Monetary Fund (various years), *Direction of Trade Statistics* (Washington: IMF); Census and Statistics Department (various years), *Annual Review of Hong Kong External Trade* (Hong Kong: CSD); Directorate General of Budget, Accounting, and Statistics (various years), *Statistical Yearbook of the Republic of China* (Taipei: DGBAS); Directorate General of Customs (various years), *Monthly Statistics of Exports: Taiwan District, the Republic of China, December Issue, Part 2* (Taipei: DGC); Directorate General of Customs (various years), *Monthly Statistics of Imports: Taiwan District, the Republic of China, December Issue* (Taipei: DGC).

2. Share of U.S. exports, by economy, 1997 and 2003

Percent except as noted

Economy	1997	2003	Change (percentage points)
Canada	23.28	23.90	.62
Euro area	14.57	15.52	.95
Mexico	10.69	13.71	3.02
Japan	8.78	7.12	−1.66
United Kingdom	5.42	4.48	−.94
China	1.81	4.00	2.19
Korea	3.52	3.28	−.24
Taiwan	2.68	2.40	−.28
Singapore	2.80	2.28	−.52
Hong Kong	2.14	1.91	−.23
Australia	1.88	1.79	−.09
Brazil	2.48	1.57	−.91
Malaysia	1.60	1.53	−.07
Philippines	1.06	1.12	.06
Israel	.75	.86	.11
Switzerland	.78	.84	.06
Thailand	1.05	.79	−.26
India	.56	.69	.13
Saudi Arabia	1.04	.60	−.44
Colombia	.75	.52	−.23
Sweden	.50	.44	−.06
Venezuela	.97	.39	−.58
Chile	.69	.38	−.31
Indonesia	.61	.35	−.26
Russia	.35	.34	−.01
Argentina	.88	.34	−.54
Total	**91.64**	**91.18**	**−.46**

NOTE. Exports exclude gold and military items.

SOURCE. See table 1.

Trade with the twenty-six economies represented in the broad index accounted for well over 90 percent of total U.S. imports and exports in 1997 (tables 1 and 2). Although the U.S. import and export weights of several of these economies have shifted in the intervening years, in some cases considerably, these twenty-six economies still accounted for more than 90 percent of U.S. trade in 2003. Changes in U.S. trading patterns are also reflected in changes in some of the U.S. bilateral import and export shares. For example, between 1997 and 2003, the largest increases in U.S. bilateral import shares were recorded by China (5¾ percentage points) and the euro area (2 percentage points) (table 1). In contrast, Japan's share of U.S. imports dropped 4¾ percentage points, and the U.S. import shares of Canada, Taiwan, and Singapore decreased 1–1¾ percentage points. Meanwhile, the largest increases in U.S. bilateral export shares were recorded by Mexico (3 percentage points) and China (nearly 2¼ percentage points), and the largest decreases were registered by Japan, the United Kingdom, and Brazil, whose export shares declined 1–1¾ percentage points (table 2).

In 2003, no economies excluded from the broad dollar index had shares of total U.S. imports or exports that exceeded ½ percent.[15] For example, none of the U.S. bilateral import and export shares of the ten countries (located mainly in central and eastern Europe) that were admitted to membership in the EU in 2004 reached ¼ percent. Hence, the staff chose not to augment its indexes with additional currencies at this time.[16]

before and after the creation of the euro. Because trade among the euro-area countries does not affect the competitiveness of euro-area and U.S. products in third markets, the staff chose in 1998 to exclude trade among the economies of the EU when calculating the U.S. third-market competitiveness weights, again for the years before and after the creation of the euro. This methodology was modified in 2003, as is described later. For the years before the creation of the euro, the broad index is based on dollar exchange rates for thirty-five currencies, and index calculations for those years use separate currency weights for the ten precursor currencies that merged into the euro at the end of 1998. The currency weights for the ten precursor currencies can be summed to obtain an implied weight for the eleven-country euro area. (Belgium and Luxembourg used the same currency before both countries adopted the euro.)

15. A second, necessary condition for including a currency in the staff's dollar indexes is ready availability of consumer price data for the economy in question.

16. When an additional EU member country adopts the euro as its currency, the staff will factor its trade into the calculation of the euro's weights in the dollar indexes. This treatment is analogous to the way the staff factored in Greece's trade flows when Greece adopted the euro as its currency in 2001. For more details on this action, see the discussion later in this article.

3. Currency weights in the broad dollar index, 1997 and 2003

Percent except as noted

Economy	1997[1]	2003	Change (percentage points)
Euro area[2]	17.49	18.80	1.31
Canada[2]	16.92	16.43	−.49
China	6.58	11.35	4.77
Japan[2]	14.27	10.58	−3.69
Mexico	8.50	10.04	1.55
United Kingdom[2]	5.73	5.17	−.56
Korea	3.68	3.86	.18
Taiwan	3.77	2.87	−.90
Hong Kong	2.65	2.33	−.32
Malaysia	2.25	2.24	−.01
Singapore	2.87	2.12	−.75
Brazil	1.82	1.79	−.03
Switzerland[2]	1.43	1.44	.01
Thailand	1.59	1.43	−.16
Australia[2]	1.31	1.25	−.06
Sweden[2]	1.22	1.16	−.06
India	.88	1.14	.26
Philippines	1.18	1.06	−.12
Israel	.84	1.00	.16
Indonesia	1.25	.95	−.30
Russia	.78	.74	−.04
Saudi Arabia	.80	.61	−.19
Chile	.53	.49	−.05
Argentina	.61	.44	−.18
Colombia	.49	.41	−.08
Venezuela	.58	.30	−.27
Total	**100**	**100**	**0**
Memo: Major currencies subtotal	58.37	54.84	−3.54

1. Weights are different from those given in table 1 of Michael P. Leahy (1998), "New Summary Measures of the Foreign Exchange Value of the Dollar," *Federal Reserve Bulletin*, vol. 84 (October), pp. 811–18. The differences are due both to updated data for 1997 and to a change in methodology, which is discussed in this article.

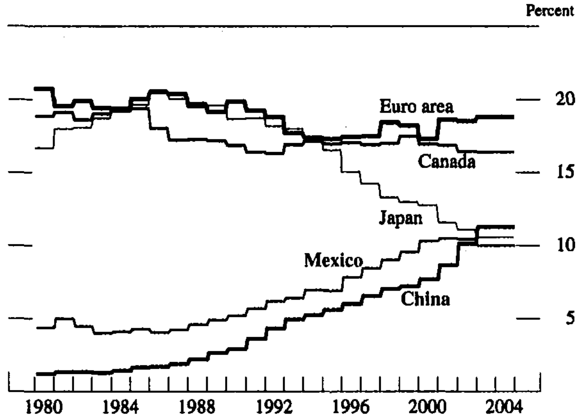
2. Currency is in the major currencies index.

SOURCE. See table 1.

Some of the combined currency weights—the linear combinations of bilateral import weights, bilateral export weights, and third-market competitiveness weights—of the twenty-six currencies in the broad dollar index underwent substantial changes between 1997 and 2003 (table 3). Reflecting the changes in U.S. bilateral import and export shares discussed earlier, the largest increases in currency weights were recorded by China (4¾ percentage points), Mexico (1½ percentage points), and the euro area (slightly more than 1¼ percentage points), whereas the currency weight of Japan fell almost 3¾ percentage points and the currency weights of Taiwan and Singapore declined ¾–1 percentage point. The euro and the Canadian dollar remain the currencies with the largest weights in the broad dollar index, whereas the currencies of China, Japan, and Mexico now have roughly equal weights at a slightly lower but still substantial level. In 2003, the sum of the currency weights of these five economies exceeded 67 percent.

The broad-index weights of these top five currencies evolved in different ways between 1980 and

1. Selected currency weights in the broad dollar index, 1980–2004



NOTE. Weights vary by year.

2004 (figure 1).[17] The weight of the Japanese yen rose in the early 1980s but declined significantly throughout much of the 1990s, whereas the weights of the euro and the Canadian dollar, while fluctuating somewhat from year to year, changed little on balance. The weights of the Mexican peso and especially the Chinese renminbi increased steadily over time. Indeed, according to the latest available annual trade data, the weight of the renminbi in the broad index now exceeds that of the yen and the peso. Taken together, these fluctuations illustrate the importance of regularly updating currency weights if an exchange rate index is to capture the implications of changing patterns of trade for the competitiveness of U.S. products in international trade.

The Major Currencies Index and the OITP Index

Seven of the twenty-six currencies in the broad index—the euro, Canadian dollar, Japanese yen, British pound, Swiss franc, Australian dollar, and Swedish krona—trade widely in currency markets outside their respective home areas, and these currencies (along with the U.S. dollar) are referred to by the Board's staff as "major" currencies. The remaining nineteen currencies in the broad index are those of what the staff refers to as the "other important trading partners" (OITP) of the United States. On the basis of these distinctions, the staff created two subindexes of the broad dollar index that correspond to

17. For now, the weights in 2003 and 2004 are the same because they are both based on annual trade data for 2003. The weights for 2004 will be revised after trade data for that year become available.

these two groups of currencies. The two subindexes, termed the major currencies index and the OITP index, track the trade-weighted exchange value of the dollar against the corresponding subsets of currencies. The weights of the currencies in the two subindexes are derived by rescaling the currencies' respective weights in the broad index so that they sum to 1 in each subindex. The share of the seven major currencies in the broad dollar index declined moderately between 1997 and 2003, from 58.4 percent to 54.8 percent, largely because of the growing relative importance of China and Mexico in U.S. international trade and the diminishing relative importance of Japan.

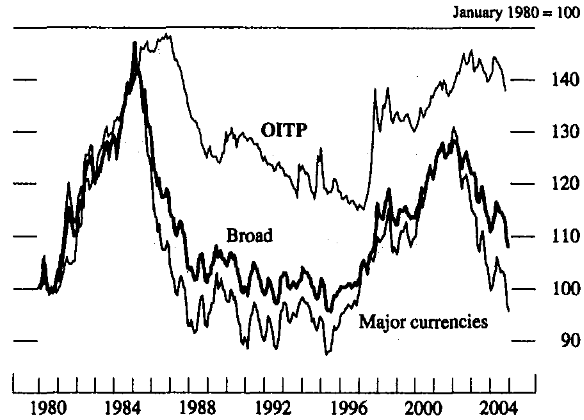
Because the major currencies generally trade in liquid financial markets, the major currencies index can be used to gauge financial market pressures on the dollar. In this role, the major currencies index is the successor to the staff's previous main dollar index, the so-called G-10 index, which the staff no longer maintains. A comparison of the performance of these two indexes and an examination of the causes of their different volatilities over certain time periods are provided in the following section.

Because most currencies are traded essentially continuously, the values of the nominal broad, major currencies, and OITP indexes can be computed on a daily basis or, if desired, at even higher frequencies. The highest frequency feasible for the corresponding real indexes, however, is monthly because these indexes require consumer price index data that are available only on a monthly basis.

Performance of the Exchange Rate Indexes, 1980–2004

The staff's dollar indexes have been successful in summarizing major long-term fluctuations in the dollar's exchange value, as the major fluctuations in the real broad, major currencies, and OITP indexes over the past quarter-century correspond to identifiable events (some lasting several years) in foreign exchange markets (figure 2). The period of dollar appreciation in the early and mid-1980s and the subsequent prolonged period of dollar depreciation are tracked by the rise and subsequent fall of the real major currencies and real broad dollar indexes. The dollar's real appreciation against several Latin American currencies during the debt crisis of the early and mid-1980s is reflected in the sustained increase in the real OITP index over that period. The sharp real appreciation of the dollar (and of other major currencies) against the currencies of several

2. Real (price-adjusted) indexes of the foreign exchange value of the U.S. dollar, 1980–2004



NOTE. Data are monthly.

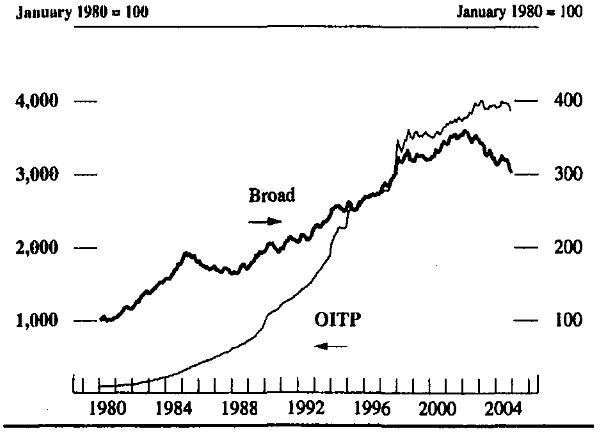
Asian emerging-market economies in the wake of the Asian crisis of 1997–98 is reflected in the run-up of the real OITP index during that time.[18] The period of broad-based dollar appreciation, which began in the late 1990s, and the recent period of sustained dollar depreciation, which began in early 2002 and has been especially pronounced against the major foreign currencies, are clearly visible in the fluctuations in the real major currencies index. The relative stability of the OITP index over the past three years contrasts markedly with the drop in the major currencies index and is due, at least in part, to the fact that the exchange values of several currencies with large weights in the OITP index are tied closely to the dollar.

In December 2004, the real broad and real major currencies indexes were about 8 percent above and 4 percent below their respective levels in January 1980 and were about 4 percent below and 11 percent below their respective twenty-five-year averages. The real broad and real major currencies indexes do not appear to show any identifiable long-term trends.[19] In

18. Currencies of Asian and Latin American emerging-market economies make up the bulk of the OITP index.

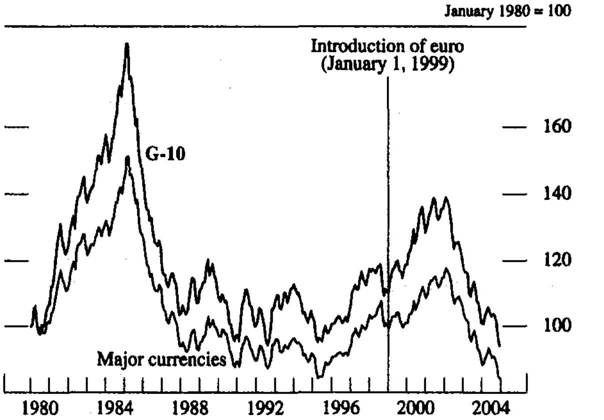
19. The staff's exchange rate indexes have the property (shared by most chain-weighted indexes) that if the weights change over time but eventually return to their initial values and if all exchange rates also return to their initial values, the indexes will generally *not* return to their respective initial values. This potentially undesirable property can complicate the evaluation of longer-term changes in the indexes. To examine the empirical relevance of this potential difficulty for evaluating the apparent lack of a significant net change in the real broad and real major currencies indexes over the past twenty-five years, the staff considered alternative index formulas, such as those of fixed-weight indexes, which do not share this potential difficulty (but which, in turn, may have other potentially undesirable properties, such as an inability to reflect the changing patterns of trade flows). The staff found that the apparent lack of drift in the real broad and real major

3. Nominal broad and OITP indexes of the foreign exchange value of the U.S. dollar, 1980–2004



NOTE. Data are monthly averages of daily values.

4. Nominal major currencies and G-10 indexes of the foreign exchange value of the U.S. dollar, 1980–2004



NOTE. Data are monthly averages of daily values.

contrast, at the end of 2004, the real OITP index was nearly 40 percent above its level in January 1980. The net increase appears mainly to reflect the sustained gain experienced during the 1980s, which was not fully reversed even as the real major currencies index declined substantially during the second half of the 1980s and in the early 1990s. Over the past twenty years, the real OITP index has changed little on balance.[20]

In contrast to the evolution of the real dollar indexes, the nominal broad index and especially the nominal OITP index have trended strongly upward since 1980 (figure 3). (Note that the vertical scales in figure 3 differ by a factor of ten.) The main reason for the sustained increase is that several of the currencies in the OITP index (and hence also in the broad index) have depreciated sharply in nominal terms, usually because of high inflation in the respective economies. The nearly fortyfold net increase in the nominal OITP index over this period stands in stark contrast to the net increase of about 40 percent in the real OITP index that was noted earlier. This difference illustrates dramatically that nominal exchange rate indexes are poor measures of trade competitiveness when inflation rates abroad differ widely from those in the United States.

Two dollar indexes, the major currencies index and its precursor, the G-10 index, cover currencies of economies that experienced inflation rates roughly similar to those in the United States during the past three decades. Thus, even without adjustments for prices, the evolution of these indexes can be informative regarding long-term trends in the competitiveness of U.S. goods relative to those of other industrial economies (figure 4).[21] The G-10 dollar index, created in the late 1970s, was based on ten major currencies, including five European currencies that later merged into the euro. With the adoption of the euro by Germany, France, Italy, the Netherlands, Belgium, and Luxembourg at the beginning of 1999, this index effectively became a six-currency index. The major currencies index includes the same six currencies as the G-10 index—the euro, Canadian dollar, Japanese yen, British pound, Swiss franc, and Swedish krona—and also the Australian dollar. The main difference between the two indexes is that the major currencies index gives considerably less weight to the euro and more weight to the Canadian dollar than does the G-10 index.[22] A second important difference is in the updating of the currency weights: The major currencies index uses weights that vary by year,

currencies indexes over the past quarter-century was also a feature of the alternative indexes, an indication that the lack of drift is not an artifact of chained weights.

20. The failure of the real OITP index to exhibit noticeable long-term downward drift over the past two decades is somewhat puzzling because the currencies of emerging-market economies may be expected to experience secular real appreciation against the dollar and other major currencies. Balassa (1964) and Samuelson (1964) argued that because technological progress tends to be concentrated in the production of internationally tradable goods, economies that experience sustained rapid technological progress, such as many emerging-market economies, should exhibit a long-term rising real exchange rate in terms of price indexes, such as consumer price indexes, that include nontradables. See Bela Balassa (1964), "The Purchasing-Power Parity Doctrine: A Reappraisal," *Journal of Political Economy*, vol. 72 (December), pp. 584–96; and Paul A. Samuelson (1964), "Theoretical Notes on Trade Problems," *Review of Economics and Statistics*, vol. 46 (May), pp. 145–54.

21. Although no longer maintained by the Board's staff, the G-10 index is still followed in the financial community, in part because it forms the basis of certain exchange-traded futures contracts.

22. The currency weights in the G-10 index are multilateral weights, which are defined as the share of total trade (exports plus

whereas the currency weights of the G-10 index are fixed.

Even though these two nominal indexes have evolved roughly similarly on balance over the past twenty-five years, the G-10 index has witnessed fluctuations of a greater amplitude during certain subperiods, especially from 1980 to 1988 and again from 1999 to the present. These two subperiods were characterized by greater volatility of the dollar against the European currencies than against several other currencies, especially the Canadian dollar. The large weight of the euro (and of its precursor currencies) in the G-10 index, together with the fact that the swings in the dollar's exchange value against the euro were large over the two subperiods, explains most of the higher amplitude of the swings in the G-10 index. The staff views the major currencies index as a better indicator of the evolution of the competitiveness of U.S. products against those made in the other major-currency economies, especially over the period since the euro was introduced as a traded currency.

Revision of Currency Weights and Implementation of Methodological Changes

Because the currency weights of the staff's dollar indexes are based on annual data on international trade, these weights will change as new trade data are received. For example, during most of 2003, index calculations for days or months in 2003 were based on annual trade data for 2001, the latest year for which such data were then available. In late 2003, after annual trade data for 2002 were published, the currency weights for 2003 were updated, and that revision led to an update of the indexes as well. After 2003 trade data became available late in 2004, the indexes for dates in 2003 were updated yet again. In addition, past international trade data are occasionally re-benchmarked and revised to incorporate new information on trade flows and to correct previous errors and omissions. Such changes may lead to further revisions of the trade-based currency weights.[23]

imports) of the foreign economies in the index. Largely because the trade figures underlying these multilateral trade weights included trade among the six countries that eventually became part of the euro area, the weight of the euro in the G-10 index (obtained by summing the individual currency weights for Germany, France, Italy, the Netherlands, and Belgium/Luxembourg) is larger than its weight in the major currencies index.

23. Such revisions are usually minor for years that precede the immediately previous year.

Another source of occasional revisions stems from methodological changes. Three such changes have been implemented since the current set of dollar indexes was introduced in late 1998. First, after Greece adopted the euro in January 2001, trade data for Greece were included to compute the euro's weights in the dollar indexes.[24] Because Greece is a relatively small economy and much of its international trade occurs with other euro-area countries, its inclusion in the euro-area aggregate raised the euro's combined weight in the broad dollar index less than 0.1 percentage point. Second, starting with the annual revision published in January 2002, agricultural exports are no longer subtracted from U.S. exports in the computations of the weights, either for the current period or for past periods. This change was motivated, in part, by the increasing level of processing incorporated in U.S. agricultural exports, which makes them less like pure commodities and more like differentiated products. This modification simplified the calculation of the bilateral export weights without changing them significantly.

Prompted in part by Sweden's referendum in September 2003, in which voters decided not to adopt the euro as their national currency, the staff made a third methodological change. It revised its practice regarding the treatment of intra-EU trade in the calculation of the third-market competitiveness weights. Although trade among euro-area countries continues to be excluded from these calculations, starting with the annual revision of weights published in December 2003, trade between the euro-area countries and both Sweden and the United Kingdom, as well as trade between Sweden and the United Kingdom, is now included for the current year and for past years. Because these three economies have important trade ties with each other and because they are also important trading partners of the United States, this methodological change resulted in some fairly substantial increases in the third-market competitiveness weights and hence also in the combined weights of the euro, the British pound, and the Swedish krona for the entire sample period.

These methodological changes were announced on the Board's website when they were introduced. The staff will continue to announce these and other revisions, including changes in index weights caused by shifting patterns of international trade and changes in component currencies, as they are implemented. □

24. Because the drachma was not in the broad dollar index before 2001, the total number of currencies in that index remained unchanged at twenty-six.

Industrial Production and Capacity Utilization: The 2004 Annual Revision

Charles Gilbert and Kimberly Bayard, of the Board's Division of Research and Statistics, prepared this article. Vanessa Haleco provided research assistance.

On December 22, 2004, the Board of Governors of the Federal Reserve issued revisions to its index of industrial production (IP) and the related measures of capacity and capacity utilization for the period from January 1972 to November 2004. Overall, the changes to total industrial production were small and almost entirely in the period from 2002 onward (chart 1).[1] The levels, but not the rates of change, for years before 1972 were also revised.

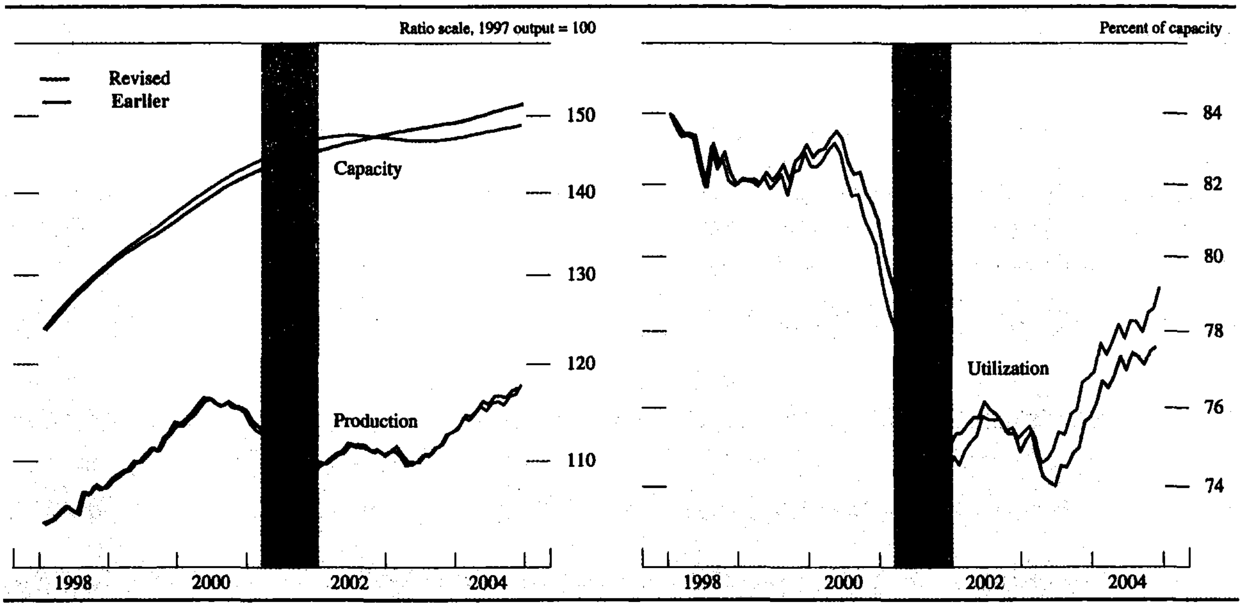
Measured from the fourth quarter of 2002 to the third quarter of 2004, industrial output is reported to have increased a little less than shown previously. Production expanded more slowly in 2000 than earlier estimates indicated, whereas the contraction in 2001 was a little less steep. The rise in output in 2002 was slightly stronger than reported earlier.

Although the level of IP was a bit lower in the third quarter of 2004 than previously reported, the rate of industrial capacity utilization—the ratio of production to capacity—was revised upward. At 78.2 percent, the utilization rate for total industry was 0.9 percentage point higher than previously reported but still 2.9 percentage points below its 1972–2003 average. The current figures place the operating rate in manufacturing for the fourth quarter of 2003 and the third quarter of 2004 about ½ percentage point above their

NOTE. Charles Gilbert directed the 2004 revision and, with Kimberly Bayard, David Byrne, William Cleveland, Paul Lengermann, Maria Otoo, Dixon Tranum, and Daniel Vine, prepared the revised estimates of industrial production. Norman Morin, John Stevens, and Daniel Vine prepared the revised estimates of capacity and capacity utilization.

1. The production and capacity indexes and the utilization rates referred to in the text and shown in table 1 are based on the data as published on January 14, 2005. Statements about previously reported estimates refer to the data published in the December 14, 2004, monthly G.17 release.

1. Total industrial production and capacity utilization, 1998–2004



NOTE. The shaded areas are periods of business recession as defined by the National Bureau of Economic Research.

The lines that are labeled "revised" correspond to the data that extend to December 2004 as published on January 14, 2005. The lines that are labeled "earlier" reflect the data as published prior to the December 22, 2004, annual revision. The "earlier" line for capacity extends through the end of 2004 because the capacity indexes are based on annual projections that are converted to a monthly basis.

1. Revised rates of change in industrial production and capacity and the revised rate of capacity utilization, 2000–2004

Item	2003 proportion	Revised rates of change (percent)					Difference between revised and earlier rates of change (percentage points)				
		2000	2001	2002	2003	2004	2000	2001	2002	2003	2004
Production											
Total industry	100.0	1.9	–5.1	1.5	1.2	4.2	–.4	.2	.1	–.3	–.7
Manufacturing	82.3	1.5	–5.4	1.3	1.5	5.0	–.5	.2	.2	–.3	–.9
Excluding high-tech industries	77.4	–1.9	–4.9	.7	.4	4.1	–.5	.3	.8	–.2	–.9
High-tech industries	4.9	37.6	–10.1	8.1	18.7	18.6	–.6	–1.6	–7.2	–2.6	–1.5
Mining and utilities	17.7	4.2	–3.3	2.7	–.4	.6	.1	.2	–.3	–.2	.3
Capacity											
Total industry	100.0	4.3	2.7	.5	–.2	1.2	.2	.4	–1.2	–1.3	–.4
Manufacturing	84.9	5.0	2.6	.0	–.1	1.1	.1	.4	–1.1	–1.1	–.5
Excluding high-tech industries	78.9	1.7	.5	–.4	–.6	.1	.4	.1	–.2	–.4	–.1
High-tech industries	6.1	38.8	27.4	8.0	8.4	13.4	–3.4	2.5	–9.7	–3.4	–7.3
Mining and utilities	15.1	1.7	3.0	2.6	1.1	1.0	.5	–.1	–1.2	–1.3	.1
Capacity utilization (percent)											
Total industry	100.0	80.7	74.6	75.4	76.5	78.8	–.7	–.8	.2	1.0	.9
Manufacturing	84.9	78.8	72.6	73.5	74.8	77.6	–.8	–.9	.1	.6	.4
Excluding high-tech industries	78.9	78.0	73.8	74.6	75.4	78.4	–1.0	–.7	.0	.2	–.2
High-tech industries	6.1	86.1	60.8	60.9	66.7	69.7	.3	–2.2	–.9	–.3	1.8
Mining and utilities	15.1	92.5	86.8	87.0	85.7	85.3	–.2	.0	.8	1.7	1.9

NOTE. The rates of change for years are calculated from the fourth quarter of the previous year to the fourth quarter of the year specified. The capacity utilization rates are for the last quarter of the year.

The difference between the revised and earlier rates of change for IP for 2004 is calculated for the period 2003:Q4 to 2004:Q3. The difference in capacity utilization for 2004 refers to 2004:Q3.

High-tech industries include the manufacturers of semiconductors and related electronic components, computers and peripheral equipment, and communications equipment.

earlier estimates. Excluding selected high-technology industries, capacity utilization in manufacturing in 2003 and 2004 was little revised on balance (chart 2). Capacity utilization rates at mines and utilities for the third quarter of 2004 were about 2 percentage points higher than reported earlier.

The revision indicated that industrial capacity expanded at a slower rate in 2002 and 2004 than estimated previously. Capacity is reported to have declined a bit in 2003; previously, a small increase had been reported. The current figures for capacity in 2000 and 2001 indicate a slightly stronger rate of increase than the earlier estimates did.

The updated IP and capacity measures incorporate newly available and more-comprehensive source data. Also, the revision introduced improved methods for compiling sixteen monthly production series and one new capacity series. The annual source data were generally for 2002 and 2003, and the modified methods affected indexes largely from 1972 forward.

The main data source introduced in this annual IP revision was the U.S. Census Bureau's recently issued 2002 Census of Manufactures. Data introduced from other Census Bureau publications included the 2002 Census of Services and the 2003 Services Annual Survey (for publishing) and selected 2003 Current Industrial Reports. Additional government source data included annual data on minerals for 2002 and 2003 from the U.S. Geological Survey (USGS) and updated deflators from the Bureau of Economic Analysis. Also, the new monthly production estimates reflect updated seasonal factors and include monthly source data that became available (or were revised) after the closing of the regular four-month reporting window.

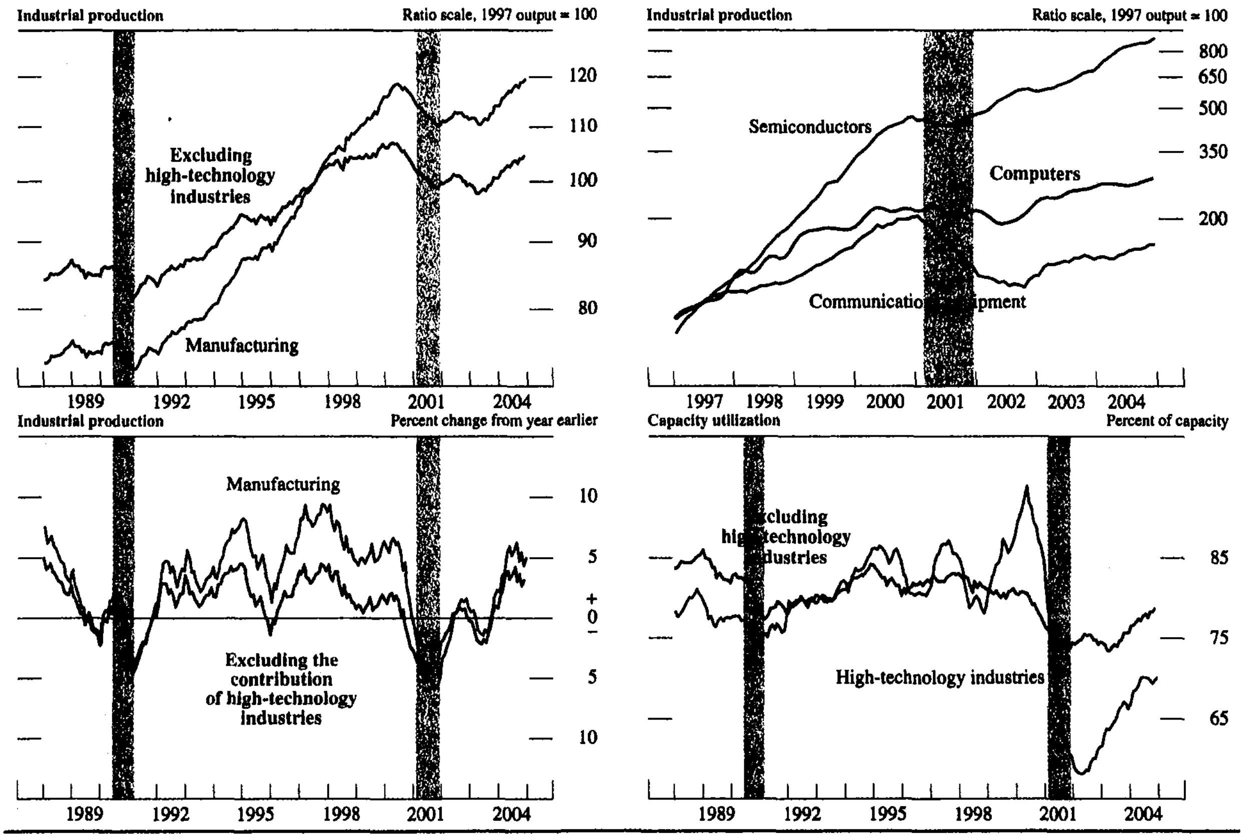
The capacity indexes and capacity utilization rates were calculated using the revised production indexes; results from the Census Bureau's 2003 Survey of Plant Capacity for the fourth quarter of the year; and newly available data on industrial capacity from the USGS, the Energy Information Agency of the Department of Energy, and other organizations.

Results of the Revision

For the third quarter of 2004, total industrial production was reported to be 115.9 percent of output in 1997 (appendix table A.1), and capacity stood at 148.2 percent of output in 1997 (appendix table A.2); both indexes are lower than reported previously. However, because the downward revision to capacity was larger than that to production, the utilization rate for total industry in the third quarter of 2004 was higher than earlier reports suggested.

Appendix tables A.3 and A.4 show the revised rates of change of industrial production for market groups, industry groups, special aggregates, and selected detail for the years 2000 through 2004. Appendix tables A.5, A.6, and A.7 show the revised figures for capacity utilization, capacity, and electric power use. Appendix tables A.3, A.4, A.6, and A.7

2. High-technology industrial production and capacity utilization



NOTE. The shaded areas are periods of business recession as defined by the National Bureau of Economic Research.

Manufacturing comprises those industries included in the NAICS definition of manufacturing plus those industries—newspaper, periodical, book, and directory publishing and logging—that have traditionally been considered to be a part of manufacturing and are included in the industrial sector.

High-technology industries are defined as semiconductors and related electronic components (NAICS 334412–9), computers and peripheral equipment (NAICS 3341), and communications equipment (NAICS 3342).

show the difference between the revised and earlier rates of change as well. Appendix table A.5 also shows the difference between the revised and previous rates of capacity utilization for the final quarter of the year (the third quarter was used for 2004). Appendix table A.8 shows the annual proportions of market groups and industry groups in total IP.

Industrial Production

The revision indicated that the overall path of industrial production was much the same as stated earlier. The most significant feature of this revision—the incorporation of the 2002 Census of Manufactures—had little effect on the top-line estimates.

Production by Industry Groups

Relative to earlier reports, the current estimates for manufacturing IP indicate a more moderate upward trajectory for 2003 and 2004. Like the revisions to total industrial production, the revisions to manufacturing output in earlier years were minimal.

Across industry groups, the revision path indicates that the output of durable goods manufacturers followed a generally lower trajectory in recent years than the previous estimates suggested. Industries that contributed to the downward revision in 2003 and 2004 include the computer and electronic products industry, the miscellaneous manufacturing industry, the fabricated metal products industry, the machinery industry, and the wood products industry.

Overall, the index for nondurable manufacturing was a little higher than the previous estimates. In 2004, lower indexes for printing and support; chemicals; plastics and rubber products; and apparel and leather were accompanied by upward revisions to the indexes for petroleum and coal products; food, beverage, and tobacco products; textile and product mills; and paper.

The revision indicated lower output in recent years for the industries that have historically been defined as manufacturing (namely publishing and logging) but that are classified elsewhere under the North American Industry Classification System (NAICS). The rates of change for 2003 and 2004 are about 4 percentage points lower than previously published.

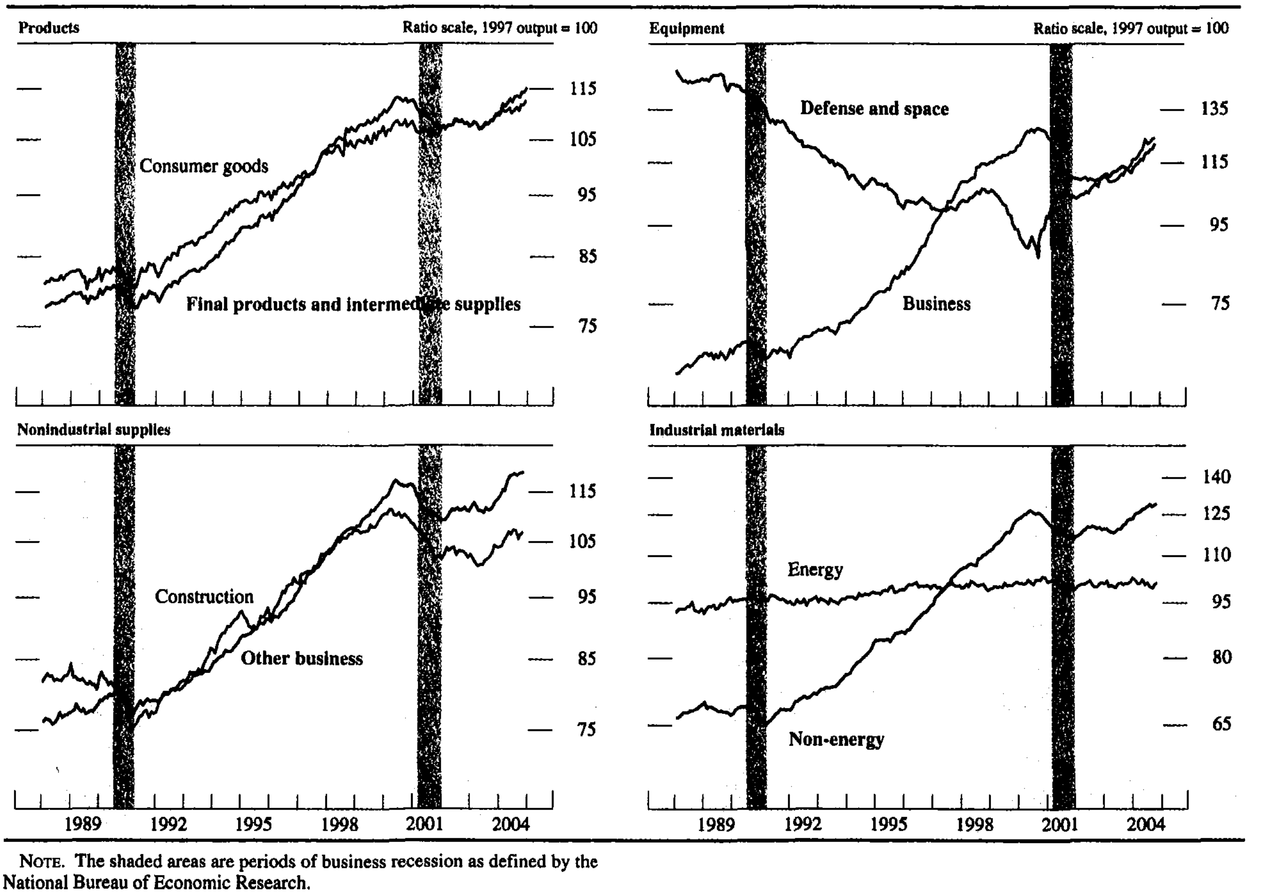
Regarding a few special aggregates (appendix table A.4), the output of selected high-technology industries—computer and peripheral equipment, communications equipment, and semiconductors and related electronic components—was lower in recent years than previously estimated. Production is reported to have fallen somewhat more steeply in 2001 and to have risen somewhat less in 2002, 2003, and 2004. Relative to earlier estimates, the output of computer and peripheral equipment is estimated to have increased much more slowly in 2002 and 2004 and more quickly in 2003. The index for communications equipment is reported to have declined at a faster pace in 2002 than was reported earlier; the rebound in 2003 is shown to be markedly stronger. The expansion of semiconductor output is estimated to have been much more moderate in 2003 and somewhat stronger in 2004 than earlier estimates suggested.

The revision found somewhat stronger output of motor vehicles and parts in recent years. Relative to earlier estimates, the index rose more in 2002 and 2003.

Production by Market Groups

Among major market groups, the production index for final products and nonindustrial supplies is little changed from earlier estimates for recent years. The overall path of this index shows a rise in 2000, a dropback in 2001, and then increasingly large gains for 2002 through 2004 (chart 3). The revision strengthened the output of consumer goods for 2001 through 2003; however, the increase in 2004 is estimated to be a little lower. The production of business equipment is reported to be somewhat weaker in the 2000–04 period, on balance, than in the earlier estimates. Production of defense and space equip-

3. Industrial production by market groups, 1988–2004



NOTE. The shaded areas are periods of business recession as defined by the National Bureau of Economic Research.

ment is reported to have risen a bit less in 2001 than earlier reports suggested, but the overall contour of the index still shows solid gains since 2001. On balance, the index for construction supplies is a little stronger since 2000 than reported earlier. However, the index for business supplies is weaker over the same time period. The output of materials was also weaker in recent years, particularly in 2003 and 2004; production indexes for both the energy and non-energy categories were revised downward.

Capacity

The general contour of manufacturing capacity shows a slightly more rapid acceleration during the second half of the 1990s and a sharper deceleration since then. The revisions to the capacity indexes for durable goods industries were the principal contributors to the changes in the contour of manufacturing capacity. The estimates for nondurable manufactures over the same time period are, on balance, little changed from earlier reports.

Among selected high-technology industries, the overall picture of rapidly expanding capacity in the late 1990s followed by more-moderate increases still remains. However, the revision suggested a slower path of expansion in the 2000–04 period than indicated previously. Excluding high-technology industries, manufacturing capacity contracted slightly in 2002 and 2003; the estimates show a small increase for 2004 that is about the same as in the earlier reports.

Capacity at mines decreased in four of the past five years and has declined, on balance, more than previously estimated. In contrast, capacity at electric and gas utilities accelerated sharply from 2000 to 2003, although the current measures show, on balance, a slower rate of expansion than previous estimates. For 2004, the increase in capacity at utilities moderated a bit from the pace seen over the preceding four years.

The revisions to the capacity estimates for stage-of-process groups occurred across all groups but were most pronounced in the category for primary and semifinished goods. For 2002 through 2004, the current capacity measures exhibit lower rates of change than previously reported for each stage-of-process group.

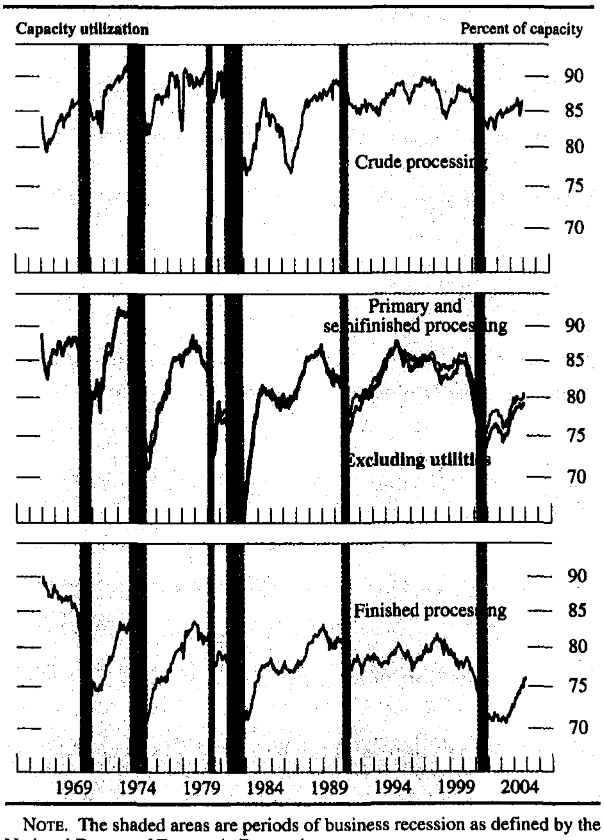
Capacity Utilization

The revised rates of capacity utilization are somewhat higher than the previous estimates for recent years, mainly because of downward revisions to capacity. For the fourth quarter of 2003 and the third quarter of 2004, the revised utilization rates for total industry are about 1 percentage point higher than the earlier estimates. Utilization rates were revised upward for the three major industrial sectors—manufacturing, mining, and electric and gas utilities—with the revisions concentrated in a few industries in each sector.

Capacity utilization for total industry was 78.8 percent in the fourth quarter of 2004, a level that is 2.3 percentage points below its 1972–2003 average. At 85.6 percent in the fourth quarter, the operating rate for industries in the crude stage of processing was less than 1 percentage point below its long-run average (chart 4). The utilization rates for industries in the primary and semifinished processing group and in the finished processing group for the fourth quarter of 2004 were about 2 percentage points below their respective long-run averages.

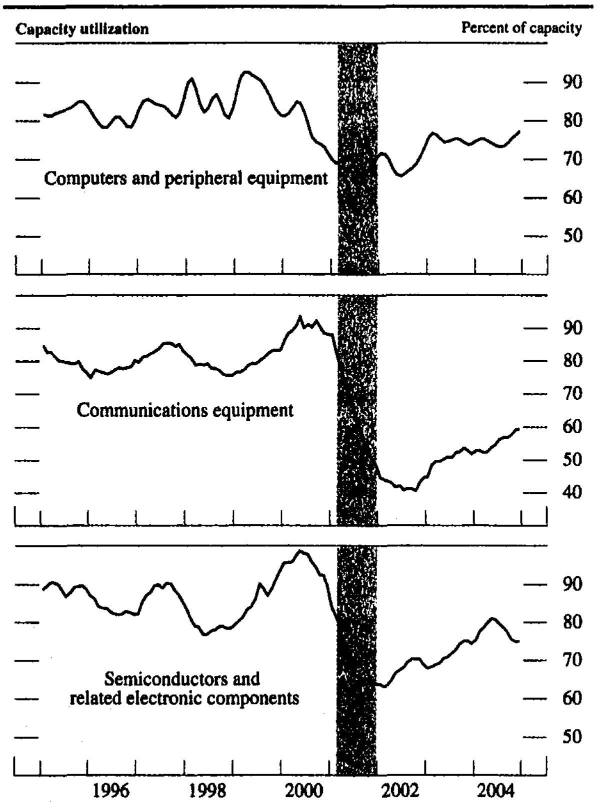
Operating rates in manufacturing industries were revised up about ½ percentage point in 2003 and in 2004; those changes accounted for about one-half of the upward revisions to total industry capacity utilization in each year. In both 2003 and 2004, some of

4. Capacity utilization by stage of process, 1967–2004



NOTE. The shaded areas are periods of business recession as defined by the National Bureau of Economic Research.

5. Capacity utilization for selected high-technology industries, 1995–2004



NOTE. The shaded areas are periods of business recession as defined by the National Bureau of Economic Research.

the upward revision to manufacturing operating rates was attributable to a lower aggregation weight being accorded to high-technology industries; during this time period, the high-technology industries had relatively low utilization rates, but the downward revision to their weight reduced their drag on the overall operating rate. In 2004, the upward revision to manufacturing operating rates was also, in part, attributable to utilization rates in the selected high-technology industries that were not as low as previously published.

The operating rate for the selected high-technology industries was 69.9 percent in the third quarter of 2004—1.8 percentage points above the previously reported level and 11.6 percentage points above its trough in the second quarter of 2002 (chart 5). On balance for recent years, the revision placed utilization in the semiconductors and related electronic components industry at a higher rate than reported earlier but indicated a lower rate for communications equipment. Operating rates in the computer and peripheral equipment industry were not much changed.

Outside the high-technology industries, manufacturing operating rates in recent years were, on balance, revised little. The current estimates for nondurable goods manufacturers and for durable goods manufacturers excluding the high-technology industries are little changed in 2003 and 2004. Over the same period, particularly for 2004, the utilization rates for other (non-NAICS) manufacturers are lower than earlier estimates suggested.

Outside of manufacturing, the revision placed the utilization rates for mines and for electric and gas utilities at higher levels than reported earlier. The upward revisions to the utilization rates for utilities reflect a significant downward revision to the data on electricity generation capacity. Less capacity at coal mines and an upward revision to drilling activity yielded higher operating rates in these industries that more than offset downward revisions to utilization rates elsewhere in mining. For the third quarter of 2004, the utilization rate at mines was 86.3 percent, and the utilization rate at gas and electric utilities was 83.7 percent. Both measures are still below their 1972–2003 averages but roughly 2 percentage points above their previous estimates.

Technical Aspects of the Revision

The revision incorporated updated comprehensive annual data and revised monthly source data used in the estimation of production, capacity, and utilization. As noted earlier, the revision included information drawn from the recently released 2002 Census of Manufactures. Additionally, this revision incorporated the 2003 Survey of Plant Capacity, other annual industry reports, recent information on prices, and revised monthly source data measuring physical output and labor and electricity inputs to production. Along with the individual production series and seasonal factors, the annual value-added weights used in aggregating the indexes to market and industry groups were also updated.

Changes to Benchmark Indexes

The benchmark indexes for manufacturing—defined for each six-digit NAICS industry as nominal gross output divided by a price index—were modified in the revision. The principal change to the indexes was the inclusion of new information from the 2002 Census of Manufactures and revisions to the information in the 2001 Annual Survey of Manufactures. In addition, the benchmark indexes incorporated newly available price indexes on a NAICS basis from the Bureau of Economic Analysis (BEA). The new price data were not significantly different from the estimates that had been used previously. The calculation of nominal gross output for the benchmark indexes was also revised for 1997 to the present. Previously, nominal gross output for an industry was defined to equal cost of materials plus value added. The updated methodology subtracts from that figure the cost of resold goods (those goods purchased by a manufacturer and then resold without any material transformation).

Changes to Individual Production Series

With the revision, the monthly production indicators for some series have changed. The source data for eleven industries were switched from electric power use to production-worker hours. These industries, which constituted 6.6 percent of IP in 2003, are the following:

1. other animal food (NAICS 311119)
2. soft drink and ice (31211)
3. wood container and pallet (32192)
4. paving, roofing, and other petroleum and coal products (32412,9)
5. pesticide and other agricultural chemicals (32532)
6. concrete and product (32732-9)
7. forging and stamping (3321)
8. coating, engraving, heat treating, and allied activities (3328)
9. motor vehicle metal stamping (33637)
10. household and institutional furniture and kitchen cabinet (3371)
11. medical equipment and supplies (3391)

The decision to switch the monthly indicators for these industries resulted from a deterioration in the sample of utilities that report for these industries as well as from a review of the historical annual relationships between the output benchmarks and the two corresponding inputs to production.

The revision also incorporated new physical product indicators for five industries, which made up 1.4 percent of IP in 2003:

1. aluminum foundries (NAICS 331521,4)
2. machine tools (333512,3)
3. engine manufacturing (333618)
4. mattress manufacturing (33791)
5. book publishing (51113)

Previously, these industries were combined with other industries in single IP indexes and then estimated from production-worker hours. Although not published, the additional series raised the total number of individual output indexes that make up industrial production to 300.

The aluminum foundries industry (NAICS 331521,4) was formerly grouped with other nonferrous foundries in a single IP index based on production-worker hours. For 1992 and forward, this revision established separate indexes for aluminum foundries and for other nonferrous foundries. The production indicator for the new index for aluminum foundries is a value-weighted aggregate of quarterly shipments of dies, permanent molds, sand castings, and other castings, for which the underlying data are obtained from the Aluminum Association. In 2003, dies made up 56.5 percent of the total product value of this industry, sand castings made up 21.4 percent, permanent molds made up 21.9 percent, and the other castings made up the very small remainder. These data are available from 1994 forward; the indexes for 1992 and 1993 were estimated based on production-worker hours. The separate index for other nonferrous foundries (331522,5,8) is based on production-worker hours.

The machine tools industry (metal cutting and forming machinery, NAICS 333512,3) was formerly grouped with other metalworking machinery in a single IP index based on production-worker hours. For 1992 and forward, the revision introduced a new index for the machine tool industry that is based on quarterly shipments data from the Census Bureau. Other metalworking machinery (333511,4,5,6,8) is now a separate index based on production-worker hours. The Census Bureau's Current Industrial Report on Metalworking Machinery (MQ333W) provides data on shipments for a variety of machine tools, including boring and drilling machines; gear-cutting machines; grinding and polishing machines; lathes; milling machines; machining centers; punching, shearing, bending, and forming machines; and presses. Both unit and revenue measures for shipments are used to construct a Fisher index of real shipments. A model-based estimate of the change in inventories (see box "The Estimation of Inventories for the Machine Tool Industry") is then added to the shipments index to compute a production index.

Engine manufacturing (NAICS 333618) was formerly grouped with power transmission equipment in a single IP index based on production-worker hours. For 1992 and forward, engines and power transmission equipment are separate indexes. The NAICS industry 333618 comprises manufacturers of

The Estimation of Inventories for the Machine Tools Industry

In the inventory model used in the estimation of machine tool production, manufacturers are assumed to want to hold inventories proportional to their expected shipments. The estimate of inventory change is computed as the sum of three components: a trend rate of stockbuilding, a portion of the adjustment to inventories that a manufacturer would need to make in order to reach a desired inventory level, and the impact on stocks of a deviation of shipments from expectations. Three parameters are required for the model: (1) a target for the ratio of inventories to expected sales, (2) a parameter that indicates how quickly manufacturers try to make up the deviation from their target inventory level at the end of the previous quarter, and (3) a parameter that indicates the degree to which surprises in shipments are offset by changes in actual production in the same quarter. The parameters values were chosen by examining industries for which shipments data exist and either production or inventory data exist. The primary criterion for the selection of parameter values was to maximize the R^2 statistic attained when regressing the period-to-period rate of change for the seasonally adjusted production series on the rate of change for the output estimate from the model (which is equal to shipments plus the model's estimate of the change in inventories). In addition to just maximizing the average R^2 statistic over all of the industries examined, it was also undesirable for the R^2 statistic to decrease rapidly as a result of small perturbations in the parameter values. The parameters that resulted from this estimation procedure seemed plausible. The target for the ratio of inventories to expected shipments was selected to be 0.3 quarter, or equivalently one month, of supply. Surprises in shipments were estimated to be mostly offset by production changes within a quarter—only 20 percent of the surprise feeds through to inventories by the end of the quarter. Last, it was estimated that during a quarter, manufacturers try to close about 40 percent of any gap between actual and target inventory levels that existed at the beginning of the quarter.

internal combustion engines except those who produce automotive gasoline engines or aircraft engines. Monthly diesel engine assemblies from Stark Communications, Inc., provide the production indicator for the new index for engines. The remainder of the previous grouping—speed changers, drives, gears, and power transmission equipment (NAICS 333612,3)—is now a separate index and is still based on production-worker hours.

The output of mattresses (NAICS 33791) was formerly grouped with the output of blinds and shades (NAICS 33792) in a single IP index called "Other furniture related product," and the estimates were based on production-worker hours. Under the revision, mattress production for 1987 and forward is based on monthly unit sales data for mattresses and foundations from the International Sleep Products Association (ISPA). The blinds and shades index continues to be based on production-worker hours.

The ISPA data come from a monthly survey of leading producers of mattresses and foundations. According to the ISPA, survey respondents in 2003 represented more than 60 percent of industry unit shipments and nearly 75 percent of wholesale dollar sales. In addition to providing information from survey respondents, the organization estimates shipments and sales for the industry as a whole. The ISPA issues information separately for mattresses and for foundations; however, currently not enough history exists for the two components to be independently weighted.

Previously, the output of the book publishing industry (NAICS 51113) was grouped with the output of other publishing operations except newspapers (51112,4,9) into a single index called "Periodical, book, and other publishers" and was based on production-worker hours. The revision introduced a new index for book publishing that begins in 1987 and is estimated separately from the other publishing operations. The new index for periodicals and other publishers is based on production-worker hours.

The new index for the book publishing industry is based on gross sales listed in the monthly reports issued by the Association of American Publishers. A Fisher index of real sales is constructed from sixteen separate categories of books and is used as the indicator for the book publishing series. The underlying gross revenue data are deflated by detailed producer price indexes from the Bureau of Labor Statistics. Because of the volatility of the sales data, the monthly production index is a three-month centered moving average in which the data for the second month are more heavily weighted than are the data for the first or third month.

The new book publishing index will continue to be published as part of the aggregate index for "Periodical, book, and other publishers" (NAICS 51112-9). Book publishing comprises approximately 20 percent of the aggregate index and about 1 percent of total IP.

Table 2 shows the 2003 value-added proportion of data by type available in each month of the four-month IP publication window. The first estimate of output for a month is preliminary and is subject to revision in each of the subsequent three months as new source data become available. As the table indicates, by the third revision (the fourth month of

2. Proportion of industrial production data by type in reporting window, 2003

Percent

Type of source data	Month of estimate			
	1st	2nd	3rd	4th
Physical product	26.1	40.8	49.9	50.1
Production-worker hours	34.7	34.7	34.7	34.7
Electric power use	.0	11.7	11.7	11.7
Received	*60.8*	*87.2*	*96.4*	*96.6*
Estimated	*39.2*	*12.8*	*3.6*	*3.4*
Total industrial production	**100.0**	**100.0**	**100.0**	**100.0**

an estimate), the physical-product content of IP is 50.1 percent.

The revision incorporated refined methods for a few series. The coverage was broadened for some of the motor vehicles parts series to include more information for engines, brakes, transmissions, and axles. This revision also included new methods for the production indicator for electronic computers; the new estimates incorporate a refined concordance between trade data from the Census Bureau and the source data for computer sales.

LAN Equipment

The 2000 revision introduced a new IP series for the production of local area network (LAN) equipment (routers, switches, and hubs). The series is not published in the monthly statistical release, but it is included in the broader IP aggregate for communications equipment and updated on an ongoing basis.[2] Table 3 updates the results for LAN equipment.

Changes to Individual Capacity Series

The revision to the capacity indexes used updated information for the publishing industry, for which there had been a gap in the collection of operating rates. Through 1998, the Survey of Plant Capacity (SPC), which covers the manufacturing sector, was conducted under the Standard Industrial Classification (SIC) system. The SIC system included the publishing industry in the manufacturing sector. In 1999, the SPC began to be conducted under NAICS, which excludes the publishing industry from the manufacturing sector. In 2002, the Census Bureau recommenced collection of publishing industry data under the SPC. The release of the 2003 SPC provided the Federal Reserve Board with two consecutive data points for the publishing industry and enabled the interpolation of industry information for the missing years 1999–2001.

The revisions to the capacity indexes also incorporated the BEA's capital flow table for 1997. This table provided a detailed breakdown of the asset composition of industry investment. The Federal Reserve used the capital flow table to estimate annual asset-by-industry investment flows—which is the first step in constructing measures of industry capital input. Before the current revision, the Federal Reserve used data for thirty-five asset categories; this revision added a thirty-sixth, software investment.

Finally, the capacity series for semiconductors was split into two components. One covers microprocessor units (MPUs), and the other covers non-MPU semiconductors, such as memory, logic, and other integrated circuit chips. Neither component will be published.

3. U.S. LAN equipment, 1997–2003

Period	Production index	Price index	Value of production (millions of dollars)
Annual estimates (1997 = 100)			
1997	100.0	100.0	12,935.4
1998	153.2	72.2	14,329.5
1999	223.0	59.1	17,138.9
2000	303.5	52.5	20,732.7
2001	357.9	41.2	19,205.4
2002	366.6	32.8	15,635.1
2003	412.5	25.4	13,549.1
Quarterly estimates (1997 = 100)			
1997:Q1	77.7	108.0	10,767.2
Q2	88.8	97.4	11,634.7
Q3	109.2	97.5	13,824.5
Q4	124.3	97.9	15,423.2
1998:Q1	136.7	80.2	14,120.6
Q2	154.8	71.1	15,041.5
Q3	160.7	67.6	14,009.2
Q4	160.7	69.7	14,191.5
1999:Q1	212.4	61.6	16,984.3
Q2	225.2	56.3	17,383.2
Q3	224.4	59.8	17,086.5
Q4	229.8	58.6	17,138.6
2000:Q1	262.8	54.4	18,692.5
Q2	304.4	49.8	20,542.1
Q3	322.9	53.5	21,751.7
Q4	323.8	52.7	21,853.8
2001:Q1	391.3	43.1	22,253.4
Q2	336.8	42.2	18,933.4
Q3	340.3	41.6	17,741.7
Q4	363.4	38.0	17,938.4
2002:Q1	353.9	34.5	16,381.3
Q2	360.0	33.5	16,034.4
Q3	382.2	33.1	15,683.9
Q4	370.2	30.2	14,438.5
2003:Q1	374.3	26.5	13,514.5
Q2	400.6	27.0	14,365.4
Q3	434.5	26.2	13,993.9
Q4	440.7	21.7	12,336.1

2. Carol Corrado, "Industrial Production and Capacity Utilization: The 2000 Annual Revision," *Federal Reserve Bulletin*, vol. 87 (March 2001), pp. 132–48, (www.federalreserve.gov/pubs/bulletin/2001/0301scnd.pdf).

Weights for Aggregation

The IP index is an annually weighted Fisher index. This revision used information from the Census of Manufactures to obtain updated estimates of the industry value-added weights for the aggregation of IP indexes and capacity utilization rates. The Federal Reserve derives estimates of value added for the electric and gas utility industries from annual revenue and expense data issued by other organizations.

The weights for aggregation, expressed as unit value added, were estimated using the latest data on producer prices. Appendix table A.8 shows the annual value-added proportions incorporated in the IP index from 1996 through 2004.

Revised Monthly Data

The revision incorporated product data that became available after the regular four-month reporting window for monthly IP had closed. One example is the data on wine and tobacco issued by the Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau. These data were released with too great a lag to be incorporated in the monthly IP estimates; however, the data were available for inclusion in the annual revision.

Revised Seasonal Factors

Seasonal factors for all series were reestimated using data that extend into 2004. Factors for production-worker hours, which adjust for timing, holiday, and monthly seasonal patterns, were updated with data through September 2004 and were prorated to correspond with the seasonal factors for hours aggregated to the three-digit NAICS level. Factors for the electric power series were reestimated using data through June 2004. The updated factors for the physical product series, which include adjustments for holiday and workday patterns, used data through at least September 2004. Seasonal factors for unit motor vehicle assemblies have been updated, and projections through June 2005 are on the Board's website at www.federalreserve.gov/releases/g17/mvsf.htm.

Appendix tables start on page 19

Appendix A: Tables Based on the G.17 Release, January 14, 2005

A.1. Revised data for industrial production for total industry

Seasonally adjusted data except as noted

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Annual avg.[1]
	Industrial production (percent change)																
1972	2.4	.9	.8	1.0	.0	.3	.1	1.3	.8	1.3	1.1	1.2	17.8	7.9	5.7	14.6	9.6
1973	.6	1.5	.0	–.2	.7	.1	.4	–.1	.9	.6	.5	–.3	11.7	3.2	3.7	5.8	8.2
1974	–.7	–.3	.0	–.1	.6	–.1	.1	–.9	.1	–.4	–3.3	–3.5	–3.8	.4	–1.7	–14.9	–.4
1975	–1.3	–2.4	–1.0	.0	–.1	.7	1.1	.9	1.3	.4	.3	1.3	–23.9	–5.5	10.7	8.8	–8.9
1976	1.4	.9	.0	.7	.4	.0	.6	.7	.2	.1	1.5	1.0	12.5	5.2	5.1	7.8	7.8
1977	–.6	1.5	1.2	.9	.8	.7	.3	.1	.5	.3	.1	.1	8.4	12.5	5.1	3.2	7.7
1978	–1.4	.5	1.9	1.9	.4	.7	.0	.4	.3	.8	.8	.6	–1.5	16.3	3.6	7.7	5.5
1979	–.7	.6	.3	–1.0	.7	.0	–.2	–.7	.1	.5	–.1	.2	1.8	–.5	–1.5	1.4	3.0
1980	.4	.0	–.4	–2.0	–2.5	–1.3	–.6	.3	1.6	1.2	1.7	.6	1.5	–15.9	–6.2	15.9	–2.6
1981	–.5	–.5	.5	–.4	.7	.5	.7	.0	–.7	–.7	–1.1	–1.1	.9	1.4	4.2	–8.6	1.3
1982	–1.9	1.9	–.7	–.8	–.7	–.4	–.4	–.8	–.4	–.8	–.4	–.8	–7.5	–5.0	–6.0	–7.6	–5.1
1983	1.9	–.6	.9	1.2	.7	.6	1.6	1.1	1.6	.8	.3	.5	4.4	9.4	14.8	10.9	2.6
1984	2.1	.4	.5	.6	.5	.4	.3	.1	–.2	–.1	.4	.1	12.5	6.2	2.9	.5	9.0
1985	–.3	.4	.1	–.2	.1	.0	–.7	.5	.4	–.4	.3	1.0	1.1	.5	–.7	2.6	1.3
1986	.5	–.8	–.6	.0	.2	–.3	.6	–.2	.2	.4	.5	.9	2.4	–2.6	1.6	4.6	1.0
1987	–.3	1.3	.1	.6	.7	.5	.6	.7	.2	1.5	.5	.5	5.5	7.0	7.0	9.8	5.1
1988	.0	.4	.3	.5	–.1	.2	.2	.5	–.3	.6	.2	.4	3.4	3.3	2.1	3.2	5.0
1989	.3	–.5	.3	–.1	–.7	.0	–.9	1.0	–.3	.0	.3	.7	1.5	–1.9	–2.5	2.0	.9
1990	–.6	.9	.5	.0	.1	.3	–.2	.3	.2	–.7	–1.2	–.7	2.6	2.9	1.3	–5.9	.9
1991	–.5	–.6	–.5	.2	1.0	1.0	.0	.1	.8	–.2	–.1	–.3	–7.5	2.6	5.6	.9	–1.5
1992	–.6	.7	.8	.7	.5	.0	.8	–.4	.2	.7	.4	.0	–.3	7.1	2.7	3.9	2.8
1993	.5	.4	.0	.3	–.4	.2	.3	.1	.4	.7	.5	.5	3.7	1.1	2.2	6.3	3.3
1994	.4	.0	1.0	.5	.6	.7	.2	.5	.2	.9	.6	1.1	5.2	7.5	5.2	8.1	5.4
1995	.3	.0	.1	.0	.2	.3	–.4	1.4	.4	–.2	.2	.5	5.2	1.0	3.8	3.7	4.8
1996	–.9	1.5	–.2	.9	.7	.9	–.1	.7	.6	.1	.9	.7	1.7	8.3	5.5	6.4	4.3
1997	.3	1.2	.5	.2	.4	.5	.6	1.0	.9	.8	.6	.4	8.6	5.7	8.6	9.5	7.3
1998	.5	.2	.2	.6	.5	–.4	–.2	1.9	–.3	.8	–.2	.2	4.6	4.3	3.4	4.5	5.8
1999	.6	.4	.4	.2	.7	.0	.6	.6	–.3	1.2	.5	1.0	4.4	4.3	4.7	7.4	4.5
2000	–.1	.4	.6	.7	.6	.0	–.5	–.3	.4	–.5	–.1	–.2	4.7	6.7	–1.4	–2.0	4.3
2001	–1.0	–.6	–.3	–.2	–.5	–.6	–.4	–.1	–.5	–.4	–.5	.0	–6.7	–4.6	–4.7	–4.2	–3.6
2002	.7	–.2	.6	.4	.2	.7	–.1	.0	.0	–.5	.1	–.4	2.3	4.4	1.7	–2.3	–.3
2003	.2	.1	–.4	–.9	.1	.3	.6	–.1	.7	.2	1.0	.2	–.7	–4.0	4.1	5.7	.0
2004	.3	1.1	–.3	.5	.7	–.4	.7	.1	–.3	.8	.2	.8	5.6	4.3	2.7	4.1	4.1
	Industrial production (1997 = 100)																
1972	50.0	50.4	50.8	51.3	51.3	51.5	51.5	52.2	52.6	53.3	53.9	54.5	50.4	51.4	52.1	53.9	51.9
1973	54.9	55.7	55.7	55.5	55.9	56.0	56.2	56.2	56.6	57.0	57.3	57.1	55.4	55.8	56.3	57.1	56.2
1974	56.7	56.5	56.5	56.5	56.8	56.7	56.8	56.2	56.3	56.1	54.2	52.3	56.6	56.7	56.4	54.2	56.0
1975	51.6	50.4	49.8	49.8	49.8	50.1	50.6	51.1	51.8	52.0	52.1	52.8	50.6	49.9	51.2	52.3	51.0
1976	53.5	54.0	54.0	54.4	54.6	54.6	54.9	55.3	55.4	55.5	56.3	56.9	53.8	54.5	55.2	56.3	55.0
1977	56.6	57.4	58.1	58.7	59.1	59.5	59.7	59.8	60.1	60.3	60.3	60.4	57.4	59.1	59.9	60.3	59.2
1978	59.5	59.8	60.9	62.1	62.4	62.8	62.8	63.0	63.2	63.7	64.2	64.6	60.1	62.4	63.0	64.1	62.4
1979	64.1	64.5	64.7	64.0	64.5	64.5	64.4	63.9	64.0	64.3	64.3	64.4	64.4	64.3	64.1	64.3	64.3
1980	64.6	64.7	64.4	63.2	61.6	60.8	60.4	60.6	61.6	62.3	63.4	63.7	64.6	61.8	60.9	63.1	62.6
1981	63.4	63.1	63.4	63.1	63.6	63.9	64.3	64.3	63.9	63.4	62.7	62.1	63.3	63.5	64.2	62.7	63.4
1982	60.9	62.1	61.6	61.1	60.7	60.5	60.2	59.7	59.5	59.0	58.7	58.2	61.5	60.7	59.8	58.6	60.2
1983	59.4	59.0	59.5	60.2	60.7	61.0	62.0	62.7	63.6	64.2	64.3	64.7	59.3	60.6	62.8	64.4	61.8
1984	66.0	66.3	66.6	67.0	67.3	67.6	67.8	67.9	67.7	67.7	68.0	68.0	66.3	67.3	67.8	67.9	67.3
1985	67.8	68.1	68.2	68.1	68.2	68.2	67.7	68.1	68.4	68.1	68.3	69.0	68.1	68.2	68.1	68.5	68.2
1986	69.4	68.9	68.4	68.4	68.6	68.3	68.8	68.6	68.8	69.1	69.4	70.0	68.9	68.4	68.7	69.5	68.9
1987	69.8	70.7	70.8	71.2	71.7	72.0	72.5	73.0	73.1	74.2	74.6	74.9	70.4	71.6	72.9	74.6	72.4
1988	75.0	75.2	75.4	75.8	75.7	75.9	76.0	76.4	76.2	76.6	76.8	77.1	75.2	75.8	76.2	76.8	76.0
1989	77.3	76.9	77.1	77.1	76.5	76.6	75.9	76.6	76.3	76.3	76.5	77.0	77.1	76.7	76.3	76.6	76.7
1990	76.6	77.2	77.6	77.6	77.6	77.9	77.7	77.9	78.1	77.5	76.6	76.1	77.1	77.7	77.9	76.7	77.4
1991	75.7	75.2	74.9	75.0	75.8	76.5	76.5	76.6	77.3	77.1	77.0	76.8	75.3	75.7	76.8	77.0	76.2
1992	76.3	76.9	77.5	78.0	78.4	78.3	78.9	78.6	78.7	79.3	79.6	79.6	76.9	78.2	78.8	79.5	78.4
1993	80.0	80.4	80.4	80.6	80.3	80.5	80.8	80.8	81.2	81.7	82.1	82.6	80.3	80.5	80.9	82.2	80.9
1994	82.9	83.0	83.7	84.2	84.7	85.3	85.5	85.9	86.1	86.8	87.4	88.3	83.2	84.7	85.8	87.5	85.3
1995	88.6	88.6	88.7	88.6	88.8	89.1	88.7	89.9	90.3	90.2	90.4	90.9	88.6	88.8	89.7	90.5	89.4
1996	90.0	91.4	91.1	92.0	92.6	93.4	93.3	93.9	94.5	94.6	95.5	96.2	90.8	92.7	93.9	95.4	93.2
1997	96.4	97.6	98.1	98.3	98.7	99.2	99.8	100.8	101.7	102.5	103.2	103.6	97.4	98.7	100.8	103.1	100.0
1998	104.1	104.2	104.5	105.2	105.7	105.3	105.1	107.0	106.7	107.5	107.3	107.5	104.3	105.4	106.3	107.4	105.8
1999	108.2	108.6	109.0	109.3	110.0	110.0	110.7	111.4	111.0	112.3	112.8	113.9	108.6	109.8	111.0	113.0	110.6
2000	113.8	114.3	114.9	115.7	116.4	116.4	115.9	115.5	115.9	115.4	115.2	115.0	114.3	116.2	115.8	115.2	115.4
2001	113.8	113.1	112.7	112.5	111.9	111.3	110.8	110.7	110.1	109.7	109.2	109.2	113.2	111.9	110.6	109.4	111.3
2002	109.9	109.7	110.3	110.7	111.0	111.8	111.7	111.6	111.6	111.1	111.2	110.7	110.0	111.2	111.6	111.0	111.0
2003	110.9	111.0	110.6	109.5	109.6	109.9	110.6	110.5	111.3	111.6	112.7	112.9	110.8	109.7	110.8	112.4	110.9
2004	113.2	114.4	114.1	114.7	115.5	115.1	115.9	116.0	115.7	116.6	116.8	117.8	113.9	115.1	115.9	117.1	115.5

NOTE. Monthly percent change figures show the change from the previous month; quarterly figures show the change from the previous quarter at a compound annual rate of growth. Production and capacity indexes are expressed as percentages of output in 1997.

Estimates from October 2004 through December 2004 are subject to further revision in the upcoming monthly releases.

1. Annual averages of industrial production are calculated from not seasonally adjusted indexes.

A.2. Revised data for capacity and utilization for total industry

Seasonally adjusted data

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Annual avg.
	Capacity (percent of 1997 output)																
1972	60.7	60.8	60.9	61.1	61.2	61.4	61.5	61.7	61.8	62.0	62.2	62.4	60.8	61.2	61.7	62.2	61.5
1973	62.6	62.7	62.9	63.1	63.3	63.6	63.8	64.0	64.2	64.4	64.6	64.8	62.7	63.3	64.0	64.6	63.7
1974	65.0	65.2	65.4	65.5	65.7	65.9	66.0	66.2	66.4	66.5	66.6	66.8	65.2	65.7	66.2	66.6	65.9
1975	66.9	67.0	67.1	67.3	67.4	67.5	67.6	67.7	67.9	68.0	68.1	68.2	67.0	67.4	67.7	68.1	67.6
1976	68.4	68.5	68.7	68.8	69.0	69.1	69.2	69.4	69.5	69.7	69.9	70.0	68.5	69.0	69.4	69.9	69.2
1977	70.2	70.3	70.5	70.7	70.8	71.0	71.2	71.4	71.6	71.8	72.0	72.2	70.3	70.8	71.4	72.0	71.2
1978	72.4	72.6	72.8	73.0	73.2	73.4	73.6	73.8	74.0	74.2	74.4	74.6	72.6	73.2	73.8	74.4	73.5
1979	74.7	74.9	75.1	75.2	75.4	75.6	75.7	75.9	76.1	76.2	76.4	76.5	74.9	75.4	75.9	76.4	75.6
1980	76.6	76.8	76.9	77.1	77.2	77.4	77.5	77.6	77.8	77.9	78.1	78.3	76.8	77.2	77.6	78.1	77.4
1981	78.4	78.6	78.8	78.9	79.1	79.3	79.5	79.7	79.9	80.1	80.3	80.5	78.6	79.1	79.7	80.3	79.4
1982	80.7	80.8	81.0	81.2	81.4	81.5	81.7	81.8	82.0	82.1	82.2	82.3	80.8	81.4	81.8	82.2	81.6
1983	82.3	82.4	82.5	82.5	82.6	82.6	82.6	82.7	82.7	82.8	82.9	82.9	82.4	82.6	82.7	82.9	82.6
1984	83.0	83.1	83.2	83.3	83.5	83.6	83.7	83.9	84.1	84.2	84.4	84.6	83.1	83.5	83.9	84.4	83.7
1985	84.8	84.9	85.1	85.3	85.5	85.7	85.9	86.0	86.2	86.4	86.5	86.7	84.9	85.5	86.0	86.5	85.7
1986	86.8	86.9	87.0	87.1	87.2	87.4	87.5	87.6	87.7	87.8	87.9	88.1	86.9	87.2	87.6	87.9	87.4
1987	88.2	88.3	88.5	88.6	88.8	89.0	89.1	89.2	89.4	89.5	89.6	89.7	88.3	88.8	89.2	89.6	89.0
1988	89.8	89.9	89.9	90.0	90.1	90.1	90.2	90.3	90.3	90.4	90.5	90.6	89.9	90.1	90.3	90.5	90.2
1989	90.8	90.9	91.0	91.2	91.4	91.6	91.7	91.9	92.1	92.3	92.5	92.7	90.9	91.4	91.9	92.5	91.7
1990	92.9	93.1	93.3	93.5	93.7	93.9	94.0	94.2	94.4	94.5	94.7	94.8	93.1	93.7	94.2	94.7	93.9
1991	94.9	95.1	95.2	95.3	95.5	95.6	95.7	95.9	96.0	96.1	96.3	96.4	95.1	95.5	95.9	96.3	95.7
1992	96.5	96.7	96.9	97.1	97.3	97.5	97.7	97.9	98.0	98.2	98.4	98.6	96.7	97.3	97.9	98.4	97.6
1993	98.7	98.9	99.0	99.2	99.3	99.5	99.6	99.8	99.9	100.1	100.3	100.5	98.9	99.3	99.8	100.3	99.6
1994	100.7	100.9	101.1	101.4	101.7	102.0	102.3	102.6	102.9	103.3	103.6	104.0	100.9	101.7	102.6	103.6	102.2
1995	104.4	104.8	105.2	105.7	106.1	106.5	107.0	107.5	108.0	108.4	108.9	109.4	104.8	106.1	107.5	108.9	106.8
1996	109.9	110.4	111.0	111.5	112.0	112.5	113.0	113.5	114.0	114.5	115.0	115.5	110.5	112.0	113.5	115.0	112.7
1997	116.1	116.6	117.2	117.7	118.3	118.9	119.6	120.2	120.9	121.7	122.4	123.1	116.6	118.3	120.3	122.4	119.4
1998	123.9	124.6	125.4	126.1	126.8	127.6	128.2	128.9	129.5	130.1	130.6	131.2	124.6	126.8	128.8	130.6	127.7
1999	131.7	132.3	132.8	133.3	133.8	134.4	134.9	135.4	135.9	136.4	136.9	137.4	132.3	133.8	135.4	136.9	134.6
2000	138.0	138.5	139.0	139.5	140.0	140.5	141.0	141.4	141.9	142.3	142.8	143.2	138.5	140.0	141.4	142.7	140.7
2001	143.6	143.9	144.3	144.6	145.0	145.3	145.6	145.9	146.1	146.4	146.6	146.8	143.9	145.0	145.9	146.6	145.3
2002	147.0	147.2	147.3	147.4	147.5	147.5	147.5	147.5	147.4	147.4	147.3	147.2	147.2	147.5	147.5	147.3	147.4
2003	147.1	147.0	146.9	146.9	146.8	146.8	146.7	146.8	146.8	146.9	146.9	147.0	147.0	146.8	146.8	146.9	146.9
2004	147.2	147.3	147.5	147.6	147.8	147.9	148.1	148.2	148.4	148.5	148.7	148.8	147.3	147.8	148.2	148.7	148.0
	Utilization (percent)																
1972	82.4	82.9	83.4	84.0	83.8	83.9	83.7	84.6	85.0	85.9	86.6	87.4	82.9	83.9	84.4	86.7	84.5
1973	87.7	88.7	88.4	88.0	88.3	88.1	88.2	87.8	88.3	88.5	88.7	88.2	88.3	88.1	88.1	88.5	88.2
1974	87.3	86.8	86.5	86.1	86.4	86.1	85.9	84.9	84.8	84.3	81.4	78.3	86.8	86.2	85.2	81.3	84.9
1975	77.2	75.1	74.2	74.1	73.9	74.2	74.9	75.5	76.3	76.4	76.5	77.3	75.5	74.0	75.5	76.7	75.5
1976	78.2	78.8	78.6	79.1	79.2	79.0	79.3	79.7	79.7	79.6	80.7	81.3	78.6	79.1	79.6	80.5	79.4
1977	80.7	81.7	82.5	83.0	83.5	83.8	83.8	83.7	83.9	83.9	83.8	83.6	81.6	83.4	83.8	83.8	83.2
1978	82.2	82.4	83.7	85.1	85.2	85.5	85.2	85.3	85.3	85.9	86.3	86.6	82.7	85.2	85.3	86.3	84.9
1979	85.8	86.1	86.2	85.1	85.5	85.3	85.0	84.2	84.2	84.4	84.2	84.1	86.0	85.3	84.5	84.2	85.0
1980	84.3	84.2	83.8	81.9	79.7	78.6	77.9	78.0	79.2	80.0	81.1	81.4	84.1	80.1	78.4	80.8	80.9
1981	80.8	80.3	80.5	80.0	80.3	80.5	80.9	80.7	80.0	79.2	78.2	77.2	80.5	80.3	80.5	78.2	79.9
1982	75.5	76.8	76.0	75.2	74.6	74.1	73.7	73.0	72.6	71.9	71.5	70.8	76.1	74.6	73.1	71.4	73.8
1983	72.1	71.6	72.1	73.0	73.5	73.9	75.0	75.8	76.9	77.5	77.7	78.0	71.9	73.4	75.9	77.7	74.7
1984	79.5	79.8	80.1	80.4	80.7	80.9	81.0	80.9	80.6	80.4	80.5	80.4	79.8	80.7	80.8	80.4	80.4
1985	80.0	80.2	80.2	79.9	79.7	79.6	78.9	79.1	79.3	78.9	79.0	79.7	80.1	79.7	79.1	79.2	79.5
1986	80.0	79.2	78.6	78.5	78.6	78.2	78.6	78.4	78.4	78.7	78.9	79.5	79.3	78.5	78.5	79.0	78.8
1987	79.1	80.0	80.0	80.3	80.7	81.0	81.3	81.8	81.8	82.9	83.3	83.5	79.7	80.7	81.6	83.2	81.3
1988	83.5	83.7	83.9	84.2	84.1	84.2	84.3	84.7	84.4	84.8	84.8	85.1	83.7	84.2	84.5	84.9	84.3
1989	85.1	84.6	84.7	84.5	83.8	83.6	82.7	83.3	82.9	82.7	82.7	83.1	84.8	84.0	82.9	82.8	83.6
1990	82.4	83.0	83.2	83.0	82.9	83.0	82.7	82.7	82.8	82.0	80.9	80.2	82.9	82.9	82.7	81.1	82.4
1991	79.7	79.1	78.6	78.6	79.4	80.0	79.9	79.9	80.5	80.2	80.0	79.6	79.2	79.4	80.1	79.9	79.6
1992	79.1	79.5	80.0	80.4	80.6	80.4	80.8	80.3	80.3	80.7	80.9	80.8	79.5	80.4	80.5	80.8	80.3
1993	81.1	81.3	81.1	81.3	80.9	80.9	81.1	81.0	81.2	81.7	81.9	82.2	81.2	81.0	81.1	81.9	81.3
1994	82.4	82.2	82.8	83.0	83.3	83.6	83.6	83.7	83.6	84.1	84.3	84.9	82.5	83.3	83.6	84.4	83.5
1995	84.8	84.5	84.3	83.9	83.7	83.6	82.9	83.7	83.7	83.2	83.0	83.0	84.5	83.7	83.4	83.0	83.7
1996	81.9	82.7	82.1	82.5	82.7	83.1	82.6	82.8	82.9	82.6	83.0	83.2	82.2	82.8	82.8	82.9	82.7
1997	83.1	83.7	83.7	83.5	83.4	83.4	83.5	83.8	84.1	84.3	84.3	84.1	83.5	83.4	83.8	84.2	83.7
1998	84.0	83.6	83.3	83.4	83.3	82.5	81.9	83.1	82.4	82.7	82.1	82.0	83.7	83.1	82.5	82.3	82.9
1999	82.1	82.1	82.1	81.9	82.2	81.9	82.1	82.3	81.7	82.3	82.4	82.9	82.1	82.0	82.0	82.5	82.2
2000	82.5	82.5	82.7	82.9	83.2	82.9	82.2	81.7	81.7	81.1	80.7	80.3	82.6	83.0	81.9	80.7	82.0
2001	79.3	78.6	78.1	77.8	77.2	76.6	76.1	75.9	75.4	75.0	74.5	74.4	78.7	77.2	75.8	74.6	76.6
2002	74.8	74.6	74.9	75.1	75.3	75.8	75.7	75.7	75.7	75.4	75.5	75.2	74.7	75.4	75.7	75.4	75.3
2003	75.4	75.5	75.2	74.6	74.7	74.9	75.4	75.3	75.8	76.0	76.7	76.8	75.4	74.7	75.5	76.5	75.5
2004	76.9	77.7	77.4	77.7	78.2	77.8	78.3	78.3	78.0	78.5	78.6	79.2	77.3	77.9	78.2	78.8	78.0

NOTE. See also general note to table A.1.

A.3. Rates of change in industrial production, by market and industry group, 2000–2004[1]

Item	NAICS code[2]	Revised rate of change (percent)					Difference between rates of change: revised minus earlier (percentage points)				
		2000	2001	2002	2003	2004	2000	2001	2002	2003	2004[3]
Total industry	...	**1.9**	**–5.1**	**1.5**	**1.2**	**4.2**	**–.4**	**.2**	**.1**	**–.3**	**–.7**
MARKET GROUP											
Final products and nonindustrial supplies	...	2.0	–4.7	.6	1.7	4.5	–.4	.3	.1	.5	–.7
Consumer goods	...	.9	–1.5	1.6	1.3	2.7	–.1	.7	.6	.8	–.6
Durable	...	–2.1	–1.3	6.4	3.3	1.6	–.2	1.6	.4	.3	–.7
Automotive products	...	–4.5	2.3	10.1	5.2	1.3	.5	1.2	.2	.3	–2.3
Home electronics	...	13.7	5.8	–4.0	34.8	–7.7	–2.0	16.1	–8.4	9.8	–2.2
Appliances, furniture, carpeting	...	–.9	–3.4	1.8	1.4	2.8	–.3	–1.4	.0	.4	2.6
Miscellaneous goods	...	–1.5	–6.6	4.3	–3.5	3.0	–1.2	1.5	1.9	–1.3	.8
Nondurable	...	2.0	–1.6	–.2	.4	3.1	.0	.3	.5	.8	–.5
Non-energy	...	.8	–.8	–2.3	.8	3.9	–.2	.3	.5	.8	–.8
Foods and tobacco	...	1.2	–1.2	–3.6	2.4	4.1	.5	–.6	.2	4.0	1.3
Clothing	...	–7.7	–20.8	–9.7	–14.9	–4.8	–2.2	–5.6	–7.3	–1.7	–2.6
Chemical products	...	3.8	7.0	.9	.6	3.6	–.6	4.0	2.7	–2.9	–3.0
Paper products	...	–2.0	–2.7	–.8	.6	6.3	–.9	.6	.1	–4.9	–4.3
Energy	...	7.9	–5.2	10.1	–1.4	–.3	.8	.6	1.3	.6	.4
Business equipment	...	6.2	–13.3	–2.6	4.7	9.9	–.6	–.5	–1.2	1.9	–1.3
Transit	...	–11.7	–3.5	–12.6	.2	11.6	–.5	2.5	2.5	3.5	2.4
Information processing	...	19.8	–17.4	–3.7	16.3	10.1	.6	–4.6	–9.2	7.9	–4.0
Industrial and other	...	3.6	–13.7	2.1	–.5	9.3	–1.3	1.4	3.0	–1.8	–.8
Defense and space equipment	...	–4.3	8.0	3.8	5.3	6.9	–1.3	–4.4	.2	.7	–.4
Construction supplies	...	–1.1	–5.0	.1	.6	4.3	–.9	1.5	–.4	–.5	1.5
Business supplies	...	2.3	–5.5	1.4	.0	4.3	–.6	.1	.1	–1.4	–2.1
Materials	...	1.9	–5.6	2.8	.5	3.7	–.4	.1	.2	–1.4	–.7
Non-energy	...	1.8	–6.5	3.5	.8	5.3	–.6	.1	.5	–1.6	–.9
Durable	...	4.9	–7.2	4.6	2.2	6.9	–.7	–.1	.3	–2.0	–.9
Consumer parts	...	–8.5	–7.9	7.1	2.7	2.1	–1.4	–.8	.4	.7	.1
Equipment parts	...	22.2	–7.9	6.2	5.8	15.7	–.8	–.5	.3	–5.9	.1
Other	...	–4.3	–6.2	1.9	–.9	2.7	–.4	.6	.4	–.4	–1.6
Nondurable	...	–3.9	–5.2	1.7	–1.3	2.6	–.2	.4	.8	–.8	–.8
Textile	...	–10.2	–9.5	2.0	–13.0	–5.1	–.4	2.2	3.0	–2.7	1.5
Paper	...	–4.1	–6.3	2.1	–4.3	3.2	.6	–.2	.6	.2	–1.0
Chemical	...	–4.4	–4.6	2.1	2.0	4.2	–.5	.5	.4	–.7	–.9
Energy	...	1.9	–2.8	.4	–.3	–.4	.2	.0	–.6	–.8	–.1
INDUSTRY GROUP											
Manufacturing[4]	...	1.5	–5.4	1.3	1.5	5.0	–.5	.2	.2	–.3	–.9
Manufacturing (NAICS)	31–33	1.7	–5.3	1.6	1.6	5.0	–.5	.2	.3	–.1	–.7
Durable manufacturing	...	4.1	–7.2	3.2	3.3	6.7	–.7	.1	.2	–.4	–.8
Wood products	321	–6.9	–1.6	.0	3.2	.5	–.4	.6	1.8	–.6	–1.1
Nonmetallic mineral products	327	–3.4	–2.5	.3	1.7	4.3	–1.8	3.1	–1.8	.5	3.9
Primary metal	331	–10.2	–8.7	7.1	.6	4.8	–1.0	2.0	3.6	1.2	–2.8
Fabricated metal products	332	.0	–8.6	–.2	–2.9	3.2	.0	–.2	–.1	–1.1	–1.0
Machinery	333	1.8	–16.7	1.3	.6	12.2	–.6	.3	2.2	–2.2	–.6
Computer and electronic products	334	29.0	–9.0	5.6	14.5	14.9	–.4	–1.4	–5.2	–1.2	–.9
Electrical equipment, appliances, and components	335	2.5	–14.7	–5.2	1.1	4.7	.2	–1.9	–3.0	.0	–.7
Motor vehicles and parts	3361–3	–9.7	–2.1	11.3	4.8	2.5	–.6	.7	1.4	1.0	–.9
Aerospace and miscellaneous transportation equipment	3364–9	–4.8	4.7	–7.5	.8	5.8	–.9	–.2	2.3	.3	–.4
Furniture and related products	337	–.7	–6.3	4.2	–1.8	2.0	–1.3	1.2	4.6	.9	–.7
Miscellaneous	339	2.9	–1.5	7.4	–2.2	4.5	–3.2	1.3	3.8	–1.0	–.9
Nondurable manufacturing	...	–1.5	–2.9	–.4	–.4	2.9	–.1	.3	.5	.3	–.6
Food, beverage, and tobacco products	311,2	1.0	–.8	–2.9	2.1	3.6	.5	–.4	.7	3.3	.7
Textile and product mills	313,4	–6.7	–9.5	.4	–8.5	–2.5	–.3	.7	1.7	–1.6	1.6
Apparel and leather	315,6	–7.5	–21.0	–9.3	–14.3	–4.3	–2.1	–5.6	–7.3	–1.9	–2.6
Paper	322	–4.7	–5.7	4.1	–3.3	3.7	.1	.3	1.2	–.6	.1
Printing and support	323	–1.3	–8.1	–3.2	–3.5	.8	.0	–1.4	–1.5	2.0	–3.9
Petroleum and coal products	324	–1.1	.8	4.1	1.2	3.9	.6	3.3	2.9	–1.3	3.4
Chemical	325	–.6	.2	1.0	1.2	3.7	–.4	1.5	1.1	–1.8	–2.6
Plastics and rubber products	326	–4.0	–4.4	2.4	–2.2	1.6	–.8	1.3	.2	–1.8	–.8
Other manufacturing (non-NAICS)	1133,5111	–1.9	–6.3	–3.9	.3	4.6	–.4	.0	–1.7	–4.0	–3.6
Mining	21	1.3	–.6	–3.8	.2	–1.5	.3	.4	–1.5	–.1	.6
Utilities	2211,2	6.1	–5.1	7.1	–.6	2.3	.0	.1	.5	.0	.0
Electric	2211	4.9	–3.7	5.7	.5	3.5	.0	.0	.2	–.1	.4
Natural gas	2212	13.2	–12.8	15.4	–6.2	–3.6	.3	.0	2.0	–.3	–1.9

NOTE. Estimates for the fourth quarter of 2004 are subject to further revision in the upcoming monthly releases.

1. Rates of change are calculated as the percent change in the seasonally adjusted index from the fourth quarter of the previous year to the fourth quarter of the year specified in the column heading.

2. North American Industry Classification System.

3. For 2004, the calculation of "revised minus earlier" is based on annualized rates of change from the fourth quarter of 2003 to the third quarter of 2004.

4. Manufacturing comprises those industries included in the NAICS definition of manufacturing plus those industries—newspaper, periodical, book, and directory publishing and logging—that have traditionally been considered to be a part of manufacturing and are included in the industrial sector.

. . . Not applicable.

A.4. Rates of change in industrial production, special aggregates and selected detail, 2000–2004[1]

Item	NAICS code[2]	Revised rate of change (percent)					Difference between rates of change: revised minus earlier (percentage points)				
		2000	2001	2002	2003	2004	2000	2001	2002	2003	2004[3]
Total industry	. . .	**1.9**	**–5.1**	**1.5**	**1.2**	**4.2**	**–.4**	**.2**	**.1**	**–.3**	**–.7**
Energy	. . .	4.3	–3.3	2.9	–.3	.6	.4	.3	.0	–.3	.1
Consumer products	. . .	7.9	–5.2	10.1	–1.4	–.3	.8	.6	1.3	.6	.4
Commercial products	. . .	6.2	–1.3	4.7	.1	5.4	.2	.3	1.2	–1.3	–.8
Oil and gas well drilling	. . .	34.8	–8.1	–15.5	21.0	8.6	5.5	2.8	–.7	17.0	12.9
Converted fuel	. . .	5.5	–8.1	4.0	.0	1.7	.1	–.2	.3	–1.0	.2
Primary materials	. . .	.0	.0	–1.5	–.4	–1.4	.3	.2	–1.0	–.7	–.4
Non-energy	. . .	1.5	–5.4	1.2	1.5	5.0	–.5	.2	.2	–.3	–.9
Selected high-technology industries	. . .	37.6	–10.1	8.1	18.7	18.6	–.6	–1.6	–7.2	–2.6	–1.5
Computers and peripheral equipment	3341	18.6	–3.6	.9	21.8	7.6	–.6	2.1	–23.0	7.7	–15.1
Communications equipment	3342	28.6	–30.3	–14.3	22.5	9.6	1.0	–7.5	–8.8	16.7	–.1
Semiconductors and related electronic components	334412–9	51.2	1.7	25.2	16.2	29.2	–1.6	.9	.3	–18.2	6.0
Excluding selected high-technology industries	. . .	–2.0	–5.0	.7	.4	4.1	–.5	.3	.7	–.2	–.9
Motor vehicles and parts	3361–3	–9.7	–2.1	11.3	4.8	2.5	–.6	.7	1.4	1.0	–.9
Motor vehicles	3361	–11.8	2.5	11.1	6.7	2.2	.3	.9	–.5	3.0	–.4
Motor vehicle parts	3363	–7.1	–5.0	10.8	2.7	1.3	–1.4	.3	3.0	–.3	–1.0
Excluding motor vehicles and parts	. . .	–1.2	–5.2	–.4	.0	4.3	–.5	.3	.6	–.3	–.8
Consumer goods	. . .	.4	–1.7	–1.2	.7	3.5	–.3	.3	.7	.5	–.4
Business equipment	. . .	2.9	–10.0	–2.2	.1	9.4	–.9	1.4	2.4	–.9	–.8
Construction supplies	. . .	–1.4	–4.8	.2	.6	4.2	–.9	1.6	–.2	–.5	1.4
Business supplies	. . .	–1.5	–6.4	–.2	–.9	3.1	–.8	.1	–.2	–1.1	–2.7
Materials	. . .	–3.2	–7.2	.7	–.9	3.8	–.3	.0	.4	–.6	–1.0
Measures excluding selected high-technology industries											
Total industry	. . .	–1.0	–4.6	1.0	.3	3.5	–.4	.3	.6	–.2	–.6
Manufacturing[4]	. . .	–1.9	–4.9	.7	.4	4.1	–.5	.3	.8	–.2	–.9
Durable	. . .	–2.3	–6.5	2.3	1.2	5.1	–.7	.4	1.3	–.1	–.7
Measures excluding motor vehicles and parts											
Total industry	. . .	2.8	–5.2	.8	.9	4.3	–.4	.2	.0	–.4	–.6
Manufacturing[4]	. . .	2.5	–5.6	.4	1.2	5.2	–.5	.2	.1	–.5	–.8
Durable	. . .	6.5	–7.9	1.6	2.9	7.5	–.8	.0	–.1	–.7	–.7
Measures excluding selected high-technology industries and motor vehicles and parts											
Total industry	. . .	–.2	–4.8	.3	–.1	3.6	–.3	.3	.5	–.3	–.6
Manufacturing[4]	. . .	–1.2	–5.2	–.3	.0	4.3	–.4	.3	.6	–.3	–.8
Measures of non-energy material inputs to											
Finished processors	. . .	7.4	–7.7	5.5	1.9	8.2	–.7	–.3	.5	–2.7	–.4
Primary and semifinished processors	. . .	–3.7	–5.3	1.7	.0	2.9	–.4	.5	.5	–.7	–1.3
Stage-of-process groups											
Crude	. . .	–2.8	–2.9	–1.0	–1.4	.3	.0	–.1	–.2	–.7	–.4
Primary and semifinished	. . .	2.3	–5.9	3.4	.3	4.2	–.4	.4	.4	–1.5	–.6
Finished	. . .	2.7	–4.4	–.4	3.3	5.3	–.4	.0	–.1	1.5	–.8

NOTE. Estimates for the fourth quarter of 2004 are subject to further revision in the upcoming monthly releases.

1. Rates of change are calculated as the percent change in the seasonally adjusted index from the fourth quarter of the previous year to the fourth quarter of the year specified in the column heading.

2. North American Industry Classification System.

3. For 2004, the calculation of "revised minus earlier" is based on annualized rates of change from the fourth quarter of 2003 to the third quarter of 2004.

4. See footnote 4 to table A.3.

. . . Not applicable.

A.5. Capacity utilization rates, by industry group, 1972–2004[1]

Item	NAICS code[2]	Revised rate (percent of capacity, seasonally adjusted)						Difference between rates: revised minus earlier (percentage points)		
		1972–2003 avg.	1988–89 high	1990–91 low	2002:Q4	2003:Q4	2004:Q4	2002:Q4	2003:Q4	2004:Q3[3]
Total industry	. . .	**81.1**	**85.1**	**78.6**	**75.4**	**76.5**	**78.8**	**.2**	**1.0**	**.9**
Manufacturing[4]	. . .	79.9	85.6	77.2	73.5	74.8	77.6	.1	.6	.4
Manufacturing (NAICS)	31–33	79.7	85.5	77.0	73.2	74.3	77.1	.0	.7	.7
Durable manufacturing	. . .	78.1	84.5	73.4	70.7	72.1	75.2	.2	.7	1.0
Wood products	321	80.1	88.9	73.1	74.4	77.4	78.2	.9	.8	.6
Nonmetallic mineral products	327	79.2	84.9	72.0	76.8	78.0	80.7	−1.1	−.8	1.4
Primary metal	331	80.5	94.3	74.6	78.6	79.3	83.8	1.4	2.8	.7
Fabricated metal products	332	76.9	80.2	71.6	69.4	67.7	70.0	−.3	−.4	−.1
Machinery	333	78.9	84.8	73.0	67.9	69.9	78.6	1.1	.6	.5
Computer and electronic products	334	79.0	81.7	76.6	62.7	67.7	71.0	−.4	.9	2.4
Electrical equipment, appliances, and components	335	82.8	87.5	75.1	72.6	74.8	79.3	−1.5	−.8	−.5
Motor vehicles and parts	3361–3	77.6	90.3	56.0	80.9	81.9	82.2	−.3	.1	.2
Aerospace and miscellaneous transportation equipment	3364–9	72.7	88.7	82.1	63.2	63.2	66.4	−1.1	−1.5	−2.1
Furniture and related products	337	78.8	83.6	69.4	72.6	71.1	73.3	1.5	1.9	2.2
Miscellaneous	339	76.5	81.7	77.7	75.9	74.1	77.4	−.8	−1.6	−2.4
Nondurable manufacturing	. . .	81.9	87.1	81.7	76.6	77.3	79.7	−.2	.5	.0
Food, beverage, and tobacco products	311,2	81.9	85.6	81.0	76.6	78.7	81.4	−.7	1.7	1.4
Textile and product mills	313,4	83.4	91.5	77.2	76.8	73.4	74.6	1.9	1.3	2.5
Apparel and leather	315,6	79.6	84.2	77.3	66.7	64.9	70.8	−.4	.8	2.2
Paper	322	88.2	93.7	85.2	84.8	83.5	86.9	−.1	−.1	−.3
Printing and support	323	84.1	91.6	82.7	73.0	71.7	72.1	−1.3	.5	−2.8
Petroleum and coal products	324	86.0	88.9	82.9	87.0	88.9	91.2	−1.1	−.2	1.2
Chemical	325	78.5	85.7	80.9	73.5	74.1	76.2	.6	−.2	−1.1
Plastics and rubber products	326	83.7	91.1	77.1	81.1	81.2	83.4	1.5	.3	.1
Other manufacturing (non-NAICS)	1133,5111	84.8	90.5	80.4	80.7	83.3	87.0	1.8	−.1	−2.8
Mining	21	87.1	85.8	83.5	85.4	87.1	86.1	.8	1.8	2.4
Utilities	2211,2	86.9	92.8	84.2	87.9	84.8	85.1	.7	1.7	1.7
Selected high-technology industries	. . .	78.6	81.0	74.3	60.9	66.7	69.7	−.9	−.3	1.8
Computers and peripheral equipment	3341	78.6	80.2	67.5	70.9	74.1	76.4	−.7	.7	−.7
Communications equipment	3342	76.6	80.8	73.4	42.8	52.8	58.8	−5.4	2.1	2.7
Semiconductors and related electronic components	334412-9	81.2	82.8	77.5	69.8	74.8	75.2	3.2	−.7	4.3
Measures excluding selected high-technology industries										
Total industry	. . .	81.2	85.5	78.8	76.4	77.1	79.6	.1	.6	.3
Manufacturing[4]	. . .	80.0	86.0	77.3	74.6	75.4	78.4	.0	.2	−.2
Stage-of-process groups										
Crude	. . .	86.4	88.9	84.8	83.5	84.9	85.6	.4	1.1	1.2
Primary and semifinished	. . .	82.2	86.5	77.5	78.0	78.4	80.1	.5	.8	.7
Finished	. . .	78.0	83.1	77.2	70.8	72.4	75.9	−.3	.8	.6

NOTE. Estimates for the fourth quarter of 2004 are subject to further revision in the upcoming monthly releases.

1. See footnote 1 to table A.3.
2. North American Industry Classification System.
3. See footnote 3 to table A.3.
4. See footnote 4 to table A.3.

. . . Not applicable.

A.6. Rates of change in capacity, by industry group, 2000–2004[1]

Industry group	Revised rate of change (percent)					Difference between rates of change: revised minus earlier (percentage points)				
	2000	2001	2002	2003	2004	2000	2001	2002	2003	2004
Total industry	**4.3**	**2.7**	**.5**	**–.2**	**1.2**	**.2**	**.4**	**–1.2**	**–1.3**	**–.4**
Manufacturing[2]	5.0	2.6	.0	–.1	1.1	.1	.4	–1.1	–1.1	–.5
Manufacturing (NAICS)	5.3	2.8	.2	.1	1.2	.1	.4	–1.1	–1.0	–.6
Durable	8.5	4.9	.7	1.3	2.2	.2	.2	–2.0	–1.2	–1.4
Nondurable	1.0	.2	–.5	–1.3	–.2	.1	.6	–.1	–.6	.3
Other manufacturing (non-NAICS)	.7	–1.3	–2.5	–2.9	.1	1.0	–.3	–.9	–1.5	.7
Mining	–1.0	2.0	–.6	–1.7	–.4	.2	–.7	–.9	–1.2	–.4
Utilities	3.2	3.9	4.6	3.0	1.9	.7	.2	–1.4	–1.3	.4
Selected high-technology industries	38.8	27.4	8.0	8.4	13.4	–3.4	2.5	–9.7	–3.4	–7.3
Manufacturing except selected high-technology industries[2]	1.7	.5	–.4	–.6	.1	.4	.1	–.2	–.4	–.1
Stage-of-process groups										
Crude	–.9	.9	–.8	–2.2	–.2	.4	–.3	–.4	–1.1	–.1
Primary and semifinished	5.1	3.0	.8	–.2	2.0	.0	.2	–1.0	–2.0	–.3
Finished	4.7	2.4	.3	.6	.3	.4	.6	–1.4	–.2	–.7

1. Rates of change are calculated as the percent change in the seasonally adjusted index from the fourth quarter of the previous year to the fourth quarter of the year specified in the column heading.

2. See footnote 4 to table A.3.

A.7. Rates of change in electric power use, by industry group, 2000–2004[1]

Industry group	Revised rate of change (percent)					Difference between rates of change: revised minus earlier (percentage points)				
	2000	2001	2002	2003	2004	2000	2001	2002	2003	2004
Total industry	**1.0**	**–6.4**	**–.3**	**–1.3**	**.8**	**.0**	**1.3**	**–.8**	**1.4**	**–.8**
Manufacturing[2]	1.2	–6.7	.1	–1.2	.7	.0	1.4	–.8	1.6	–.9
Durable	–.1	–7.0	1.5	–2.5	2.6	.0	1.2	–.7	1.2	–.2
Nondurable	2.4	–6.4	–1.0	–.2	–.9	.0	1.5	–.9	1.9	–1.3
Other manufacturing (non-NAICS)	–.5	–6.8	–2.3	.2	–1.1	.0	.0	.0	–.6	–1.3
Mining	–2.7	–3.1	–5.0	–3.4	2.8	.0	.1	–.4	–1.0	.3
Total excluding nuclear nondefense	.2	–5.4	–.4	–1.1	.8	.0	1.3	–.8	1.4	–.5
Utility sales to industry	.6	–7.4	–.3	–1.5	.8	.0	1.2	–.7	1.5	–.6
Industrial generation	9.1	2.8	.7	.9	.7	.0	2.6	–1.4	–.1	.7

NOTE. Estimates for the third quarter of 2004 are subject to further revision in the upcoming monthly releases.

1. Rates of change are calculated as the percent change in the seasonally adjusted index from the fourth quarter of the previous year to the fourth quarter of the year specified in the column heading. For 2004, the rates are calculated from the fourth quarter of 2003 to the third quarter of 2004 and are annualized.

2. See footnote 4 to table A.3.

A.8. Annual proportion in industrial production, by market groups and industry groups, 1996–2004

Item	NAICS code[1]	1996	1997	1998	1999	2000	2001	2002	2003	2004
Total industry	...	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
MARKET GROUPS										
Final products and nonindustrial supplies	...	56.4	56.9	58.1	57.7	57.6	59.1	58.8	58.4	58.0
Consumer goods	...	27.7	27.6	28.0	28.2	28.5	30.1	30.9	30.9	30.3
Durable	...	7.8	7.9	7.9	8.0	7.8	8.1	8.9	8.8	8.4
Automotive products	...	3.6	3.7	3.7	3.9	3.7	4.0	4.6	4.7	4.5
Home electronics	...	.4	.4	.4	.4	.4	.4	.3	.4	.3
Appliances, furniture, carpeting	...	1.4	1.4	1.4	1.4	1.4	1.4	1.5	1.4	1.4
Miscellaneous goods	...	2.4	2.4	2.4	2.4	2.3	2.3	2.4	2.3	2.3
Nondurable	...	19.9	19.7	20.1	20.2	20.7	22.0	22.0	22.1	21.8
Non-energy	...	16.3	16.3	16.9	16.7	16.9	18.1	18.1	17.9	17.7
Foods and tobacco	...	8.7	8.7	9.2	9.1	9.3	10.0	9.7	9.7	9.7
Clothing	...	1.8	1.6	1.5	1.3	1.2	1.1	.9	.8	.7
Chemical products	...	3.7	3.7	3.8	3.8	3.9	4.5	4.9	4.9	4.8
Paper products	...	1.7	1.8	1.9	1.9	2.0	2.0	2.0	2.0	2.0
Energy	...	3.7	3.4	3.3	3.5	3.8	3.8	3.9	4.2	4.1
Business equipment	...	11.2	11.8	12.3	11.9	11.7	11.2	10.3	9.9	10.0
Transit	...	1.8	2.1	2.5	2.3	2.0	2.0	1.9	1.7	1.8
Information processing	...	3.7	4.0	4.0	4.1	4.1	3.8	3.0	3.1	2.9
Industrial and other	...	5.7	5.8	5.8	5.5	5.6	5.4	5.3	5.1	5.3
Defense and space equipment	...	2.0	1.9	1.9	1.8	1.5	1.8	1.8	2.0	2.0
Construction supplies	...	4.1	4.1	4.3	4.3	4.3	4.3	4.3	4.3	4.4
Business supplies	...	11.0	11.1	11.2	11.2	11.2	11.3	11.2	11.0	10.9
Materials	...	43.6	43.1	41.9	42.3	42.4	40.9	41.2	41.6	42.0
Non-energy	...	33.4	33.8	33.3	33.1	32.3	30.8	30.9	30.2	30.1
Durable	...	21.4	21.7	21.4	21.4	20.9	19.6	19.3	18.7	18.8
Consumer parts	...	4.1	4.2	4.2	4.4	4.1	3.8	4.1	4.1	4.0
Equipment parts	...	8.1	8.3	8.2	8.1	8.1	7.3	6.7	6.2	6.2
Other	...	9.2	9.2	9.1	8.9	8.6	8.4	8.5	8.4	8.6
Nondurable	...	12.1	12.1	11.9	11.7	11.4	11.3	11.6	11.5	11.3
Textile	...	1.1	1.1	1.0	1.0	.9	.8	.8	.7	.6
Paper	...	3.0	2.9	2.8	2.9	2.8	2.8	2.8	2.7	2.6
Chemical	...	4.8	4.9	4.6	4.5	4.3	4.2	4.5	4.5	4.5
Energy	...	10.2	9.3	8.6	9.2	10.1	10.0	10.3	11.4	11.9
INDUSTRY GROUPS										
Manufacturing[2]	...	84.4	85.7	86.5	85.8	84.5	84.1	83.8	82.5	81.9
Manufacturing (NAICS)	31–33	80.3	81.2	81.8	81.0	79.6	79.2	79.0	77.7	77.2
Durable manufacturing	...	45.5	46.5	47.1	46.6	45.5	44.2	43.7	42.7	42.8
Wood products	321	1.5	1.5	1.5	1.6	1.4	1.4	1.5	1.5	1.6
Nonmetallic mineral products	327	2.2	2.2	2.3	2.3	2.2	2.3	2.3	2.2	2.2
Primary metal	331	3.0	3.1	2.9	2.8	2.5	2.3	2.4	2.5	2.8
Fabricated metal products	332	6.0	6.0	6.1	6.0	6.1	5.9	5.8	5.6	5.7
Machinery	333	6.2	6.2	6.2	5.8	5.9	5.6	5.4	5.2	5.5
Computer and electronic products	334	10.0	10.4	10.3	10.3	10.3	9.2	7.9	7.6	7.4
Electrical equipment, appliances, and components	335	2.6	2.6	2.6	2.5	2.5	2.4	2.2	2.1	2.1
Motor vehicles and parts	3361–3	6.5	6.7	6.6	7.0	6.6	6.5	7.4	7.5	7.2
Aerospace and miscellaneous transportation equipment	3364–9	3.2	3.5	4.1	3.8	3.3	3.8	3.6	3.5	3.6
Furniture and related products	337	1.5	1.6	1.7	1.7	1.7	1.7	1.8	1.7	1.7
Miscellaneous	339	2.8	2.8	2.8	2.8	2.9	3.1	3.3	3.2	3.1
Nondurable manufacturing	...	34.7	34.7	34.7	34.4	34.1	35.0	35.3	35.0	34.4
Food, beverage, and tobacco products	311,2	10.1	10.1	10.6	10.4	10.7	11.4	11.3	11.4	11.4
Textile and product mills	313,4	1.7	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1
Apparel and leather	315,6	1.9	1.8	1.6	1.4	1.3	1.2	1.0	.8	.7
Paper	322	3.3	3.2	3.2	3.2	3.2	3.1	3.1	3.1	3.0
Printing and support	323	2.7	2.6	2.6	2.6	2.6	2.6	2.5	2.3	2.2
Petroleum and coal products	324	1.6	1.6	1.5	1.7	1.9	1.7	1.6	1.9	2.0
Chemical	325	9.9	10.1	9.9	9.6	9.4	9.8	10.6	10.6	10.5
Plastics and rubber products	326	3.6	3.7	3.7	3.8	3.7	3.7	3.8	3.7	3.6
Other manufacturing (non-NAICS)	1133,5111	4.1	4.4	4.7	4.8	4.9	5.0	4.8	4.8	4.7
Mining	21	6.0	5.4	4.8	5.5	6.5	6.4	6.4	7.6	8.3
Utilities	2211,2	9.6	9.0	8.7	8.6	9.0	9.5	9.7	9.9	9.8
Electric	2211	8.1	7.7	7.5	7.4	7.6	8.1	8.3	8.2	8.1
Natural gas	2212	1.4	1.3	1.2	1.2	1.4	1.4	1.5	1.6	1.6

NOTE. The IP proportion data are estimates of the industries' relative contributions to the overall IP change between the reference year and the following year. For example, a 1 percent increase in durable goods manufacturing between 2004 and 2005 would account for a 0.428 percent increase in total IP.

1. North American Industry Classification System.
2. See footnote 4 to table A.3.
. . . Not applicable.

Fair Value Accounting

Adapted from remarks by Susan Schmidt Bies, Member, Board of Governors of the Federal Reserve System, to the International Association of Credit Portfolio Managers General Meeting, November 18, 2004.

Good morning. I appreciate the opportunity to participate in your Fall General Meeting. As my colleagues at the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) will agree, fair value accounting poses many challenges and has sparked significant industry debate.

The subject of fair value accounting has been discussed in the United States for well over a decade. Advocates of fair value accounting believe that fair value is the most relevant measure for financial reporting. Others, however, believe that historical cost provides a more useful measure because it more clearly represents the economics of business performance and because fair value estimates may not be reliable or verifiable.

So, which is more appropriate—fair value or historical cost? Let me share with you the Federal Reserve's long-standing position on this issue. As a supervisor of the U.S. banking system, we want to ensure that financial institutions follow sound accounting policies and practices. We continue to support improved transparency and enhanced financial disclosures, which promote market discipline and provide useful information to decisionmakers. We also support fair value accounting for assets and liabilities used in the business of short-term trading for profit, such as the trading account for banks. And we support enhanced disclosures of fair-value-based information as part of broader descriptions of risk exposures and risk management. However, we believe that the accounting industry should be very careful before moving toward a more comprehensive fair value approach, where all financial assets and liabilities are recorded on the balance sheet at fair value and changes in fair value are recorded in earnings, whether realized or not.

The FASB recently issued a proposed standard on fair value measurements that provides a general framework for valuing assets and liabilities that are currently measured or disclosed at fair value.[1] At this time, it does not expand the use of fair values in the primary financial statements. I would like to summarize and share with you the Federal Reserve's views on the proposed standard, which were provided to FASB in a comment letter as part of the exposure process.[2] We see the proposal as a good first step toward enhancing measurement guidance in this area. However, as I will discuss in a moment, a number of important issues warrant further consideration, especially before dramatic moves are made toward increased fair value accounting.

But before discussing these specific issues, allow me to emphasize one important point. As a bank supervisor, the Federal Reserve believes that innovations in risk management are very important to the continued improvement of our financial system. New methods and financial instruments allow banking organizations to improve their risk-management practices by selecting target levels of risk exposures and shedding or limiting unwanted positions. Accounting frameworks should improve transparency around business decisions and outcomes without providing a disincentive to better management of risk.

Fair Value Measurement Issues That Warrant Further Consideration

Reliability and Measurement

If markets were liquid and transparent for all assets and liabilities, fair value accounting clearly would be reliable information useful in the decisionmaking process. However, because many assets and liabilities do not have an active market, the inputs and methods for estimating their fair value are more subjective and, therefore, the valuations less reliable.

Research by Federal Reserve staff shows that fair value estimates for bank loans can vary greatly,

1. The Financial Accounting Standards Board is considering possible changes to the proposed Fair Value Measurements Standard. The final standard is scheduled to be issued in the second quarter of 2005.

2. A copy of the Federl Reserve's comment letter can be found on the Financial Accounting Standards Board's web site at www.fasb.org/ocl/1201-100/31186.pdf.

depending on the valuation inputs and methodology used. For example, observed market rates for corporate bonds and syndicated loans within lower-rated categories have varied by as much as 200 to 500 basis points. Such wide ranges occur even in the case of senior bonds and loans when obligors are matched.

The FASB statement on the proposed fair value standard suggests that reliability can be significantly enhanced if market inputs are used in valuation. However, because management uses significant judgment in selecting market inputs when market prices are not available, reliability will continue to be an issue.

The proposal identifies three levels of estimates, with the lowest priority given to level-3 estimates. These estimates are not based on quoted prices in active markets for either identical or similar assets or liabilities, but rather on mark-to-model estimates. The proposal suggests that the use of multiple approaches, such as the market, income, and replacement-cost methods, will improve reliability of these estimates. However, the number of approaches adds little to reliability if all the methods are based on the same underlying information, as would often be the case for financial instruments.

In our role as a bank supervisor, we have observed that minor changes in a number of assumptions in a pricing model can have a substantial effect. Generally, we are comfortable with the fair value measurement process for liquid trading instruments that financial institutions have had significant experience in valuing. However, we believe that for less-liquid assets and liabilities, reliability is a significant concern.

Management Bias

The fact that management uses significant judgment in the valuation process, particularly for level-3 estimates, adds to our concerns about reliability. Management bias, whether intentional or unintentional, may result in inappropriate fair value measurements and misstatements of earnings and equity capital. This was the case in the overvaluation of certain residual tranches in securitizations in recent years, when there was no active market for these assets. Significant write-downs of overstated asset valuations have resulted in the failure of a number of finance companies and depository institutions. Similar problems have occurred due to overvaluations in nonbank trading portfolios that resulted in overstatements of income and equity.

The possibility for management bias exists today. We continue to see news stories about charges of earnings manipulation, even under the historical cost accounting framework. We believe that, without reliable fair value estimates, the potential for misstatements in financial statements prepared using fair value measurements will be even greater.

Verification

As the variety and complexity of financial instruments increases, so does the need for independent verification of fair value estimates. However, verification of valuations that are not based on observable market prices is very challenging. Many of the values will be based on inputs and methods selected by management. Estimates based on these judgments will likely be difficult to verify. Both auditors and users of financial statements, including credit portfolio managers, will need to place greater emphasis on understanding how assets and liabilities are measured and how reliable these valuations are when making decisions based on them.

Compound Values and Revenue Recognition

The value of a financial instrument may, in some cases, be coupled with an intangible value. For example, a servicing asset can be considered to reflect two values: a financial instrument that is similar to an interest-only strip and an intangible value reflecting the contractual right to perform services over time in exchange for a fee. The current accounting framework often requires different accounting and disclosure treatments for financial and nonfinancial components. However, the accounting literature offers little guidance on when these assets should be separated and how to determine the separate valuations. This lack of guidance may in some cases result in questionable or inappropriate practices, such as including projected income from cross-marketing activities in the valuation of financial instruments. Additional guidance to address these issues is warranted.

Also, consideration must be given to revenue-recognition issues in a fair value regime. We must ensure that unearned revenue is not recognized up front, as it inappropriately was by certain high-tech companies not so long ago.

Disclosures

Fair values reflect point estimates and by themselves do not result in transparent financial statements.

Additional disclosures are necessary to bring meaning to these fair value estimates. FASB's proposal takes a first step toward enhancing fair value disclosures related to the reliability of fair value estimates. I believe that additional types of disclosures should be considered to give users of financial statements a better understanding of the relative reliability of fair value estimates. These disclosures might include key drivers affecting valuations, fair-value-range estimates, and confidence levels.

Another important disclosure consideration relates to changes in fair value amounts. For example, changes in fair values of securities portfolios can arise from movements in interest rates, foreign-currency rates, and credit quality, as well as purchases and sales from the portfolio. For users to understand fair value estimates, I believe that they must be given adequate disclosures about what factors caused the changes in fair value.

Considerations for Credit Portfolio Management

Fair value estimates affect the information you use as credit portfolio managers. Today's financial statements are based on a mixed-attribute accounting model. This means that an entity's balance sheet may include certain values reported at historical cost and certain values reported at fair value.

Fair values may be used as an analytic tool in the lending process and are compared with historical cost values. This historical cost information, along with associated disclosures, contains reliable information that provides insights into a firm's expected cash flows. As the industry moves toward expanded use of fair value, I believe disclosure of certain historical cost information will remain essential.

As indicated above, the reliability of the valuations and the transparency of the methods and inputs used to calculate the values are critically important. Clearly, fair valuations will have an impact on leverage ratios, capital ratios, and other ratios used in the lending and credit-management process. Credit portfolio managers will need to identify and understand the impact of changes in fair value estimates that result from changes in specific factors, economic conditions, management judgment, modeling techniques, and so forth and distinguish these mark to model factors from realized gains or losses.

Accounting Treatment for Credit Derivatives

Under U.S. generally accepted accounting principles, credit derivatives are generally required to be recognized as an asset or liability and measured at fair value, and the gain or loss resulting from the change in fair value must be recorded in earnings. Most credit derivatives do not qualify for hedge accounting treatment, which would permit the gain or loss on the credit derivative to be reported in the same period as the gain or loss on the position being hedged, assuming the hedge is effective. Therefore, the use of credit derivatives can result in earnings volatility.

Consider a credit derivative that hedges credit risk of a loan, for example. As the loan's credit quality deteriorates, the value of the credit derivative improves. Since the loan is recorded at historical cost, and the credit derivative is marked to fair value, a gain from the change in value of the derivative is recognized in earnings. Conversely, if the loan's credit quality improves, the value of the credit derivative declines, resulting in a reported loss. These gains and losses may be offset by the level of provisions that are established for estimated credit losses on the loan, but this would likely result in only a partial offset.

As management attempts to reduce this earnings volatility, we may see changes in risk-management practices. Unfortunately, some managers might use fewer credit derivatives to reduce credit risk due to this potential earnings volatility. Accordingly, setters of accounting standards need to consider improvements to the accounting treatment that do not result in a disincentive to those who prudently use credit derivatives for risk-management purposes.

Is fair value accounting the answer to this volatility issue? If the hedged asset were measured at fair value, the changes in values of the hedged item and the credit derivative may offset each other, reducing the volatility that arises when only the derivative is marked to market and not the hedged item. Of course, the degree of the earnings volatility under a full fair value accounting approach would depend on the effectiveness of the hedge.

The IASB developed the new "fair value option" under International Accounting Standard (IAS) 39. Using this option, companies that use international accounting standards will be permitted to apply fair value accounting to certain financial instruments that they designate at the time of purchase or origination. Accordingly, firms using the fair value option could mark to market both the credit derivative and the hedged position and report changes in their fair values in current earnings.

While at first glance the fair value option might be viewed as the solution to addressing the problems of the mixed-attribute model, it also raises a number of concerns. Many of these concerns, as well as recommendations to address them, were included in a comment letter to the IASB from the Basel Committee on Banking Supervision (Basel Committee) issued on July 30.[3]

Many of the Basel Committee's concerns are similar to those I described above and can be summarized as follows. Addressing reliability and verifiability issues, the committee suggested that, without observable market prices and sound valuation approaches, fair value measurements are difficult to determine, verify, and audit. It also suggested that reporting will become more complex and less comparable.

The Basel Committee comment letter also discussed the *own credit risk* issue. If an entity's creditworthiness deteriorates, financial liabilities would be marked down to fair value and a gain would be recorded in the entity's profit and loss statement. In the most dramatic case, an insolvent entity might appear solvent as a result of marking to market its own deteriorated credit risk.

To address these concerns, the Basel Committee recommended certain restrictions on the fair value option, such as disallowing the marking to market of credit risk of the institution's own outstanding debt and prohibiting the fair value option for illiquid financial instruments. It also suggested that the fair value option be limited to transactions that seek to economically hedge risk exposures and to situations in which accounting volatility associated with the mixed-attribute model can be reduced. Lastly, it recommended enhanced disclosures related to the fair value option.

3. A copy of the Basel Committee's comment letter can be found on the Bank for International Settlements web site at www.bis.org/bcbs/commentletters/iasb14.pdf.

Representatives of the Basel Committee continue to work constructively with the IASB on these issues, and I believe this dialogue can lead to a more-balanced approach to the fair value option that supports transparent accounting and sound risk-management policies in a manner consistent with safe and sound banking practices.

As banking organizations using IASB standards consider how to use the fair value option for their own financial reporting purposes, additional issues should be considered. For example, if loans are accounted for under the fair value option, what impact would that have on loan loss allowances, which under risk-based capital standards are a component of regulatory capital? Would changes in loan-loss provisioning practices due to the fair value option reduce regulatory capital, and, if so, how would this capital be replaced? How would the fair value option affect important asset-quality measures, such as nonperforming assets? From an earnings perspective, how would net interest margin be affected? As you can see, a number of important practical issues need to be addressed.

CONCLUSION

FASB's fair value measurement standard is a good first step toward developing enhanced guidance for the estimation of fair values. However, much more work needs to be done before fair value estimates are reliable, verifiable, and auditable. Credit portfolio managers will need to be aware of these movements to fair value accounting and how they will affect your understanding of companies you evaluate.

Credit derivatives can be a useful tool in managing credit risk. However, they raise thorny accounting issues. While IASB's fair value option is one possible approach to addressing these problems, further development of this alternative accounting method should move forward in a balanced fashion to ensure that it results in an actual improvement in accounting practices. □

Report on the Condition of the U.S. Banking Industry: Third Quarter, 2004

Total assets of reporting bank holding companies rose $245 billion (2.5 percent), to just less than $9.9 trillion, in a third quarter that was characterized by continuing merger activity among banking organizations, reactions to changes in the interest rate environment, and tepid financial markets. More than half of the increase in assets ($144 billion) was accounted for by loans, primarily those secured by commercial real estate and those extended under home equity lines of credit and credit cards. The quarter's growth in commercial real estate loans was about evenly divided between construction lending and mortgage loans to finance existing nonfarm business properties. A significant portion of the growth in credit card loans was unrelated to the quarter's lending activity, reflecting instead a reclassification of credit-card-backed assets to loans from the securities portfolio at one large bank holding company as it merged with another company during the quarter. Commercial and industrial loans rose only modestly, primarily in the small-business and middle-market segments.

Other earning assets grew $49 billion (1.4 percent), primarily in assets held for trading purposes but also in short-term and interbank money market instruments. Total holdings of investment securities declined slightly. Securities and money market holdings rose more rapidly at the fifty large companies than at "all other reporting companies" (1.4 percent, compared with 0.6 percent). These holdings have consistently represented a greater share of assets at the fifty large companies (38.0 percent of assets) than at "all other" companies (27.9 percent), a difference that has been attributable to the sizable trading portfolios maintained by the largest institutions.

Deposits grew $166 billion (1.2 percent), with more rapid growth occurring at "all other" companies (2.2 percent, compared with 0.8 percent at the fifty large bank holding companies). Because deposits did not keep pace with growth in total assets, nondeposit borrowings rose $97 billion (or 3.3 percent) overall, chiefly at the fifty large companies.

Equity rose sharply in the quarter ($79 billion, or 10.3 percent), principally because of increases in the unrealized valuation gains on securities, assets denominated in foreign currencies, and certain derivatives holdings that hedge risks of longer-term loans and servicing assets. A lesser influence was revaluation of the assets of banks or other entities acquired during the quarter, accompanied by increases in intangible assets. Accordingly, regulatory capital ratios—which exclude both unrealized valuation changes and capital increases associated with acquisition-related intangible assets—remained largely steady for the quarter.

Net income rebounded to $27.8 billion, an increase of $2.9 billion, or 11.6 percent, from a second quarter that had included large nonrecurring, litigation-related expenses at two of the largest bank holding companies. This significant decline in non-interest expense ($13.0 billion, or 13.0 percent) primarily reflected the presence of the large nonrecurring charges in the second quarter, although the third quarter included some notable nonrecurring expenses at bank holding companies that had recently completed major acquisitions. Non-interest income also fell sharply ($7.0 billion, or 10.0 percent), reflecting weakness in market-sensitive business lines (such as trading, investment banking, venture capital, and asset management) and a continuing slowdown in mortgage banking revenues. Earnings were damped a bit by a modest narrowing of net interest margins (down 0.08 percent, to 3.39 percent of earning assets) attributable to higher short-term interest rates, a less-steep yield curve, and reduced holdings of longer-term (and thus higher-yielding) mortgage pass-through securities. Provisions for credit losses remained modest, as already low nonperforming asset and net charge-off ratios fell further during the quarter. Nonetheless, reporting bank holding companies increased their provisions slightly for the quarter and thus, for the first time in several quarters, their earnings did not benefit from lower credit costs.

Tables start on page 31.

1. Financial characteristics of all reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account or ratio[1, 2]	1999	2000	2001	2002	2003	2003				2004		
						Q1	Q2	Q3	Q4	Q1	Q2	Q3
Balance sheet												
Total assets	**6,233,038**	**6,726,947**	**7,458,768**	**7,953,470**	**8,834,162**	**8,190,176**	**8,685,673**	**8,707,637**	**8,834,162**	**9,298,924**	**9,649,224**	**9,893,922**
Loans	3,393,034	3,713,457	3,811,632	4,052,705	4,403,012	4,121,366	4,274,266	4,345,701	4,403,012	4,573,448	4,758,146	4,901,751
Securities and money market	2,085,532	2,194,431	2,562,784	2,857,949	3,290,307	3,011,737	3,219,158	3,176,827	3,290,307	3,577,494	3,613,859	3,662,762
Allowance for loan losses	−55,289	−59,849	−67,993	−73,170	−72,343	−72,864	−73,131	−72,456	−72,343	−75,348	−75,188	−74,632
Other	809,762	878,909	1,152,346	1,115,987	1,213,186	1,129,936	1,265,380	1,257,565	1,213,186	1,223,330	1,352,408	1,404,042
Total liabilities	**5,766,238**	**6,211,048**	**6,876,420**	**7,317,349**	**8,137,200**	**7,539,661**	**8,011,048**	**8,025,999**	**8,137,200**	**8,561,387**	**8,882,687**	**9,048,739**
Deposits	3,506,462	3,763,370	4,012,930	4,339,919	4,682,627	4,434,185	4,579,874	4,584,608	4,682,627	4,822,452	4,978,928	5,037,590
Borrowings	1,779,292	1,984,686	2,064,538	2,232,500	2,615,355	2,320,727	2,513,618	2,558,226	2,615,355	2,852,001	2,901,847	2,998,907
Other[3]	480,484	462,992	798,952	744,930	839,218	784,748	917,556	883,166	839,218	886,935	1,001,912	1,012,243
Total equity	**466,800**	**515,899**	**582,348**	**636,121**	**696,962**	**650,516**	**674,625**	**681,638**	**696,962**	**737,537**	**766,537**	**845,183**
Off-balance-sheet												
Unused commitments to lend[4]	3,093,729	3,297,511	3,481,744	3,650,669	4,097,531	3,714,160	3,756,486	3,887,356	4,097,531	4,350,933	4,420,737	4,569,901
Securitizations outstanding[5]	n.a.	n.a.	276,717	295,001	298,348	284,429	285,286	290,328	298,348	308,543	314,258	313,436
Derivatives (notional value, billions)[6]	37,925	43,600	48,261	57,865	72,878	64,116	68,330	69,418	72,878	79,234	83,071	84,691
Income statement												
Net income[7]	77,054	72,698	65,868	84,831	106,819	24,817	26,389	27,306	28,414	30,368	24,945	27,850
Net interest income	187,535	196,106	222,785	243,329	254,752	62,383	63,268	63,999	65,287	68,050	71,764	71,536
Provisions for loan losses	20,056	26,886	39,637	42,957	31,557	8,579	8,433	7,120	7,427	6,933	6,513	6,712
Non-interest income	174,855	197,838	214,556	216,065	245,226	57,479	61,757	61,445	64,578	66,566	70,367	63,332
Non-interest expense	225,584	255,066	298,083	292,379	311,473	74,315	77,647	78,111	81,466	83,037	99,590	86,605
Security gains or losses	3,122	−606	4,338	4,521	5,782	1,856	2,684	587	666	1,987	1,019	1,983
Ratios (percent)												
Return on average equity	17.44	15.15	11.81	14.05	16.24	15.65	16.13	16.42	16.73	17.02	13.13	13.53
Return on average assets	1.30	1.12	.91	1.10	1.26	1.22	1.25	1.26	1.30	1.33	1.03	1.13
Net interest margin[8]	3.71	3.56	3.59	3.72	3.49	3.58	3.50	3.43	3.47	3.45	3.47	3.39
Efficiency ratio[7]	61.40	62.67	66.04	62.62	61.71	61.95	62.50	62.08	62.52	61.79	62.32	63.86
Nonperforming assets to loans and related assets	.85	1.09	1.45	1.45	1.16	1.43	1.33	1.23	1.16	1.10	.97	.90
Net charge-offs to average loans	.54	.65	.89	1.01	.80	.84	.80	.75	.83	.70	.64	.58
Loans to deposits	96.77	98.67	94.98	93.38	94.03	92.95	93.33	94.79	94.03	94.84	95.57	97.30
Regulatory capital ratios												
Tier 1 risk-based	8.80	8.83	8.91	9.21	9.55	9.33	9.29	9.51	9.55	9.49	9.33	9.35
Total risk-based	11.73	11.80	11.91	12.28	12.58	12.42	12.29	12.52	12.58	12.45	12.24	12.25
Leverage	7.00	6.80	6.66	6.70	6.84	6.73	6.76	6.74	6.84	6.84	6.63	6.71
Number of reporting bank holding companies	1,647	1,727	1,842	1,979	2,134	2,036	2,064	2,120	2,134	2,192	2,210	2,239

Footnotes appear on p. 34.

2. Financial characteristics of fifty large bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account or ratio[2, 9]	1999	2000	2001	2002	2003	2003				2004		
						Q1	Q2	Q3	Q4	Q1	Q2	Q3
Balance sheet												
Total assets	**5,099,836**	**5,477,515**	**5,839,170**	**6,187,672**	**6,832,129**	**6,359,053**	**6,746,975**	**6,758,788**	**6,832,129**	**7,263,707**	**7,450,254**	**7,644,504**
Loans	2,678,006	2,914,611	2,925,840	3,100,479	3,338,672	3,148,109	3,254,017	3,307,831	3,338,672	3,490,674	3,622,295	3,725,856
Securities and money market	1,757,559	1,841,370	2,041,939	2,268,185	2,610,066	2,382,270	2,548,039	2,513,575	2,610,066	2,882,756	2,865,953	2,905,381
Allowance for loan losses	–45,328	–48,578	–55,578	–59,340	–57,596	–58,631	–58,507	–57,624	–57,596	–60,227	–59,875	–59,267
Other	709,599	770,112	926,969	878,349	940,987	887,305	1,003,426	995,006	940,987	950,504	1,021,882	1,072,534
Total liabilities	**4,729,467**	**5,069,521**	**5,395,194**	**5,707,108**	**6,310,076**	**5,869,841**	**6,241,733**	**6,246,408**	**6,310,076**	**6,705,660**	**6,870,009**	**6,998,052**
Deposits	2,667,386	2,832,602	3,002,488	3,232,630	3,476,108	3,291,933	3,407,659	3,401,269	3,476,108	3,591,513	3,719,888	3,751,165
Borrowings	1,608,456	1,801,495	1,862,392	2,022,527	2,335,721	2,097,263	2,247,655	2,292,836	2,335,721	2,584,248	2,608,592	2,705,089
Other[3]	453,626	435,425	530,314	451,950	498,247	480,645	586,419	552,303	498,247	529,900	541,529	541,798
Total equity	**370,369**	**407,994**	**443,976**	**480,564**	**522,054**	**489,212**	**505,243**	**512,380**	**522,054**	**558,047**	**580,245**	**646,453**
Off-balance-sheet												
Unused commitments to lend[4]	2,878,837	3,073,838	3,236,770	3,384,138	3,800,034	3,436,066	3,467,715	3,592,127	3,800,034	4,046,999	4,103,786	4,233,162
Securitizations outstanding[5]	n.a.	n.a.	271,825	289,320	292,312	278,633	279,083	284,134	292,312	304,545	307,878	307,325
Derivatives (notional value, billions)[6]	37,885	43,534	48,142	57,744	72,683	63,973	68,157	69,239	72,683	78,999	82,799	84,420
Income statement												
Net income[7]	64,586	59,815	51,747	67,222	86,248	19,895	21,061	22,186	23,213	24,769	18,477	21,653
Net interest income	146,555	151,564	164,525	180,568	188,901	46,282	46,804	47,724	48,277	50,997	52,405	52,783
Provisions for loan losses	17,228	23,245	34,666	37,161	26,976	7,483	7,231	5,927	6,336	6,136	5,704	5,931
Non-interest income	156,838	178,438	169,811	166,937	189,973	44,579	47,730	47,652	50,044	52,565	53,187	47,566
Non-interest expense	187,837	213,601	220,159	210,949	224,063	53,445	55,830	56,599	58,255	60,665	72,854	61,638
Security gains or losses	2,232	–609	4,288	4,894	5,160	1,735	2,323	480	633	1,616	715	1,720
Ratios (percent)												
Return on average equity	18.59	15.80	12.15	14.64	17.45	16.66	17.20	17.74	18.19	18.31	12.83	13.69
Return on average assets	1.33	1.13	.91	1.12	1.30	1.25	1.29	1.31	1.36	1.38	.99	1.14
Net interest margin[8]	3.58	3.42	3.36	3.53	3.33	3.41	3.32	3.28	3.30	3.29	3.25	3.21
Efficiency ratio[7]	61.04	62.58	63.43	59.79	58.63	59.04	59.39	59.14	59.04	58.86	58.49	60.83
Nonperforming assets to loans and related assets	.89	1.18	1.58	1.58	1.23	1.52	1.42	1.31	1.23	1.15	1.01	.92
Net charge-offs to average loans	.60	.74	1.02	1.18	.93	1.00	.94	.86	.94	.85	.76	.70
Loans to deposits	100.40	102.90	97.45	95.91	96.05	95.63	95.49	97.25	96.05	97.19	97.38	99.33
Regulatory capital ratios												
Tier 1 risk-based	8.11	8.19	8.21	8.49	8.77	8.59	8.52	8.78	8.77	8.71	8.55	8.54
Total risk-based	11.32	11.45	11.57	11.94	12.15	12.06	11.89	12.15	12.15	12.00	11.81	11.78
Leverage	6.62	6.41	6.21	6.22	6.31	6.24	6.26	6.25	6.31	6.31	6.07	6.16

Footnotes appear on p. 34.

3. Financial characteristics of all other reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account[1, 10]	1999	2000	2001	2002	2003	2003				2004		
						Q1	Q2	Q3	Q4	Q1	Q2	Q3
Balance sheet												
Total assets	**1,104,423**	**1,215,909**	**1,317,791**	**1,448,084**	**1,591,924**	**1,498,582**	**1,546,740**	**1,557,164**	**1,591,924**	**1,615,235**	**1,662,302**	**1,704,200**
Loans	703,746	785,858	837,595	905,028	993,814	924,644	952,506	968,204	993,814	1,012,195	1,050,666	1,088,259
Securities and money market	312,036	334,378	369,757	421,328	464,390	450,956	464,999	458,854	464,390	472,987	472,276	475,248
Allowance for loan losses	−9,784	−11,062	−12,075	−13,418	−14,357	−13,816	−14,118	−14,374	−14,357	−14,736	−14,971	−15,070
Other	98,425	106,734	122,514	135,146	148,077	136,799	143,352	144,480	148,077	144,789	154,331	155,762
Total liabilities	**1,009,906**	**1,110,013**	**1,199,770**	**1,315,094**	**1,446,823**	**1,360,617**	**1,404,460**	**1,415,160**	**1,446,823**	**1,466,907**	**1,514,597**	**1,546,823**
Deposits	839,076	930,685	1,004,192	1,098,359	1,194,262	1,133,011	1,161,193	1,171,761	1,194,262	1,216,958	1,243,241	1,270,158
Borrowings	149,263	153,503	168,676	184,531	217,017	192,795	206,763	208,553	217,017	208,703	232,083	234,951
Other[3]	21,568	25,825	26,901	32,203	35,545	34,811	36,503	34,846	35,545	41,246	39,274	41,715
Total equity	**94,516**	**105,896**	**118,021**	**132,990**	**145,102**	**137,965**	**142,280**	**142,004**	**145,102**	**148,328**	**147,705**	**157,377**
Off-balance-sheet												
Unused commitments to lend[4]	203,564	215,324	235,290	255,183	285,057	266,833	277,061	283,085	285,057	290,551	301,933	319,422
Securitizations outstanding[5]	n.a.	n.a.	4,567	4,942	4,893	4,994	5,205	5,116	4,893	2,875	3,000	2,757
Derivatives (notional value, billions)[6]	27	53	90	89	98	100	106	102	98	125	117	128
Income statement												
Net income[7]	12,320	12,864	14,063	16,941	18,299	4,547	4,770	4,650	4,332	4,906	4,913	5,139
Net interest income	40,896	44,548	46,944	51,927	54,153	13,319	13,500	13,419	13,915	14,038	14,192	14,757
Provisions for loan losses	2,734	3,499	4,537	5,166	4,365	1,029	1,113	1,073	1,150	832	817	795
Non-interest income	16,216	17,468	22,577	24,837	28,066	6,730	7,411	7,080	6,844	6,834	6,758	6,671
Non-interest expense	36,231	39,726	44,808	47,501	52,077	12,488	13,124	12,867	13,598	13,267	13,255	13,445
Security gains or losses	821	−3	760	708	1,055	296	425	133	201	311	101	140
Ratios (percent)												
Return on average equity	13.12	12.95	12.32	13.56	13.15	13.43	13.69	13.37	12.13	13.55	13.28	13.49
Return on average assets	1.16	1.11	1.12	1.24	1.20	1.24	1.26	1.21	1.10	1.24	1.20	1.23
Net interest margin[8]	4.29	4.27	4.15	4.23	3.97	4.05	3.99	3.89	3.95	3.96	3.88	3.91
Efficiency ratio[7]	62.62	62.38	63.51	60.85	62.58	61.66	63.45	62.49	65.39	62.79	62.57	62.66
Nonperforming assets to loans and related assets	.69	.77	.97	1.02	.97	1.13	1.09	1.03	.97	.97	.88	.86
Net charge-offs to average loans	.30	.32	.43	.46	.39	.32	.37	.35	.50	.24	.26	.22
Loans to deposits	83.87	84.44	83.41	82.40	83.22	81.61	82.03	82.63	83.22	83.17	84.51	85.68
Regulatory capital ratios												
Tier 1 risk-based	12.39	12.02	12.31	12.51	12.60	12.66	12.60	12.60	12.60	12.58	12.45	12.42
Total risk-based	13.83	13.49	13.88	14.14	14.32	14.32	14.29	14.31	14.32	14.28	14.14	14.08
Leverage	8.68	8.61	8.79	8.89	9.02	8.99	8.95	8.96	9.02	9.08	9.08	9.11
Number of other reporting bank holding companies	1,564	1,657	1,783	1,920	2,075	1,977	2,005	2,061	2,075	2,134	2,151	2,184

Footnotes appear on p. 34.

4. Nonfinancial characteristics of all reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account	1999	2000	2001	2002	2003	2003				2004		
						Q1	Q2	Q3	Q4	Q1	Q2	Q3
Bank holding companies that qualify as financial holding companies [11, 12]												
Domestic												
Number	n.a.	299	388	434	451	437	440	448	451	463	469	475
Total assets	n.a.	4,494,270	5,436,785	5,916,859	6,605,565	6,061,696	6,433,736	6,447,130	6,605,565	6,839,976	7,063,960	7,258,996
Foreign-owned [13]												
Number	n.a.	9	10	11	12	11	11	11	12	13	14	14
Total assets	n.a.	502,506	621,442	616,254	710,441	648,017	732,695	729,244	710,441	995,454	1,117,732	1,194,645
Total U.S. commercial bank assets [14]	**5,673,702**	**6,129,534**	**6,415,909**	**6,897,447**	**7,397,818**	**7,031,274**	**7,325,350**	**7,293,920**	**7,397,818**	**7,614,374**	**7,850,643**	**8,041,091**
By ownership												
Reporting bank holding companies	5,226,027	5,657,210	5,942,575	6,429,738	6,940,992	6,577,712	6,863,154	6,842,727	6,940,992	7,165,521	7,409,184	7,599,349
Other bank holding companies	226,916	229,274	230,464	227,017	219,222	222,670	222,998	217,035	219,222	213,193	211,726	208,964
Independent banks	220,759	243,050	242,870	240,692	237,604	230,893	239,198	234,157	237,604	235,660	229,733	232,778
Assets associated with nonbanking activities [12, 15]												
Insurance	n.a.	n.a.	426,462	372,405	437,503	381,464	405,297	419,575	437,503	468,168	583,073	579,785
Securities broker–dealers	n.a.	n.a.	n.a.	630,851	656,775	709,839	659,701	686,049	656,775	713,794	710,485	756,870
Thrift institutions	117,699	102,218	91,170	107,422	133,056	126,375	124,640	143,578	133,056	139,713	156,033	162,396
Foreign nonbank institutions	78,712	132,629	138,977	145,344	170,600	154,812	160,515	162,789	170,600	195,472	226,055	230,066
Other nonbank institutions	879,793	1,234,714	1,674,267	561,712	686,367	524,709	737,434	736,515	686,367	837,298	861,366	874,295
Number of bank holding companies engaged in nonbanking activities [12, 15]												
Insurance	n.a.	n.a.	143	96	102	94	93	102	102	100	102	100
Securities broker–dealers	n.a.	n.a.	n.a.	47	50	48	50	46	50	49	48	46
Thrift institutions	57	50	38	32	27	31	31	29	27	29	27	25
Foreign nonbank institutions	25	25	32	37	41	38	40	39	41	41	40	40
Other nonbank institutions	559	633	743	880	1,042	913	945	992	1,042	1,016	1,038	1,068
Foreign-owned bank holding companies [13]												
Number	18	21	23	26	28	26	27	28	28	28	29	29
Total assets	535,024	636,669	764,411	762,901	934,781	799,540	946,847	947,932	934,781	1,146,963	1,272,564	1,351,302
Employees of reporting bank holding companies (full-time equivalent)	1,775,418	1,859,930	1,985,981	1,992,559	2,034,358	2,000,168	2,019,953	2,031,029	2,034,358	2,099,072	2,085,671	2,133,194
Assets of fifty large bank holding companies [9, 17]												
Fixed panel (from table 2)	5,099,836	5,477,515	5,839,170	6,187,672	6,832,129	6,359,053	6,746,975	6,758,788	6,832,129	7,263,707	7,450,254	7,644,504
Fifty large as of reporting date	4,809,785	5,319,129	5,732,621	6,032,000	6,666,488	6,203,000	6,587,000	6,602,255	6,666,488	7,045,844	7,385,384	7,644,504
Percent of all reporting bank holding companies	77.20	79.10	76.90	75.80	75.50	75.70	75.80	75.80	75.50	75.80	76.50	77.30

NOTE. All data are as of the most recent period shown. The historical figures may not match those in earlier versions of this table because of mergers, significant acquisitions or divestitures, or revisions or restatements to bank holding company financial reports. Data for the most recent period may not include all late-filing institutions.

1. Covers top-tier bank holding companies except (1) those with consolidated assets of less than $150 million and with only one subsidiary bank and (2) multibank holding companies with consolidated assets of less than $150 million, with no debt outstanding to the general public and not engaged in certain nonbanking activities.

2. Data for all reporting bank holding companies and the fifty large bank holding companies reflect merger adjustments to the fifty large bank holding companies. Merger adjustments account for mergers, acquisitions, other business combinations and large divestitures that occurred during the time period covered in the tables so that the historical information on each of the fifty underlying institutions depicts, to the greatest extent possible, the institutions as they exist in the most recent period. In general, adjustments for mergers among bank holding companies reflect the combination of historical data from predecessor bank holding companies.

The data for the fifty large bank holding companies have also been adjusted as necessary to match the historical figures in each company's most recently available financial statement.

In general, the data are not adjusted for changes in generally accepted accounting principles.

3. Includes minority interests in consolidated subsidiaries.

4. Includes credit card lines of credit as well as commercial lines of credit.

5. Includes loans sold to securitization vehicles in which bank holding companies retain some interest, whether through recourse or seller-provided credit enhancements or by servicing the underlying assets. Securitization data were first collected on the FR Y-9C report for June 2001.

6. The notional value of a derivative is the reference amount of an asset on which an interest rate or price differential is calculated. The total notional value of a bank holding company's derivatives holdings is the sum of the notional values of each derivative contract regardless of whether the bank holding company is a payor or recipient of payments under the contract. The actual cash flows and fair market values associated with these derivative contracts are generally only a small fraction of the contract's notional value.

7. Income statement subtotals for all reporting bank holding companies and the fifty large bank holding companies exclude extraordinary items, the cumulative effects of changes in accounting principles, and discontinued operations at the fifty large institutions and therefore will not sum to Net income. The efficiency ratio is calculated excluding nonrecurring income and expenses.

8. Calculated on a fully-taxable-equivalent basis.

9. In general, the fifty large bank holding companies are the fifty largest bank holding companies as measured by total consolidated assets for the latest period shown. Excludes a few large bank holding companies whose commercial banking operations account for only a small portion of assets and earnings.

10. Excludes predecessor bank holding companies that were subsequently merged into other bank holding companies in the panel of fifty large bank holding companies. Also excludes those bank holding companies excluded from the panel of fifty large bank holding companies because commercial banking operations represent only a small part of their consolidated operations.

11. Exclude qualifying institutions that are not reporting bank holding companies.

12. No data related to financial holding companies and only some data on nonbanking activities were collected on the FR Y-9C report before implementation of the Gramm–Leach–Bliley Act in 2000.

13. A bank holding company is considered "foreign-owned" if it is majority-owned by a foreign entity. Data for foreign-owned companies do not include data for branches and agencies of foreign banks operating in the United States.

14. Total assets of insured commercial banks in the United States as reported in the commercial bank Call Report (FFIEC 031 or 041, Reports of Condition and Income). Excludes data for a small number of commercial banks owned by other commercial banks that file separate call reports yet are also covered by the reports filed by their parent banks. Also excludes data for mutual savings banks.

15. Data for thrift, foreign nonbank, and other nonbank institutions are total assets of each type of subsidiary as reported in the FR Y-9LP report. Data cover those subsidiaries in which the top-tier bank holding company directly or indirectly owns or controls more than 50 percent of the outstanding voting stock and that has been consolidated using generally accepted accounting principles. Data for securities broker–dealers are net assets (that is, total assets, excluding intercompany transactions) of broker–dealer subsidiaries engaged in activities pursuant to the Gramm–Leach–Bliley Act, as reported on schedule HC-M of the FR Y-9C report. Data for insurance activities are all insurance-related assets held by the bank holding company as reported on schedule HC-I of the FR Y-9C report.

Beginning in 2002:Q1, insurance totals exclude intercompany transactions and subsidiaries engaged in credit-related insurance or those engaged principally in insurance agency activities. Beginning in 2002:Q2, insurance totals include only newly authorized insurance activities under the Gramm–Leach–Bliley Act.

16. Aggregate assets of thrift subsidiaries were affected significantly by the conversion of Charter One's thrift subsidiary (with assets of $37 billion) to a commercial bank in the second quarter of 2002 and the acquisition by Citigroup of Golden State Bancorp (a thrift institution with assets of $55 billion) in the fourth quarter of 2002.

17. Changes over time in the total assets of the time-varying panel of fifty large bank holding companies are attributable to (1) changes in the companies that make up the panel and (2) to a small extent, restatements of financial reports between periods.

n.a. Not available

SOURCE. Federal Reserve Reports FRY-9C and FR Y-9LP, Federal Reserve National Information Center, and published financial reports.

Announcements

PASSING OF FORMER GOVERNOR JOHN P. LAWARE

Former banking executive and Federal Reserve Governor John P. LaWare died on December 13, 2004, at Southeast Georgia Health System hospital in Brunswick, Georgia. LaWare, who was appointed to the Federal Reserve by President Ronald Reagan in 1988, retired to Sea Island, Georgia, after resigning in 1995.

Federal Reserve Board Chairman Alan Greenspan, in a statement released just before the Board's meeting on December 14, 2004, said of former Governor LaWare:

> "In his service to the Federal Reserve, my good friend John LaWare contributed keen judgment and a deep and practical knowledge of the American financial system, developed during a long career in banking. His insight was invaluable during the deliberations that led eventually to the Gramm–Leach–Bliley legislation that modernized the legal structure of banking and finance. Most of all, he was a gentleman. I extend my deepest sympathies to his family."

FEDERAL OPEN MARKET COMMITTEE STATEMENTS

The Federal Open Market Committee decided on November 10, 2004, to raise its target for the federal funds rate 25 basis points, to 2 percent.

The Committee believes that, even after this action, the stance of monetary policy remains accommodative and, coupled with robust underlying growth in productivity, is providing ongoing support to economic activity. Output appears to be growing at a moderate pace despite the rise in energy prices, and labor market conditions have improved. Inflation and longer-term inflation expectations remain well contained.

The Committee perceives the upside and downside risks to the attainment of both sustainable growth and price stability for the next few quarters to be roughly equal. With underlying inflation expected to be relatively low, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

Voting for the FOMC monetary policy action were: Alan Greenspan, Chairman; Timothy F. Geithner, Vice Chairman; Ben S. Bernanke; Susan S. Bies; Roger W. Ferguson, Jr.; Edward M. Gramlich; Thomas M. Hoenig; Donald L. Kohn; Cathy E. Minehan; Mark W. Olson; Sandra Pianalto; and William Poole.

In a related action, the Board of Governors unanimously approved a 25 basis point increase in the discount rate, to 3 percent. In taking this action, the Board approved the requests submitted by the Boards of Directors of the Federal Reserve Banks of Boston, New York, Philadelphia, Cleveland, Richmond, Atlanta, Chicago, St. Louis, Minneapolis, and Kansas City.

The Federal Open Market Committee decided on December 14, 2004, to raise its target for the federal funds rate 25 basis points, to 2¼ percent.

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In addition, the Committee unanimously decided to expedite the release of its minutes. Beginning with this meeting, the minutes of regularly scheduled meetings will be released three weeks after the date of the policy decision. The first set of expedited minutes will be released at 2:00 p.m. eastern standard time on January 4, 2005.

Request for Comments on Review of Open-End Credit Rules, Regulation Z

The Federal Reserve Board issued for public comment on December 3, 2004, an advance notice of proposed rulemaking (ANPR) announcing a review of the open-end (revolving) credit rules of the Board's Regulation Z (Truth in Lending), which implements the Truth in Lending Act.

The Board periodically reviews each of its regulations to update them, if necessary.

Open-end credit generally refers to a revolving line of credit (such as a credit card account) where repeated transactions are expected, the available credit is replenished as unpaid balances are repaid, and finance charges are assessed on unpaid balances. The ANPR seeks comment on a variety of specific issues relating to three broad categories: (1) the format of open-end credit disclosures; (2) the content of the disclosures; and (3) the substantive protections provided under the regulation. The ANPR solicits comments on the scope of the review, and also requests commenters to identify other issues that the Board should consider addressing in the review.

Comments must be received on or before March 28, 2005.

Fee Schedules for Federal Reserve Priced Services for 2005

The Federal Reserve Board approved fee schedules on November 4, 2004, for Federal Reserve Bank payment services for depository institutions (priced services), effective January 3, 2005.

The Reserve Banks project that they will recover 100.1 percent of all their priced services costs in 2005 and estimate that they will recover 94.6 percent of these costs in 2004.

From 1994 to 2003 the Reserve Banks recovered 97.8 percent of priced services costs, including operating costs, imputed costs, and targeted return on equity (ROE, or net income), which amounts to a ten-year total net income of slightly less than $500 million.

Since the mid-1990s there has been a national trend away from the use of checks and toward more efficient electronic payment alternatives. Although this trend has affected the entire payments industry and is consistent with the Federal Reserve's position of encouraging the use of more efficient electronic payment alternatives, it has adversely affected the ability of the Reserve Banks to fully recover their costs. In response to this national trend, the Reserve Banks have improved operational efficiencies and reduced costs with the aim of returning to full cost recovery in 2005.

As part of their check restructuring initiative, the Reserve Banks have reduced the number of Federal Reserve check-processing locations from forty-five to thirty-two and have announced plans to further reduce the number to twenty-three sites by early 2006. In 2005 the Reserve Banks are expected to realize full-year operational efficiencies and cost savings associated with the first round of restructurings in 2003 and 2004, and partial-year savings associated with the second round of restructurings. The Reserve Banks have also reduced costs in a variety of support and overhead areas.

Overall the price level for Federal Reserve priced services will increase about 7 percent in 2005 from 2004 levels. The increase reflects an approximately 8 percent rise in paper-check service fees combined with a 2.6 percent increase in fees for the Reserve Banks' electronic payment services. Fee schedules for all priced services are available on the Federal Reserve Banks' financial services web site at www.frbservices.org.

The Board also approved, effective January 6, 2005, changing the earnings credit rate on depository institutions' clearing balances at the Reserve Banks from 90 percent to 80 percent of the three-month Treasury bill rate.

In addition the Board approved the 2005 private-sector adjustment factor (PSAF) for Reserve Bank priced services of $161 million. The PSAF is an allowance for taxes and other imputed expenses that would have to be paid and profits that would have to be earned if the Federal Reserve's priced services were provided by a private business. The Monetary Control Act of 1980 requires the Federal Reserve to recover the costs of providing priced services, including the PSAF, over the long run, to promote competition between the Reserve Banks and private-sector service providers.

REVISED PAYMENTS SYSTEM RISK POLICY

The Federal Reserve Board announced on November 26, 2004, the approval of proposed revisions to its Policy on Payments System Risk (PSR Policy) addressing risk management in payments and securities settlement systems.

The revisions update the policy in light of current industry and supervisory risk-management approaches as well as new international risk-management standards for payments and securities settlement systems. In addition they provide further clarification regarding the policy's objectives, scope, and application.

The key revisions include an expansion of the policy's scope to include those Federal Reserve Bank payments and securities settlement systems that meet the policy's application criteria, revised general risk-management expectations for systems subject to the policy, and the incorporation of both the *Core Principles for Systemically Important Payment Systems* (Core Principles) and the *Recommendations for Securities Settlement Systems* (Recommendations).

Under the revised policy, public- and private-sector payments and securities settlement systems that expect to settle a daily aggregate gross value of U.S. dollar-denominated transactions exceeding $5 billion on any day during the next twelve months are expected to implement a sound risk-management framework. A sound risk-management framework should: (1) clearly identify risks and set sound risk-management objectives, (2) establish sound governance arrangements, (3) establish clear and appropriate rules and procedures, and (4) employ the resources necessary to achieve the system's risk-management objectives and implement effectively its rules and procedures. Systems deemed by the Board to be systemically important are also required to meet the Core Principles or Recommendations.

The Core Principles were developed by the Committee on Payment and Settlement Systems (CPSS) of the central banks of the Group of Ten countries. The Recommendations were developed by the CPSS and the Technical Committee of the International Organization of Securities Commissions. Both sets of standards are part of the Financial Stability Forum's Compendium of Standards that have been widely recognized and endorsed by U.S. authorities as integral to strengthening global financial stability.

REVISED BANK HOLDING COMPANY RATING SYSTEM

The Federal Reserve issued on December 1, 2004, a revised bank holding company (BHC) rating system. The revised system more closely aligns the Federal Reserve's rating process with the focus of its current supervisory practices by placing an increased emphasis on risk management, providing a more flexible and comprehensive framework for evaluating financial condition, and requiring an explicit determination of the likelihood that the nondepository entities of a BHC will have a significant negative effect on the depository subsidiaries. The revised rating system became effective January 1, 2005.

Under the revised rating system, each BHC is assigned a composite rating (C) based on an evaluation and rating of three essential components of an institution's financial condition and operations. These three components are: Risk Management (R); Financial Condition (F); and potential Impact (I) of the parent company and nondepository subsidiaries on the subsidiary depository institutions. A fourth rating, Depository Institution (D), mirrors the primary regulator's assessment of the subsidiary depository institutions. A simplified version of the rating system that includes only the R and C components will be applied to noncomplex bank holding companies with assets less than $1 billion.

To provide a consistent framework for assessing risk management, the R component is supported by four subcomponents that reflect the effectiveness of the banking organization's risk management and controls. The F component is supported by four subcomponents reflecting an assessment of the quality of the banking organization's Capital; Asset Quality; Earnings; and Liquidity.

The policy also contains guidance on implementation of the revised rating system based on BHC size and complexity.

CHANGES TO PUBLIC DISCLOSURE TABLES TO ADJUST FOR REVISIONS IN REGULATION C

The Federal Reserve Board announced on December 10, 2004, changes to the tables used to publicly release data collected by lenders under the Home Mortgage Disclosure Act (HMDA), which is implemented by the Board's Regulation C (Home Mortgage Disclosure).

The formats for some of the existing disclosure tables have been revised, one set of existing tables has been deleted, and new tables have been added.

The changes reflect revisions to Regulation C, adopted by the Board in 2002, that require lenders to collect new data beginning January 1, 2004.

These revisions to the public disclosure tables do not affect the data collection and reporting requirements applicable to lenders subject to Regulation C; the revised disclosure tables merely show the format that will be used by the federal financial regulatory agencies for public disclosure of the data collected and reported by lenders.

The 2002 revisions to Regulation C require lenders to collect and report data including loan pricing information (the rate spread between the annual percentage rate on the loan and the yield on Treasury securities of comparable maturity); whether the loan is subject to the Home Ownership and Equity Protection Act; whether manufactured housing is involved; whether the loan is secured by a first or subordinate lien on the property; and certain information about requests for preapproval. In addition, the race and ethnicity categories were changed to conform to standards established by the Office of Management and Budget.

The first year for which the new data will be reported is 2004. Data from lenders must be submitted to the federal financial regulatory agencies no later than March 1, 2005, and will be reflected in the public disclosures scheduled to be released later in 2005.

Annual Notice of Asset-Size Exemption Threshold

The Federal Reserve Board published on December 21, 2004, its annual notice of the asset-size exemption threshold for depository institutions under Regulation C (Home Mortgage Disclosure), which implements the Home Mortgage Disclosure Act (HMDA).

The asset-size exemption for depository institutions will increase $1 million to a level of $34 million based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the twelve-month period ending in November 2004. As a result, depository institutions with assets of $34 million or less as of December 31, 2004, are exempt from data collection in 2005. An institution's exemption from collecting data in 2005 does not affect its responsibility to report the data it was required to collect in 2004.

The adjustment became effective January 1, 2005.

HMDA and the Board's Regulation C require most depository institutions and certain for-profit, nondepository institutions to collect, report, and disclose data about applications for, and originations and purchases of, home mortgage loans, home improvement loans, and refinancings. Data reported include the type, purpose, and amount of the loan; the race, ethnicity, sex, and income of the loan applicant; and the location of the property. The purposes of HMDA include helping to determine whether financial institutions are serving the housing needs of their communities and assisting in fair lending enforcement.

Appointment of Richard W. Fisher as President, Federal Reserve Bank of Dallas

Richard W. Fisher will become president of the Federal Reserve Bank of Dallas, effective April 4, 2005. The appointment of Mr. Fisher was announced on December 21, 2004, by Ray L. Hunt, chairman of the Bank's Board of Directors. Mr. Fisher will succeed Robert D. McTeer, Jr., who resigned November 4, 2004, to become chancellor of the Texas A&M University System.

Mr. Fisher, 55, is currently vice chairman of Kissinger McLarty Associates, a strategic advisory firm chaired by Henry Kissinger, the former Secretary of State of the United States of America.

As president of the Federal Reserve Bank of Dallas, Mr. Fisher will head one of the twelve regional Reserve Banks, which with the Board of Governors in Washington, D.C., make up the Federal Reserve System, the nation's central bank. He will participate in meetings of the Federal Open Market Committee, a principal policymaking body in the Federal Reserve System, and during 2005, and every third year following, will be a voting member of the Committee.

The Dallas Reserve Bank serves the Eleventh Federal Reserve District, which includes all of Texas, as well as portions of Louisiana and New Mexico. The Federal Reserve is responsible for managing the country's money supply, supervising banks and depository institutions, and serving as fiscal agent for the federal government. The Federal Reserve also provides services to depository institutions.

Ray Hunt, chairman of the Board of Directors of the Federal Reserve Bank of Dallas, said the following.

> "We are extremely pleased with the fact that Richard Fisher will soon be joining us as our new president. Richard possesses a superb knowledge of the nation's economic and monetary system and his direct per-

sonal involvement in a number of very important international economic treaties and activities make him uniquely qualified to provide the very forward-looking leadership for which the Federal Reserve Bank of Dallas has become known."

Mr. Fisher graduated with honors from Harvard University in economics, earned an MBA from Stanford University, and studied engineering at the U.S. Naval Academy and Latin American politics at Oxford University. He began his career as a banker at the private bank of Brown Brothers Harriman and Company. At Brown Brothers, Mr. Fisher was assistant to Robert Roosa, a former senior official of the Federal Reserve and Under Secretary of the Treasury, who had trained several leading financial officials, among them Paul Volcker, who became Federal Reserve Board Chairman before Mr. Greenspan.

In 1977 Mr. Fisher was "loaned out" by Brown Brothers to serve as Assistant to the Secretary of the Treasury during the Carter Administration, where he worked on issues related to the dollar crisis of 1978 and 1979, then returned to Brown Brothers to found their Texas operations in Dallas. In 1987 he created Fisher Capital Management, an investment advisory firm, and a separate funds management firm, Fisher Ewing Partners, which focused heavily on investing in distressed banks, savings and loans, and thrift institutions. He sold his controlling interests in both firms when he again joined the government in 1997.

From 1997 to 2001 Mr. Fisher served as Deputy United States Trade Representative with the rank of Ambassador. Ambassador Fisher oversaw the implementation of NAFTA, negotiations for the Free Trade Area of the Americas, and the initiation of the U.S.–Chile Free Trade Agreement negotiations. He negotiated several major agreements on behalf of the United States in Asia, including the Bilateral Trade Agreement with Vietnam signed by President Bush, the U.S.–Korea Auto Agreement of 1998, and the initiation of the Free Trade Agreement with Singapore, and was a senior member of the team that negotiated the bilateral accords for China and Taiwan's accession to the World Trade Organization (WTO). Under an agreement struck between President Clinton and Japanese Prime Minister Hashimoto, Ambassador Fisher co-chaired the U.S.–Japan Enhanced Initiative on Competition and Deregulation, which led to significant changes in the financial, telecommunications, commercial, and legal sectors of the Japanese economy.

Mr. Fisher stated the following:

"I am excited at the prospect of working for the brilliant staff at the Dallas Fed. This is a homecoming in more than one way. I started my career at Brown Brothers as the assistant to Robert Roosa, a legendary figure in both the Federal Reserve System and the U.S. Treasury. He and the partners there taught me the bond, stock, and foreign exchange markets and the investment trade. It was Mr. Roosa's ardent wish that someday I would 'pay it back' by joining the Federal Reserve, which he considered the 'purest form of public service, above and beyond the reach of partisan politics.' He is probably grinning up in heaven right now."

A biographical summary is available on the Federal Reserve Bank of Dallas's web site, www.dallasfed.org/news/releases/2004/nr041221.htm.

Figures on Income of the Federal Reserve Banks

The Federal Reserve Board released figures on January 7, 2005, that indicate the Federal Reserve Banks distributed approximately $18.086 billion of their $23.541 billion total income to the U.S. Treasury during 2004.

Federal Reserve System income is derived primarily from interest earned on U.S. government securities that the Federal Reserve has acquired through open market operations. This income amounted to $22.344 billion in 2004. Additionally, income from fees for the provision of priced services to depository institutions totaled $867 million. The remaining income of $330 million includes earnings on foreign currencies, earnings from loans, and other income.

The operating expenses of the twelve Reserve Banks totaled $2.116 billion in 2004, including the System's net pension credit. In addition, the cost of earnings credits granted to depository institutions amounted to $116 million. Assessments against Reserve Banks for Board expenditures totaled $272 million and the cost of currency amounted to $504 million.

Net additions to income amounted to $919 million, primarily representing unrealized gains on assets denominated in foreign currencies that are revalued to reflect current market exchange rates. These gains were partially offset by interest expense on reverse repurchase agreements.

Total net income for the Federal Reserve Banks in 2004 amounted to $21.452 billion. Under the Board's policy, each Reserve Bank's net income after the statutory dividend to member banks and the amount necessary to equate surplus to paid-in capital is transferred to the U.S. Treasury. The statutory dividends to member banks in 2004 were $582 million.

BASEL II SURVEY DOCUMENTS FINALIZED

The U.S. banking agencies have made available on November 3, 2004, survey materials for the fourth Quantitative Impact Study (QIS-4) and a related Loss Data Collection Exercise (LDCE) in preparation for the U.S. implementation of the Basel II Capital Framework.

The Basel Committee on Banking Supervision proposed new international capital standards for banking organizations in June 2004, and the proposal is being evaluated by bank supervisory authorities worldwide. QIS-4 is intended to provide the agencies with a better understanding of ways that the implementation of a more risk-sensitive approach for regulatory capital standards might affect minimum required capital at the industry, institution, and portfolio levels. The LDCE is intended to provide insight, based on detailed loss event data, into the implications of the proposed Basel II standards regarding the Advanced Measurement Approaches for evaluating operational risk.

Materials for the U.S. survey are available on the Federal Financial Institutions Examination Council's web site at www.ffiec.gov/qis4 and www.ffiec.gov/ldce. Interested parties may review and use these materials to gain a better understanding of the possible implications of such new capital standards for their own institutions.

Approximately thirty U.S. banking organizations have indicated an interest in participating in the U.S. version of QIS-4, though fewer are expected to participate in the LDCE. The agencies requested responses for the LDCE by late November 2004 and for the QIS-4 by late January 2005. The information received should help them prepare, by midyear 2005, a joint Notice of Proposed Rulemaking for implementing Basel II in the United States.

FEDERAL RESERVE STUDIES CONFIRM ELECTRONIC PAYMENTS EXCEED CHECK PAYMENTS

The Financial Services Policy Committee announced on December 6, 2004, that surveys conducted by the Federal Reserve confirm that electronic payment transactions in the United States have exceeded check payments for the first time. The number of electronic payment transactions totaled 44.5 billion in 2003, while the number of checks paid totaled 36.7 billion, according to recent surveys of U.S. depository financial institutions and electronic payments organizations.

Previous research by the Federal Reserve found that the number of checks paid in 2000 was 41.9 billion transactions, compared with 30.6 billion electronic payments. Electronic payments consist of such payment methods as credit cards, debit cards, and automated clearinghouse (ACH) transactions, for example, direct debit.

The decline in the number of checks paid from 41.9 billion to 36.7 billion transactions reflects an annual average rate decline of 4.3 percent from 2000 to 2003. Electronic forms of payment increased from 30.6 billion to 44.5 billion, reflecting an average annual rate of increase of 13.2 percent for the same period. "The balance has shifted from check writing to electronic payments, and we expect this trend to continue," said Richard Oliver, senior vice president of the Federal Reserve Bank of Atlanta and the Federal Reserve Banks' product manager for retail payments.

> "Indeed, at current growth rates, credit cards and debit cards will both surpass checks in terms of total annual transactions in 2007. Such rapid change presents opportunities and challenges for an industry traditionally geared toward paper-based payments. The value of these surveys is that they quantify this shift and provide important insight for all industry participants."

The *2004 Federal Reserve Payments Study* consists of two research efforts commissioned to estimate the annual number, dollar value, and makeup of payments in the United States, and to estimate the annual volume of electronic payments. The first survey, the *Depository Institutions Payments Survey*, included responses from more than 1,500 depository financial institutions (commercial banks, savings institutions, and credit unions). The second research effort, the *Electronic Payment Instruments Study*, included responses from sixty-eight organizations involved in originating, switching, or processing electronic payments.

"The Fed's 2004 *Payments Study* is part of an ongoing effort by the Federal Reserve System to measure trends in noncash payments in the United States," Oliver said.

> "This year's studies repeat critical aspects of the studies we conducted three years ago to provide a second series of point-in-time estimates from which inferences can be drawn about the rate and nature of change of the U.S. payments system."

According to the *Depository Institutions Payments Study*, the 36.7 billion checks paid in 2003 had a total value of about $39.3 trillion. These estimates do not include checks that are written and subsequently converted to electronic transactions for clearing. Also, the study found that approximately 77 percent of checks are interbank checks, which are cleared between financial institutions, and the remaining 23 percent are so-called on-us checks, or those for which the financial institution of first deposit is also the paying institution.

The second survey, the *Electronic Payment Instruments Study*, revealed that the 44.5 billion electronic payments had a dollar value of $27.4 trillion. These payments include consumer, business, and government-initiated electronic payments. Debit card transactions, with an estimated annual growth rate of 23.5 percent, are the fastest growing type of electronic payment. ACH transactions increased 13.4 percent on an annual basis and credit cards grew at a 6.7 percent rate. The relatively slow growth of credit card transactions is likely owing to its mature status as a payment option, according to Oliver.

Findings of the *Electronic Payment Instruments Study*

Type of payment	Number (billions of dollars)	Value (trillions of dollars)	Annual rate of decline or growth 2000–2003 (percent)
Check	36.7	39.3	–4.3
Electronic	44.5	27.4	13.2
Debit card	15.6	.6	23.5
ACH	9.1	25.1	13.4
Credit card	19.0	1.7	6.7

NOTE. Annual estimates based on survey data.

Complete reports on the 2004 *Federal Reserve Payments Study* can be found on the Federal Reserve Financial Services's web site at www.frbservices.org.

Fact Sheet Background

The *2004 Federal Reserve Payments Study* includes two research efforts to estimate the annual number, dollar value, and makeup of noncash payments in the United States. The study estimated the number and value of payments by check, automated clearinghouse (ACH), credit card, debit card, and electronic benefits transfer (EBT).

The *Depository Institutions Payments Study* is based on a national survey of approximately 1,500 financial institutions, and estimates the annual number and value of check and other noncash transactions in the United States. It was conducted as a joint effort of the Federal Reserve System, Global Concepts, and its subcontractor International Communications Research.

The *Electronic Payment Instruments Study*, conducted by Dove Consulting, included statistics for 2003 from sixty-eight payments organizations that were used to estimate the annual number and value of electronic payments. Those organizations are involved in originating, switching, or processing electronic payments.

PROPOSED CHANGES TO COLLECTION OF DATA FOR SHARED NATIONAL CREDIT REVIEWS

The federal bank and thrift institution regulatory agencies requested public comment on December 16, 2004, on proposed changes to the data collection process that supports the Shared National Credit review of large syndicated loans.

The program, which has been in place since 1977, is an interagency examination and supervision effort designed to evaluate loan commitments aggregating $20 million or more that are shared by three or more supervised institutions. The program provides a process for assigning uniform credit ratings for shared national credits in addition to collecting and analyzing data that regulators use to monitor credit conditions and trends at the nation's largest banks.

The proposed data collection changes would enable the agencies to improve the efficiency and effectiveness of credit reviews, support continued risk-focusing efforts in the program, and provide comparative credit risk information to banks and regulatory supervisors. Under the proposal, the data collection changes would be implemented with the 2007 review, employing data as of December 31, 2006.

Comments were requested by February 15, 2005.

FINAL RULES REGARDING DISPOSAL OF CONSUMER INFORMATION

The federal bank and thrift institution regulatory agencies announced on December 21, 2004, interagency final rules to require financial institutions to adopt measures for properly disposing consumer information derived from credit reports.

Current law requires financial institutions to protect customer information by implementing information security programs. The final rules require institutions to make modest adjustments to their information security programs to include measures for the proper disposal of consumer information. They also add a new definition of consumer information.

The agencies' final rules implement section 216 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) and include this new statutory requirement in the *Interagency Guidelines Establishing Standards for Safeguarding Customer Information* (retitled the *Interagency Guidelines Establishing Standards for Information Security*), which were adopted in 2001.

The final rules will take effect on July 1, 2005.

PUBLICATION DATE FOR INDUSTRIAL PRODUCTION REVISION

The Federal Reserve Board announced on November 19, 2004, that it would publish the annual revision to the G.17 statistical release, Industrial Production and Capacity Utilization, on Wednesday, December 22, 2004, at 10:00 a.m. eastern standard time.

The revision is available on the Board's web site at www.federalreserve.gov/releases/G17.

NOVEMBER 2004 UPDATE TO THE *COMMERCIAL BANK EXAMINATION MANUAL*

The November 2004 update to the *Commercial Bank Examination Manual* has been published (supplement no. 22). The new supplement includes supervisory and examination guidance on the following subjects:

1. *The May 2004 Recommended Practices Document for the Seamless Supervision of State-Chartered Banks.* The "Examination Strategy and Risk-Focused Examinations" section incorporates this recommended-practices document, which was promulgated by the interagency State–Federal Working Group. The working group consists of state bank commissioners and senior officials from the Federal Reserve Board and the Federal Deposit Insurance Corporation. The recommended practices highlight the importance of communication and coordination between state and federal banking agencies in the planning and execution of supervisory activities over state-chartered banking organizations. The recommended practices are the common courtesies and practices that examination and supervisory staff should follow in the implementation and execution of their agencies' supervisory activities. The practices apply to institutions that operate in a single state or in more than one state. See SR letters 04–12 and 96–33.

2. *Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks and Thrift Institutions.* The "Investment Securities and End-User Activities" section incorporates this June 15, 2004, revised Uniform Agreement (the uniform agreement) that was jointly issued by the federal banking and thrift institution agencies. The uniform agreement sets forth the definitions of the classification categories and the specific examination procedures and information for classifying bank assets, including securities. The June 2004 revision did not change the classification of loans in the uniform agreement. The uniform agreement addresses, among other items, the treatment of rating differences, multiple security ratings, and split or partially rated securities. It also eliminates the automatic classification for sub-investment-grade debt securities. See SR letter 04–9. The examination procedures incorporate the supervisory guidance provided in the uniform agreement.

3. *Tying Arrangements.* The "Loan Portfolio Management" section has been revised to incorporate a detailed discussion on tying arrangements. Section 106 of the Bank Holding Company Act Amendments of 1970 generally prohibits a bank from conditioning the availability or price of one product or service (the *tying product* or the *desired product*) on a requirement that a customer obtain another product or service (the *tied product*) from the bank or an affiliate of the bank. Section 106 contains several exceptions to its general prohibitions, and it authorizes the Board to grant, by regulation or order, additional exceptions from the prohibitions when the Board determines an exception "will not be contrary to the purposes" of the statute.

The "Loan Portfolio Management" section also includes the Board or Board staff interpretations on tying arrangements, including those issued on August 18, 2003, and February 2, 2004. These two interpretations state that bank customers that receive securities-based credit can be required to hold their pledged securities as collateral at an account of a bank holding company's or bank's broker–dealer affiliate. The section's examination objectives and examination procedures also have been revised to further address tying arrangements.

4. *Guidance on Accepting Accounts from Foreign Governments, Foreign Embassies, and Foreign Political Figures.* The "Deposit Accounts" section has been revised to incorporate this June 15, 2004, interagency advisory that was issued in response to inquiries the agencies received on whether financial institutions should do business and establish account relationships with those foreign customers cited in the advisory. Banking organizations are advised that the decision to accept or reject such foreign-account relationships is theirs alone to make. Financial institutions should be aware that there are varying degrees of risk associated with these accounts, depending on the customer and the nature of the services provided. Institutions should take appropriate steps to manage these risks, consistent with sound practices and applicable anti-money-laundering laws and regulations. See SR letter 04–10. The examination objectives, examination procedures, and internal control questionnaire were also revised to incorporate the advisory's supervisory guidance.

5. *Risk-Based Capital Requirements for Asset-Backed Commercial Paper Programs.* The "Assessment of Capital Adequacy" and the "Asset Securitization" sections have been updated to discuss the Board's July 17, 2004, approval (effective September 30, 2004) of its revisions to the risk-based capital requirements for asset-backed commercial paper (ABCP) programs. See appendix A of Regulation H (12 CFR 208, appendix A). Under the Board's revised risk-based capital rule, a bank that qualifies as a primary beneficiary and must consolidate an ABCP pro-

gram that is defined as a variable interest entity under generally accepted accounting principles (See FIN 46–R) may exclude the consolidated ABCP program's assets from risk-weighted assets provided that the bank is the sponsor of the ABCP program. Banks must also hold risk-based capital against eligible ABCP liquidity facilities with an original maturity of one year or less that provide liquidity support to ABCP by applying a new 10 percent credit-conversion factor to such facilities. Eligible ABCP liquidity facilities with an original maturity exceeding one year remain subject to the rule's current 50 percent credit-conversion factor. Ineligible liquidity facilities are treated as direct-credit substitutes or recourse obligations, which are subject to a 100 percent credit-conversion factor. When calculating the bank's tier 1 and total capital, any associated minority interests must also be excluded from tier 1 capital. The examination procedures also were revised to incorporate the revised risk-based capital requirements.

6. *Policy on Payments System Risk.* The "Payment System Risk and Electronic Funds Transfer Activities" section incorporates the Board's changes to its Policy on Payments System Risk (the PSR policy). See 69 *Federal Register* 57917, September 28, 2004, and 69 *Federal Register* 69926, December 1, 2004. Effective July 20, 2006, the PSR policy requires Reserve Banks (1) to release interest and redemption payments on securities issued by government-sponsored enterprises (GSEs) and certain international organizations (institutions for which the Reserve Banks act as fiscal agents but whose securities are not obligations of, or fully guaranteed as to principal and interest by, the United States) only if the issuer's Federal Reserve account contains sufficient funds to cover them and (2) to align the treatment of the general corporate account activity of GSEs and certain international organizations with the treatment of the activity of other account holders that do not have regular access to the discount window and those account holders not eligible for intraday credit. The examination procedures have been updated to incorporate these revisions.

A more detailed summary of changes is included with the update package. Copies of the new supplement were shipped directly by the publisher to the Reserve Banks for distribution to examiners and other System staff members. The public may obtain the *Manual* and the updates (including pricing information) from Publications Fulfillment, Mail Stop 127, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; telephone (202) 452-3244; or send facsimile to (202) 728-5886). The *Manual* is also available on the Board's public web site at www.federalreserve.gov/boarddocs/supmanual/.

Change in Release Date of FOMC Minutes

The Federal Reserve Board announced on November 3, 2004, that it would release the minutes of the September 21, 2004, Federal Open Market Committee meeting at 2:00 p.m. eastern standard time on Friday, November 12, 2004, because of the Veteran's Day holiday. The minutes from the September meeting were previously scheduled for release on Thursday, November 11, 2004.

Approvals of Increase in Discount Rate

The Federal Reserve Board approved on November 10, 2004, an action by the Board of Directors of the Federal Reserve Bank of San Francisco increasing the discount rate at the Bank from 2¾ percent to 3 percent, effective immediately.

The Federal Reserve Board approved on November 12, 2004, an action by the Board of Directors of the Federal Reserve Bank of Dallas increasing the discount rate at the Bank from 2¾ percent to 3 percent, effective immediately.

Release of Minutes of the Board's Discount Rate Meetings

The Federal Reserve Board released on November 18, 2004, the minutes of its discount rate meetings from August 23, 2004, through September 21, 2004.

On December 21, 2004, the Board released the minutes of its discount rate meetings from October 12, 2004, through November 10, 2004.

On January 11, 2005, the Board released the minutes of its discount rate meetings from November 22, 2004, through December 14, 2004.

Appointments of New Members and Designation of the Chair and Vice Chair of the Thrift Institutions Advisory Council

The Federal Reserve Board announced on November 18, 2004, the names of six new members of its Thrift Institutions Advisory Council (TIAC) and designated a new president and vice president of the council for 2005.

The council is an advisory group made up of twelve representatives from thrift institutions. The panel was established by the Board in 1980 and includes members from savings and loans, savings banks, and credit unions. The council meets three times each year with the Board of Governors to discuss developments relating to thrift institutions, the housing industry, mortgage finance, and certain regulatory issues.

The new council president for 2005 is Curtis L. Hage, chairman and chief executive officer, Home Federal Bank, Sioux Falls, South Dakota. The new vice president is Roy M. Whitehead, president and chief executive officer, Washington Federal Savings, Seattle, Washington.

These six new members were named for two-year terms that began on January 1, 2005:

Craig G. Blunden, chairman, president, and CEO, Provident Savings Bank, FSB, Riverside, California

Alexander R.M. Boyle, vice chairman, Chevy Chase Bank, Bethesda, Maryland

Robert M. Couch, president and CEO, New South Federal Savings Bank, Birmingham, Alabama

Jeffrey H. Farver, president and CEO, San Antonio Federal Credit Union, San Antonio, Texas

George Jeffrey Records, Jr., chairman and CEO, MidFirst Bank, Oklahoma City, Oklahoma

David Russell Taylor, president and CEO, Rahway Savings Institution, Rahway, New Jersey

Other TIAC members whose terms continue through 2005 are the following:

Eldon R. Arnold, president and CEO, Citizens Equity First Credit Union (CEFCU), Peoria, Illinois

H. Brent Beesley, chairman and CEO, Heritage Bank, St. George, Utah

Douglas K. Freeman, chairman and CEO, NetBank, Alpharetta, Georgia

David H. Hancock, chief executive officer, North American Savings Bank, Grandview, Missouri

APPOINTMENTS OF NEW MEMBERS AND DESIGNATION OF THE CHAIR AND VICE CHAIR OF THE CONSUMER ADVISORY COUNCIL

The Federal Reserve Board named on January 7, 2005, eleven new members to its Consumer Advisory Council for three-year terms and designated a new chair and vice chair of the council for 2005.

The council advises the Board on the exercise of its responsibilities under the Consumer Credit Protection Act and on other matters in the area of consumer financial services. The council meets three times a year in Washington, D.C.

Mark Pinsky was designated chair; his term runs through December 2005. Mr. Pinsky is president and chief executive officer for the National Community Capital Association.

Lori Swanson was designated vice chair; her term on the council ends in December 2006. Lori Swanson is solicitor general for the Office of the Minnesota Attorney General.

The eleven new members are the following:

Stella Adams
Durham, North Carolina
Ms. Adams is the executive director of the North Carolina Fair Housing Center, a nonprofit organization dedicated to equal housing opportunity and equal access. Her focus has been on elimination of predatory lending, support for community reinvestment, and education of communities about fair housing and fair lending issues. Ms. Adams's activism gave impetus to the passage of the North Carolina anti-predatory lending bill.

Faith Anderson
Fort Worth, Texas
Ms. Anderson is vice president of legal compliance and general counsel for American Airlines Federal Credit Union. The credit union's offerings include savings and checking accounts, consumer and real estate loans, overdraft protection, and ATM, debit, and credit cards. Ms. Anderson is responsible for compliance and implementation of federal and state laws and regulations.

Carolyn Carter
Boston, Massachusetts
Ms. Carter is a consultant for the National Consumer Law Center. She has experience with the Truth in Lending Act, particularly with respect to coverage issues, rescission, and remedies and defenses. Ms. Carter represents low-income consumers involving foreclosures, repossession, credit and usury, bankruptcy, debt collection, and the application of consumer protection laws to landlord-tenant matters.

Michael Cook
Bentonville, Arkansas
Mr. Cook is vice president and assistant treasurer for Wal-Mart Stores, Inc., and has responsibility for domestic payment services and financial operations. His work supports global strategies for electronic payments and financial services. Mr. Cook has been instrumental in the formation of Wal-Mart's Financial Services Division.

Donald S. Currie
Brownsville, Texas
Mr. Currie is the executive director of the Community Development Corporation of Brownsville, a nonprofit affordable housing provider. The organization's programs include single-family new construction, housing rehabilitation and reconstruction, affordable housing subdivisions, and the Colonia Self Help Center. Mr. Currie helped organize the Rio Grande Valley Multibank Corporation,

a stockholder-held Community Development Financial Institution.

Kurt Eggert
Orange, California
Professor Eggert is an associate professor of law, director of Clinical Legal Education, and the director of the Alona Cortese Elder Law Center at Chapman University School of Law. His specialties are consumer law and elder law, and he has particular expertise in predatory lending, abusive servicing, home equity fraud prevention, elder abuse, and consumer fraud.

Deborah Hickok
Ooltewah, Tennessee
Ms. Hickok is the president and chief executive officer of ACH Commerce, LLC. She is founder of the organization, which specializes in providing ACH processing services, software solutions, and consulting to financial institutions. She trains state banking examiners and consults on issues affecting ACH processing.

Lisa Sodeika
Prospect Heights, Illinois
Ms. Sodeika is senior vice president of Corporate Affairs for HSBC North America Holdings, Inc. Her responsibilities include directing community development, the Center for Consumer Advocacy, public relations, philanthropic services, and employee communications. She has experience in subprime lending and servicing, quality assurance and compliance, and community relations.

Anselmo Villarreal
Waukesha, Wisconsin
Mr. Villarreal is the executive director of La Casa de Esperanza, Inc. He advocates for fair lending, works against predatory lending, encourages the use of banking services among immigrants, and promotes privacy and security. Mr. Villarreal is the Wisconsin representative of the Institute of Mexicans Abroad, which addresses issues related to community reinvestment, consumer protection regulations, consumer credit, privacy, and electronic banking.

Kelly K. Walsh
Honolulu, Hawaii
Ms. Walsh is corporate compliance and Community Reinvestment Act officer for the Bank of Hawaii. Her responsibilities include oversight of the bank's compliance with all consumer laws and regulations. Ms. Walsh coordinates community development programs for the bank's service area, including the state of Hawaii, Guam, American Samoa, and Saipan. Ms. Walsh speaks before banking groups, such as the Consumer Bankers Association, and has authored several articles for the ABA's Bank Compliance Magazine.

Marva Williams
Chicago, Illinois
Ms. Williams is senior vice president of the Woodstock Institute, a community lending research and consulting organization engaged in applied research, policy development, and technical assistance to promote community economic development. She advocates for the needs of lower-income individuals and communities and for financial products and services to meet their needs.

Council members whose terms continue through 2005 are the following:

Susan Bredehoft, senior vice president, compliance risk management, Commerce Bank, N.A., Cherry Hill, New Jersey

Dan Dixon, group senior vice president, World Savings Bank, FSB, Washington, District of Columbia

James Garner, senior vice president and general counsel, North American Consumer Finance, Citigroup, Baltimore, Maryland

R. Charles Gatson, vice president and chief operating officer, Swope Community Builders, Kansas City, Missouri

W. James King, president and chief executive officer, Community Redevelopment Group, Cincinnati, Ohio

Elsie Meeks, executive director, First Nations Oweesta Corporation, Kyle, South Dakota

Benjamin Robinson III, president and chief executive officer, Innovative Risk Solutions, LLC, Charlotte, North Carolina

Diane Thompson, supervising attorney, Land of Lincoln Legal Assistance Foundation, Inc., East St. Louis, Illinois

Clint Walker, general counsel and chief administrative officer, Juniper Bank, Wilmington, Delaware

Council members whose terms continue through 2006 are the following:

Dennis L. Algiere, senior vice president, Compliance and Community Affairs, The Washington Trust Company, Westerly, Rhode Island

Sheila Canavan, consumer attorney, Law Office of Sheila Canavan, Moab, Utah

Anne Diedrick, senior vice president, JPMorgan Chase Bank, New York, New York

Hattie B. Dorsey, president and chief executive officer, Atlanta Neighborhood Development Partnership, Atlanta, Georgia

Bruce B. Morgan, chairman, president, and chief executive officer, Valley State Bank, Roeland Park, Kansas

Mary Jane Seebach, executive vice president and chief compliance officer, Countrywide Financial Corporation, Calabasas, California

Paul J. Springman, group executive, Predictive Sciences, Equifax, Atlanta, Georgia

Forrest F. Stanley, senior vice president and deputy general counsel, KeyBank National Association, Cleveland, Ohio

Enforcement Actions

The Federal Reserve Board announced on November 15, 2004, the issuance of a consent order of assessment of a civil money penalty against the Cumberland Bank, Franklin, Tennessee, a state member bank. Cumberland Bank, without admitting to any allegations, consented to the issuance of the order in connection with its alleged violations of the Board's Regulations implementing the National Flood Insurance Act.

The order requires Cumberland Bank to pay a civil money penalty of $3,250, which will be remitted to the Federal Emergency Management Agency for deposit into the National Flood Mitigation Fund.

The Federal Reserve Board announced on November 15, 2004, the issuance of a consent order of assessment of a civil money penalty against the Five Points Bank, Grand Island, Nebraska, a state member bank. Five Points Bank, without admitting to any allegations, consented to the issuance of the order in connection with its alleged violations of the Board's Regulations implementing the National Flood Insurance Act.

The order requires Five Points Bank to pay a civil money penalty of $10,000, which will be remitted to the Federal Emergency Management Agency for deposit into the National Flood Mitigation Fund.

The Federal Reserve Board announced on November 18, 2004, the issuance of a cease and desist order against Ameribanc Holdings, Inc., Durango, Colorado, a bank holding company, and its subsidiary bank, the Bank of Durango, Durango, Colorado.

The Federal Reserve Board announced on December 2, 2004, the issuance of a cease and desist order against Thomas C. Darden, a former institution-affiliated party of Kenco Bancshares, Inc., Jayton, Texas.

The Federal Reserve Board also announced the execution of two written agreements. One agreement is between William J. Collier and the Federal Reserve Bank of Dallas, and the other agreement is between Jesse L. Reese and the Federal Reserve Bank of Dallas. Both William J. Collier and Jesse L. Reese are institution-affiliated parties of Kenco Bancshares, Inc., Jayton, Texas.

The order and the written agreements address conduct relating to a commitment made in connection with an application involving Kenco Bancshares, Inc.

The Federal Reserve Board announced on January 5, 2005, the execution of a written agreement by and among Prineville Bancorporation, Prineville, Oregon; the Community First Bank, Prineville Oregon; the Oregon Division of Financial and Corporate Securities, Salem, Oregon; and the Federal Reserve Bank of San Francisco.

Changes in Board Staff

Normand Bernard, special assistant to the Board, retired on November 3, 2004, after more than forty-two years of service, including more than thirty years as a member of the Board's official staff.

The Board of Governors approved the following officer appointments in the Office of the Inspector General.

- Elizabeth A. Coleman appointed assistant inspector general for Communications and Quality Assurance.
- Laurence A. Froehlich appointed assistant inspector general for Legal Services.
- William L. Mitchell appointed assistant inspector general for Audits and Attestations.

Ms. Coleman has oversight responsibilities for the OIG's overall reporting and communications, including its legislatively mandated semiannual reports to the Congress; as well as the quality assurance of OIG products and processes. In addition she will be responsible for the OIG's major administrative functions and its information technology operations. Ms. Coleman joined the Board's OIG in 1989 as a senior auditor. She was promoted to program manager in 1999 and to senior program manager in 2001. Before joining the Board's staff, she worked on a variety of topics at the Government Accountability Office. Ms. Coleman has a BBA in accounting from James Madison University and is completing her third year at the Stonier Graduate School of Banking. She is also a certified information systems auditor.

Mr. Froehlich continues to serve as counsel to the inspector general, which requires coordinating interactions with the general counsels at the Board, the Reserve Banks, and other federal agencies, and will assume additional supervisory responsibilities. Mr. Froehlich joined the OIG's staff in 2001 as counsel to the inspector general. He brings to the Board more than twenty years of service in the OIG community, most recently as deputy inspector general counsel at the Federal Deposit Insurance Corporation. Mr. Froehlich holds a BA degree from Yale University, an MS degree from the London School of Economics, and a JD degree from George Washington University. He is a member of the D.C. bar.

Mr. Mitchell has oversight responsibility for the OIG's financial audits, legislatively mandated work under the Federal Information Security Management Act, procurement audits, performance audits, and attestations. Mr. Mitchell joined the OIG's staff in 1993 as an auditor, and was promoted to senior auditor in 1998 and to program manager in 1999. His most recent promotion to senior program manager was in 2001. Before joining the Board's staff, Mr. Mitchell served in the U.S. Army as an auditor and an instructor in the Army's finance school. He holds BBA and MPA degrees in accounting from the University of Texas and is a certified government financial manager. Mr. Mitchell is also a graduate of the Bank Administration Institute's Graduate School of Bank Operations and Technology at Vanderbilt University and has attended the System's Trailblazer program.

Howard Amer, deputy associate director in the Division of Banking Supervision and Regulation, retired from the Board on January 30, 2005, after thirty-two years of service at the Board and the Federal Reserve Bank of Boston. □

Legal Developments

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued Under Section 3 of the Bank Holding Company Act

Barclays PLC
London, England

Barclays Bank PLC
London, England

Barclays Group US Inc.
Wilmington, Delaware

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

Barclays PLC ("Barclays") and its subsidiaries, Barclays Bank PLC ("Barclays Bank") and Barclays Group US Inc. ("Barclays US") (collectively, "Applicants"), have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act") to become bank holding companies and to acquire Juniper Financial Corp. ("Juniper") and its subsidiary bank, Juniper Bank ("Juniper Bank"), both in Wilmington, Delaware.[1]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 56,067 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Barclays, with total consolidated assets of approximately $901 billion, is the 11th largest banking organization in the world.[2] Barclays operates branches in New York and Miami and representative offices in New York, San Francisco, and Washington, D.C. Juniper Bank, with consolidated assets of approximately $437 million, is the 21st largest depository organization in Delaware, controlling $326.8 million in deposits.[3]

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that 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]

Applicants do not currently engage in retail banking activities in the United States and, therefore, do not compete with Juniper Bank in any relevant banking market. Accordingly, the Board concludes, based on all the facts of record, that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Factors

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Applicants, and public comment on the proposal.[5] In addi-

1. 12 U.S.C. § 1842. Barclays and Barclays Bank are each treated as a financial holding company for purposes of the BHC Act. Barclays US has elected to become a financial holding company on consummation of the proposal. The Board has determined that its election would become effective on consummation of the proposal, if on that date, Juniper Bank remains well capitalized and well managed. On that date, Juniper Bank must also have received a rating of at least "satisfactory" at its most recent performance evaluation under the Community Reinvestment Act ("CRA"). 12 U.S.C. § 2901 et seq.

2. Worldwide asset data are as of June 30, 2004, and worldwide ranking data are as of December 31, 2003. Asset figures are based on United Kingdom generally accepted accounting principles.

3. Asset, deposit, and ranking data are as of June 30, 2004.

4. 12 U.S.C. § 1842(c)(1).

5. Using press reports, a commenter expressed concern that:

(1) projects that Barclays financed in Asia have negative environmental consequences,

(2) Barclays Bank is a defendant in litigation involving the apartheid policies of the former government in South Africa, and

tion, the Board consulted with the Financial Services Authority ("FSA"), which is responsible for the supervision and regulation of financial institutions in the United Kingdom.

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 and the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization on consummation, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction. Based on its review of these factors, the Board finds that Applicants have sufficient financial resources to effect the proposal. The capital levels of Barclays Bank would continue to exceed the minimum levels that would be required under the Basel Capital Accord and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization. Furthermore, Juniper Bank is well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a share purchase, and the consideration to be received by Juniper's shareholders would be funded from Applicants' existing cash resources.

The Board also has considered the managerial resources of Applicants, Juniper, and Juniper Bank, particularly the supervisory experience of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws. The Board has reviewed assessments by the relevant federal and state banking supervisory agencies of the organizations' management and of the risk-management systems of the Applicants' U.S. operations and of the operations of Juniper and Juniper Bank. The Board also has considered Applicants' plans to integrate Juniper and Juniper Bank and Applicants' proposed business plan for, and management structure of, Juniper Bank.

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

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.[6] The home country supervisor of the Applicants is the FSA.

In approving applications under the BHC Act and the International Banking Act ("IBA"),[7] the Board previously has determined that various banks in the United Kingdom, including Barclays Bank, were subject to home country supervision on a consolidated basis.[8] In this case, the Board finds that the FSA continues to supervise Barclays Bank in substantially the same manner as it supervised United Kingdom banks at the time of those determinations. Based on this finding and all the facts of record, the Board concludes that Barclays Bank continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that a company has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.[9] The Board has reviewed the restrictions on disclosure in relevant jurisdictions in which Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Applicants previously have committed to make available to the Board such information on the operations of Applicants and their affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal law. Applicants have also previously committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable Applicants and their affiliates to make such information available to the Board. In light of these commitments, the Board concludes that Applicants have provided adequate assurances of access to any appropriate information that the Board may request. Based on these and all the facts of record, the Board concludes that the supervisory factors it is required to consider are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the

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(3) Barclays Bank is increasing its interest in banking organizations in Zimbabwe and Zambia.

These matters are not within the Board's jurisdiction to adjudicate or within the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973) ("*Western Bancshares*").

6. 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank is subject to consolidated home country supervision. *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).

7. 12 U.S.C. § 3101 et seq.

8. *See, e.g., HBOS Treasury Services plc*, 90 *Federal Reserve Bulletin* 103 (2004); *The Royal Bank of Scotland Group*, 90 *Federal Reserve Bulletin* 87 (2004); Board letter to Gerald LaRocca, January 16, 2003.

9. *See* 12 U.S.C. § 1842(c)(3)(A).

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

The Board has carefully considered the convenience and needs factor and the CRA performance record of Juniper Bank in light of all the facts of record, including public comments received on the proposal. A commenter opposing the proposal expressed concern about Juniper Bank's record of community development lending.

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examination by the appropriate federal supervisor of the CRA performance record of the relevant insured depository institution. 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.[10]

Juniper Bank received a "satisfactory" rating at its most recent CRA performance examination by the Federal Deposit Insurance Corporation ("FDIC"), as of May 13, 2003. Juniper Bank engages primarily in credit card operations and has been designated as a limited purpose bank by the FDIC for purposes of assessing its CRA performance.[11] The performance test for limited purpose banks evaluates an institution's record of community development lending, investments, and services in its designated assessment area.[12]

In the last performance evaluation of Juniper Bank, examiners indicated that the bank originated an adequate level of community development loans in its assessment area in Delaware during the evaluation period.[13] Community development loans made by Juniper Bank that examiners noted favorably included a bridge loan to a nonprofit organization that was used in the construction of a group home in New Castle County for LMI individuals with mental illness, and the bank's participation in a loan fund administered by a community development financial institution that financed the rehabilitation of fifteen apartments and the construction of four group homes for low-income individuals in Wilmington.

Examiners also indicated that the level of qualified investments, grants, and in-kind donations of property in Juniper Bank's assessment area reflected an adequate responsiveness to the credit and development needs of the bank's assessment area. Examiners stated that the bank purchased a $250,000 bond from the Delaware State Housing Authority, the proceeds of which were used to fund affordable housing initiatives in Delaware.

Examiners also praised Juniper Bank for the high level of community development services provided to fifteen organizations throughout its assessment area. They commended the bank for providing financial-skills education and outreach programs to three nonprofit organizations in Delaware. Examiners concluded that the high level of community services provided by the bank demonstrated an excellent responsiveness in addressing the LMI and community economic development needs of its assessment area.

Applicants represented that since the last performance evaluation, Juniper Bank has purchased more than $1 million of securities backed by mortgages in LMI communities in New Castle County and has committed $400,000 to pooled loan funds that financed community development initiatives in the bank's assessment area. Applicants also represented that Juniper Bank continues to provide services to its community, including participating in programs to increase financial literacy and other life skills for children and young adults transitioning from the foster care system and for young mothers. In addition, Applicants represented that after consummation of the proposal, they would continue to implement Juniper Bank's existing CRA program and would not change or discontinue any services or products now offered by Juniper Bank.[14] The FDIC, as Juniper Bank's primary federal supervisor, will continue to evaluate the bank's CRA performance record after consummation.

The Board has carefully considered all the facts of record, including reports of examination of the CRA record of Juniper Bank, information provided by Applicants, public comments received on the proposal, and confidential supervisory information. Applicants represented that the proposal would enable the combined organization to increase Juniper Bank's credit card business and would provide Juniper's customers access to Applicants' interna-

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

11. A "limited purpose bank" is a bank that:

(1) offers only a narrow product line, such as credit card loans, to a regional or broader market and

(2) has been designated as a limited purpose bank by the appropriate federal banking agency. 12 CFR 345.12(o). The FDIC designated Juniper Bank as a limited purpose bank on April 15, 2002.

12. 12 CFR 345.25(a) and (c).

13. The evaluation period for the examination was May 24, 2001, to May 12, 2003.

14. The commenter asserted that Barclays Bank's activities negatively affected lower-income communities outside the United States and that this record should be viewed as a predictor of Juniper Bank's performance under the CRA after Applicants acquire the bank. As previously noted, allegations concerning these types of activities outside the United States are within the jurisdiction of the foreign supervisor for the organization to adjudicate and are not within the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See Western Bancshares.* Moreover, the CRA requires the relevant banking agency to assess an insured depository institution's record of meeting the credit needs of its community in the United States, but does not extend to activities conducted by foreign banks outside the United States. *See* 12 U.S.C. §2903.

tional banking products and services that are currently unavailable to its customers. 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, including the CRA performance record of Juniper Bank, are consistent with approval.

Conclusion

Based on the foregoing and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved.[15] In reaching this 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 Applicants with the conditions imposed in this order, the commitments made to the Board in connection with the application, and the prior commitments to the Board referenced in this order. 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 shall not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 9, 2004.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

15. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the public had ample opportunity to submit comments on the proposal, and in fact, the commenter has submitted written comments that the Board considered carefully in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not present its views adequately and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

BNP Paribas
Paris, France

BancWest Corporation
Honolulu, Hawaii

Order Approving the Acquisition of a Bank Holding Company

BNP Paribas ("BNP") and its subsidiary, BancWest Corporation ("BancWest") (collectively, "Applicants"), financial holding companies within the meaning of the Bank Holding Company Act ("BHC Act"), have requested the Board's approval under section 3 of the BHC Act to acquire Community First Bankshares, Inc. ("CFB") and its subsidiary bank, Community First National Bank ("CFB Bank"), both in Fargo, North Dakota.[1]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 21,535 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

BNP, with total consolidated assets of approximately $1.2 trillion, is the tenth largest banking organization in the world.[2] BNP operates branches in Chicago, New York City, and San Francisco; agencies in Houston and Miami; and representative offices in Atlanta, Dallas, and Los Angeles.

BancWest, with total consolidated assets of $40 billion, is the 29th largest depository organization in the United States, controlling deposits of $24 billion.[3] In California, BancWest is the eighth largest depository organization, controlling deposits of $16 billion. BancWest also operates subsidiary insured depository institutions in Hawaii, Idaho, Nevada, New Mexico, Oregon, Washington, Guam, and the Northern Mariana Islands. CFB, with total consolidated assets of approximately $5.6 billion, is the 133rd largest depository organization in California and controls deposits of $242 million.

1. 12 U.S.C. § 1842. Applicants propose to acquire the nonbanking subsidiaries of CFB 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. BancWest's wholly owned subsidiary bank, Bank of the West, San Francisco, California, has requested the approval of the Federal Deposit Insurance Corporation ("FDIC") under section 18(c) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c), to merge with CFB Bank, with Bank of the West as the surviving institution. Today, the Board approved the separate application filed by Applicants to acquire USDB Bancorp ("USDB") and its subsidiary bank, Union Safe Deposit Bank, both in Stockton, California ("the USDB transaction"), under section 3 of the BHC Act. *See BNP Paribas*, 91 *Federal Reserve Bulletin* 58 (2005).

2. Asset data are as of March 31, 2004. International ranking data are as of December 31, 2003, and are based on the exchange rate then available.

3. Asset data are as of June 30, 2004; national deposit and ranking data are as of March 31, 2004; and statewide deposit and ranking data are as of June 30, 2003. Data reflect subsequent consolidations through August 1, 2004.

On consummation of this proposal and the USDB transaction, BancWest would become the 27th largest depository organization in the United States, with total consolidated assets of $46 billion, and would control deposits of $30 billion, representing less than 1 percent of the total amount of deposits of insured depository institutions in the United States. BancWest would remain the eighth largest insured depository organization in California, controlling deposits of approximately $17 billion, which represent approximately 3 percent of the total amount of deposits of insured depository institutions in the state.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met.[4] For purposes of the BHC Act, the home state of BNP is California, and CFB's subsidiary bank is located in Arizona, California, Colorado, Iowa, Minnesota, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wisconsin, and Wyoming.[5]

All the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case. Applicants currently are adequately capitalized and adequately managed, as defined by applicable law, and would remain so on consummation of this proposal.[6] CFB Bank has existed and operated for at least the minimum age requirements established by applicable state law.[7] On consummation of the proposal, Applicants and their affiliates 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, or the appropriate percentage established by applicable state law, of the total amount of deposits of insured depository institutions in each state in which both institutions currently are located.[8] All other requirements of section 3(d) are met in this case. Accordingly, based on all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

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

BancWest and CFB compete directly in the San Diego, California and the Las Cruces, New Mexico banking markets.[10] The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by BancWest and CFB,[11] 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"),[12] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in each of these banking markets.[13] Both the San Diego and the Las Cruces banking markets would remain moderately concentrated as measured by the HHI. In both markets the increases in concentration would be small and numerous competitors would remain.

The Department of Justice also has conducted a detailed review of the competitive effects of the proposal and has advised the Board that consummation of the proposal would not have a significantly adverse effect on com-

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

5. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B). California is the home state of BNP for purposes of the International Banking Act and Regulation K. 12 U.S.C. § 3101 et seq.; 12 CFR 211.22.

6. *See* 12 U.S.C. § 1842(d)(1)(A).

7. *See* 12 U.S.C. § 1842(d)(1)(B).

8. *See* 12 U.S.C. § 1842(d)(2)(A) and (B). Ariz. Rev. Stat. § 6-328 (30 percent); Colo. Rev. Stat. § 11-104-202(4) (25 percent); Iowa Code § 524.1802(2)(b) (15 percent).

9. 12 U.S.C. § 1842(c)(1).

10. The San Diego banking market is defined as the San Diego Ranally Metro Area ("RMA"), Camp Pendleton, and Pine Valley. The Las Cruces banking market is defined as Dona Ana County, New Mexico, excluding those communities in the El Paso, Texas–New Mexico RMA.

11. Market share data are based on Summary of Deposits reports filed as of June 30, 2003, adjusted for transactions through April 14, 2004, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group,* 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation,* 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.,* 77 *Federal Reserve Bulletin* 52 (1991).

12. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered 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 by 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 institutions.

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

petition in these markets or in any other relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on these and all other facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of 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 banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the various banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Applicants, and comments received on the proposal.[14] The Board also has consulted with the French Banking Commission ("FBC"), which is responsible for the supervision and regulation of French financial institutions.

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important. BNP and its U.S. subsidiary depository institutions are considered to be well capitalized and would remain so on consummation of the proposal. BNP's capital levels exceed the minimum levels that would be required under the Basel Capital Accord, and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization. The proposed transaction is structured as a share purchase, and the consideration to be received by CFB shareholders would be funded from BNP's available resources. The Board finds that the Applicants have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of BNP, BancWest, CFB, and their subsidiary banks, particularly the supervisory experience of the various bank supervisory agencies with the organizations and their records of compliance with applicable banking laws. The Board has reviewed assessments of the organizations' management and risk-management systems by the relevant federal and state banking supervisory agencies. Domestic banking organizations and foreign banks operating in the United States are required to implement and operate effective anti-money laundering programs. Accordingly, the Board has also considered the existing anti-money laundering programs at BNP and the assessment of these programs by the relevant federal supervisory agencies, state banking agencies, and the FBC. Furthermore, the Board has considered additional information provided by BNP on enhancements it has made and is currently making to its systems as the organization expands its operations. The Board expects that BNP will take all necessary steps to ensure that sufficient resources, training, and managerial efforts are dedicated to maintaining a fully effective anti-money laundering program. The Board also has considered BancWest's plans to implement the proposal, including its proposed management after consummation and the company's record of successfully integrating acquired institutions into its existing operations. Based on these and all other facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.[15]

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.[16] The home country supervisor of BNP is the FBC.

In approving applications under the BHC Act and the International Banking Act ("IBA"),[17] the Board previously

14. A commenter cited press reports of litigation concerning alleged gender-based employment discrimination brought by two current or former employees of BNP in London, and a press report of an alleged wrongful termination of a BNP employee in New York. The Board notes that the laws of the relevant jurisdictions provide causes of action and remedies with respect to individual complaints of gender-based employment discrimination and wrongful termination occurring in those jurisdictions and that such matters are not within the Board's jurisdiction to adjudicate. *See, e.g., Norwest Corporation*, 82 *Federal Reserve Bulletin* 580 (1996); *see also Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973) ("*Western Bancshares*").

The commenter also expressed concern that BNP's involvement in financing certain foreign projects or its business relationships with energy companies doing business in a foreign country damaged the environment, caused additional social harm, or raised other unspecified concerns. These contentions contain no allegation of illegality or action that would affect the safety and soundness of the institutions involved in the proposal and are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See, e.g., The Royal Bank of Scotland Group plc*, 90 *Federal Reserve Bulletin* 87, 88 n.16 (2004); *Western Bancshares*.

15. The commenter, citing press reports, also expressed concerns about BNP's role in handling payments for the United Nations' Oil-for-Food program with Iraq. As part of its review and assessment of the managerial resources of BNP, the Board reviewed records of BNP's New York branch concerning this program in conjunction with state regulators. The Board notes that BNP's role in this program was to act as the exclusive bank to facilitate payments under an agreement with the United Nations, which currently is conducting its own review of this program. The Board will continue to monitor the progress and results of investigations of the Oil-for-Food program by the Congress and by the United Nations.

16. 12 U.S.C. § 1842(c)(3)(B). Under Regulation Y, the Board uses the standards enumerated in Regulation K to determine whether a foreign bank is subject to consolidated home country supervision. *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).

17. 12 U.S.C. § 3101 et seq.

has determined that various French banks, including BNP, were subject to home country supervision on a consolidated basis by the FBC.[18] In this case, the Board has determined that the FBC continues to supervise BNP in substantially the same manner as it supervised French banks at the time of those determinations. Based on this finding and all the facts of record, the Board has concluded that BNP continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

In addition, section 3 of the BHC Act requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.[19] The Board has reviewed the restrictions on disclosure in relevant jurisdictions in which BNP operates and has communicated with relevant government authorities concerning access to information. In addition, BNP previously has committed to make available to the Board such information on the operations of BNP and its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the IBA, and other applicable federal law. BNP also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable BNP and its affiliates to make such information available to the Board. In light of these commitments, the Board concludes that BNP has provided adequate assurances of access to any appropriate information the Board may request. Based on these and all other facts of record, the Board has concluded that the supervisory factors it is required to consider are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board 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").[20] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance records of Banc West's subsidiary banks and CFB Bank in light of all the facts of record, including public comment on the proposal.

18. *See, e.g., BNP Paribas,* 88 *Federal Reserve Bulletin* 221 (2002); *Caisse Nationale de Credit Agricole,* 86 *Federal Reserve Bulletin* 412 (2000).

19. *See* 12 U.S.C. § 1842(c)(3)(A).

20. 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 et seq.

One commenter opposed the proposal and alleged, based on data reported under the Home Mortgage Disclosure Act ("HMDA"),[21] that BancWest and CFB Bank engaged in disparate treatment of minority individuals in home mortgage lending in the banks' assessment areas.[22] The commenter also expressed concern about possible branch closures.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the 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.[23]

Bank of the West, BancWest's largest subsidiary bank as measured by total deposits, received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of February 3, 2003 ("February 2003 Evaluation"). First Hawaiian Bank, Honolulu, BancWest's other subsidiary bank, received an "outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of August 19, 2003. CFB Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of December 31, 2002 ("December 2002 Evaluation").

Applicants have indicated that after the merger of Bank of the West and CFB Bank, the CRA activities of the resulting bank would conform to Bank of the West's current CRA program.

B. CRA Performance of Bank of the West

Bank of the West received an overall rating of "high satisfactory" under the lending test in the February 2003

21. 12 U.S.C. § 2801 *et seq.*

22. The commenter also expressed concern about lending by Bank of the West and CFB Bank to unaffiliated retail check cashers and pawn shops. Applicants responded that Bank of the West and CFB Bank provide credit to pawn shops and retail check cashers but that neither bank plays any role in the lending practices or the credit review processes of those borrowers. These businesses are licensed by the states where they operate and are subject to applicable state law.

In addition, the commenter expressed concern about instances in which BNP may have underwritten the securitizations of subprime loans. BNP acknowledged that its U.S. broker–dealer subsidiary may from time to time underwrite securitization of assets that include subprime loans but stated that the subsidiary plays no role in the lending practices or credit review processes of any lender involved in the transaction. BNP has indicated that the due diligence implemented by its broker–dealer subsidiary would include consideration of whether the lender is known to have experienced legal or regulatory compliance problems.

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

Evaluation.[24] Examiners reported that the bank originated more than 15,800 residential mortgage loans totaling $2.3 billion in its assessment areas during the evaluation period. They found that the Bank of the West's lending levels in LMI census tracts were good and noted favorably that the bank offered several loan programs to meet the needs of low-income and first-time homebuyers. Such programs included the First Time Home Buyer Program, which offers low down payments and waivers of most origination costs when certain income or geographic requirements are met, and Fannie Mae's 97% Program and Flex 97% Product, under which closing costs or down payments could be funded from gifts, grants, loans from a nonprofit organization, or other sources. During the evaluation period, the bank extended 405 loans totaling $64.5 million through these three programs.

Bank of the West originated more than 20,600 small business loans totaling approximately $2.9 billion in its assessment areas during the review period.[25] Examiners stated that the bank's lending to small businesses with gross annual revenues of $1 million or less was good and was responsive to small business credit needs. They noted favorably that the bank was a certified Small Business Administration ("SBA") "Preferred Lender" and extended more than 1,250 SBA loans totaling approximately $739 million during the evaluation period. In addition, examiners noted the bank's partnerships with the Export–Import Bank of the United States and the California State World Trade Commission's Export Finance Office to finance exports by small and medium-size businesses.

Examiners reported that the bank extended a high level of community development loans during the evaluation period, with 234 of such loans totaling more than $1.02 billion. They found that many of these loans were complex and represented credits not routinely extended by banks. The majority of the bank's community development loans by number financed affordable housing and community development services for LMI individuals and were made in partnership with community development organizations, government-sponsored affordable housing agencies, bank consortia, and multifamily housing developers.

Bank of the West received an "outstanding" rating overall under the investment test in the February 2003 Evaluation, and examiners reported that the bank had taken a leadership role by making investments not routinely provided by the private sector. The bank made 824 qualified community development investments totaling more than $51.8 million during the review period. Examiners particularly noted the bank's investment in a California environmental cleanup and redevelopment fund and the bank's $10.7 million of investments in six housing projects that created more than 370 units of affordable housing in LMI areas.

The bank received a "high satisfactory" rating overall under the service test in the February 2003 Evaluation. Examiners reported that the bank's distribution of its branches generally mirrored community demographics across all its assessment areas. They also reported that the bank provided a relatively high level of community development services in its combined assessment areas that focused on affordable housing for LMI individuals. The evaluation made particular note of the bank's affiliation with the Affordable Housing Program administered by the Federal Home Loan Bank of San Francisco, which makes awards to develop and rehabilitate single-family and multifamily housing for very low- and low-income individuals.

C. CRA Performance of CFB Bank

As noted, CFB Bank received an overall "satisfactory" rating in the December 2002 evaluation. Under the lending test, CFB Bank received an overall rating of "high satisfactory." During the evaluation period,[26] CFB Bank originated or purchased more than 4,500 HMDA-reportable loans totaling $386 million in three states that together accounted for 61 percent of the bank's deposits ("Representative States").[27] Examiners reported that the bank's distribution of loans across geographies of different income levels was generally good and that the bank had an excellent distribution of loans to borrowers of different income levels.

CFB Bank originated or purchased more than 12,400 small loans to businesses totaling more than $1.15 billion in the Representative States during the evaluation period.[28] In addition, the bank originated or purchased more than 6,500 small loans to farms totaling $326 million in the Representative States.[29] Examiners reported that the bank's distribution of loans to businesses of varying sizes generally was excellent.

During the evaluation period, CFB Bank also made 11 community development loans totaling almost $2.6 million in the Representative States. These community development loans helped provide affordable housing and social services to LMI families and financing for start-up and existing small businesses.

24. The evaluation periods were from January 1, 2000, through September 30, 2002, for lending and extended through December 31, 2002, for community development loans and qualified investments. Examiners conducted full-scope reviews for the Los Angeles and San Francisco Consolidated Metropolitan Statistical Areas ("CMSAs"), which together accounted for more than 60 percent of the bank's small business loans and nearly 70 percent of the bank's mortgages reportable under HMDA.

25. In this context, a "small business loan" is a loan in an original amount of $1 million or less that either is secured by nonfarm, nonresidential properties or is classified as a commercial and industrial loan.

26. The evaluation period was from January 1, 2000, through December 31, 2002.

27. The Representative States are Colorado, Wyoming, and Minnesota, which respectively accounted for 27 percent, 19 percent, and 15 percent of CFB Bank's deposit base at the time of the December 2002 Evaluation.

28. In this context, "small loans to businesses" are loans with original amounts of $1 million or less that either are secured by nonfarm or residential real estate or are classified as commercial and industrial loans.

29. In this context, "small loans to farms" are loans with original amounts of $500,000 or less that either are secured by farmland or are classified as loans to finance agricultural and other loans to farmers.

CFB Bank received an overall rating of "high satisfactory" under the investment test in the December 2002 Evaluation. During the evaluation period, CFB made more than 190 qualified investments totaling $5.3 million in the Representative States. Examiners noted that almost all these investments assisted in providing affordable housing for LMI families.

Under the service test, CFB Bank received an overall rating of "high satisfactory." Examiners reported that the percentage of the bank's branches in LMI census tracts often exceeded the percentage of the population residing in these areas. In addition, examiners noted that the bank provided relatively high levels of community development services in nonmetropolitan assessment areas in each of the Representative States.

D. HMDA Data and Fair Lending Records

The Board has carefully considered the lending records of Applicants and CFB in light of comments on the HMDA data reported by their subsidiary banks. Based on 2002 HMDA data, the commenter alleged that Bank of the West and CFB Bank disproportionately excluded or denied African-American or Hispanic applicants for home mortgage loans in various MSAs.[30] The Board reviewed HMDA data for 2002 and 2003 reported by Bank of the West and CFB Bank for the major markets they each serve and the MSAs identified by the commenter.[31]

The 2002 and 2003 HMDA data reported by Bank of the West indicate that the bank's denial disparity ratios.[32] for African-American and Hispanic applicants for total HMDA-reportable loans were comparable with or more favorable than those ratios for the aggregate of lenders ("aggregate lenders") in the San Francisco MSA, and comparable or less favorable than those ratios for the aggregate lenders in the Los Angeles CMSA.[33] From 2002 to 2003, Bank of the West's percentages of total HMDA-reportable loans to African Americans and Hispanics increased in most of the areas reviewed, including in the San Francisco MSA and the Los Angeles CMSA.[34] In addition, Bank of the West's percentages of total HMDA-reportable loans to borrowers in predominantly minority census tracts in the San Francisco MSA and Los Angeles CMSA in 2003 exceeded the percentages for the aggregate lenders in those areas.

The 2003 data reported by CFB Bank indicate that the bank's denial disparity ratios for Hispanic applicants for HMDA-reportable loans in the MSAs cited by the commenter were more favorable than those ratios for the aggregate lenders. In addition, the bank's percentages of total HMDA-reportable loans to Hispanic borrowers in these areas were higher than the percentages for the aggregate lenders.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups, the HMDA data generally do not indicate that Bank of the West or CFB Bank are excluding any racial groups or geographic areas on a prohibited basis. The Board nevertheless is concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about covered loans.[35] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance by the subsidiary depository institutions of BancWest and CFB with fair lending laws. Examiners noted no fair lending law issues or concerns in either the February 2003 or the December 2002 Evaluations. The Board also consulted with the FDIC and the OCC, which have responsibility for enforcing compliance with fair lending laws by Bank of West and CFB Bank, respectively, about this proposal and the record of performance of Bank of the West since the last examination.

30. Specifically, the commenter cited HMDA data on Bank of the West's lending to African Americans or Hispanics in the following MSAs: Albuquerque, Los Angeles, Las Vegas, Modesto, Stockton–Lodi, and Portland. The commenter cited HMDA data for CFB Bank's lending to Hispanics in the Boulder, Colorado and Las Cruces, New Mexico MSAs.

31. The Board also reviewed HMDA data for Bank of the West in the San Francisco MSA, which is the bank's home market, and for CFB Bank in the Fargo, North Dakota MSA, which is that bank's home market.

32. The denial disparity ratio equals the denial rate of a particular racial category (e.g., African-American) divided by the denial rate for whites.

33. The bank's denial disparity ratios were comparable or less favorable than those ratios for aggregate lenders in the other MSAs reviewed. In 2003, the Los Angeles CMSA and San Francisco MSA together accounted for 31 percent of all of Bank of the West's HMDA-reportable loans. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a given market.

34. From 2002 to 2003, Bank of the West's percentage of total HMDA-reportable loans to Hispanics declined in the Las Vegas and Portland MSAs, and its percentage of total HMDA-reportable loans to African Americans declined in the Modesto MSA. African Americans accounted for only 2.6 percent of the population of the Modesto MSA.

35. 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. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

The record also indicates that Bank of the West and CFB Bank have taken steps to ensure compliance with fair lending laws. Bank of the West has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations, including a second-review process, regular internal fair lending examinations, risk-based regulatory audits, and compliance self-assessments. CFB Bank's compliance program includes a second-review process, along with regular internal fair lending audits and examinations. Applicants have represented that, on consummation of the proposed bank merger, CFB Bank's compliance function will be integrated into Bank of the West's compliance management system.

The Board has also considered the HMDA data in light of the programs described above and the overall performance records of the subsidiary banks of BancWest and CFB under the CRA. These established efforts demonstrate that the banks are actively helping to meet the credit needs of their entire communities.

E. Branch Closings

The Board has considered the commenter's concern about possible branch closings in light of all the facts of record. Applicants have indicated that they have no plans as a result of the transaction to close any branches of Bank of the West or CFB Bank in the banking markets where the banks overlap.[36] The Board has considered Bank of the West's branch banking policy and its record of opening and closing branches. In the February 2003 Evaluation, examiners concluded that Bank of the West's record of opening and closing branches had not adversely affected the bank's delivery of services in LMI areas and to LMI individuals and that the bank's branch closing policy met all regulatory requirements.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.[37] Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the FDIC, as the appropriate federal supervisor of Bank of the West, will continue to review the bank's branch closing record in the course of conducting CRA performance evaluations.

F. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Applicants, public comments on the proposal, and confidential supervisory information. Applicants have stated that the proposal would provide CFB customers with expanded products and services, including access to BNP's international banking and financial services network. 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, including the CRA performance records of the relevant depository institutions, are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[38] 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.[39] The Board's approval is specifically

36. Applicants have stated that CFB Bank is in the process of relocating one of its branches in Las Cruces, New Mexico, and that the bank initiated this relocation process before CFB's execution of its purchase and sales agreement with Applicants. This branch is not in an LMI census tract.

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

38. The commenter requested that the Board extend the comment period. The Board believes that the record in this case does not warrant postponing its consideration of the proposal. During the applications process, the Board has accumulated a significant record, including reports of examination, supervisory information, public reports and information, and public comment. The Board believes this record is sufficient to allow it to assess the factors it is required to consider under the BHC Act. The BHC Act and the Board's processing rules establish time periods for consideration and action on acquisition proposals. Moreover, as discussed above, the CRA requires the Board to consider the existing record of performance of an organization and does not require an organization to enter into contracts or agreements with interested parties to implement its CRA programs. For the reasons discussed above, the Board believes that commenter has had ample opportunity to submit its views, and in fact, commenter has provided substantial written submissions that the Board has considered carefully in acting on the proposal. Based on a review of all the facts of record, the Board concludes that granting an extension of the comment period is not warranted.

39. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views, and in fact, commenter has submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately. The request also fails to identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this

conditioned on compliance by Applicants with the conditions imposed in this order and the commitments made to the Board in connection with the application, including compliance with state law. The commitments made to the Board in the applications process are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective October 15, 2004.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

Banking Market Data

San Diego, California

BancWest operates the 39th largest depository institution in the San Diego banking market, controlling $55 million in deposits, which represents less than 1 percent of market deposits. CFB operates the 16th largest depository institution in the market, controlling $242 million in deposits, which represents less than 1 percent of market deposits. On consummation of the proposal, BancWest would operate the 16th largest depository institution in the market, controlling deposits of $297 million, which represent less than 1 percent of market deposits. The HHI would remain at 1105. Seventy bank and thrift competitors would remain in the market.

Las Cruces, New Mexico

BancWest operates the 12th largest depository institution in the Las Cruces banking market, controlling $15 million in deposits, which represents 1.6 percent of market deposits. CFB operates the third largest depository institution in the market, controlling $92 million in deposits, which represents 9.8 percent of market deposits. On consummation of the proposal, BancWest would operate the third largest depository institution in the market, controlling deposits of $108 million, which represent approximately 11 percent of market deposits. The HHI would increase 32 points to 1435. Sixteen bank and thrift competitors would remain in the market.

case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

BNP Paribas
Paris, France

BancWest Corporation
Honolulu, Hawaii

Order Approving the Acquisition of a Bank Holding Company

BNP Paribas ("BNP") and its subsidiary, BancWest Corporation ("BancWest") (collectively "Applicants"), financial holding companies within the meaning of the Bank Holding Company Act ("BHC Act"), have requested the Board's approval under section 3 of the BHC Act to acquire USDB Bancorp ("USDB") and its subsidiary bank, Union Safe Deposit Bank ("USDB Bank"), both in Stockton, California.[1]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 31,821 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

BNP, with total consolidated assets of approximately $1.2 trillion, is the tenth largest banking organization in the world.[2] BNP operates branches in Chicago, New York City, and San Francisco; agencies in Houston and Miami; and representative offices in Atlanta, Dallas, and Los Angeles.

BancWest, with total consolidated assets of $40 billion, is the 29th largest depository organization in the United States, controlling deposits of $24 billion.[3] In California, BancWest is the eighth largest depository organization, controlling deposits of $16 billion. BancWest also operates subsidiary insured depository institutions in Hawaii, Idaho, Nevada, New Mexico, Oregon, Washington, Guam, and the Northern Mariana Islands. USDB, with total consolidated assets of approximately $1.1 billion, is the 61st largest depository organization in California and controls deposits of $786 million.

1. (12 U.S.C. § 1842). BancWest's wholly owned subsidiary bank, Bank of the West, San Francisco, California, has requested the approval of the Federal Deposit Insurance Corporation ("FDIC") under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)) to merge with USDB Bank, with Bank of the West as the surviving institution. Today, the Board approved the separate application filed by Applicants to acquire Community First Bankshares, Inc. and Community First National Bank, both in Fargo, North Dakota ("the CFB transaction"), under section 3 of the BHC Act. *See BNP Paribas*, 91 *Federal Reserve Bulletin* 51 (2005) ("CFB Order").

2. Asset data are as of March 31, 2004. International ranking data are as of December 31, 2003, and are based on the exchange rate then available.

3. National deposit and ranking data are as of March 31, 2004, and statewide deposit and ranking data are as of June 30, 2003, adjusted for transactions through August 1, 2004.

On consummation of this proposal and the CFB transaction, BancWest would become the 27th largest depository organization in the United States, with total consolidated assets of $46 billion, and would control deposits of $30 billion, representing less than 1 percent of the total amount of deposits of insured depository institutions in the United States. BancWest would remain the eighth largest insured depository organization in California, controlling deposits of approximately $17 billion, which represent approximately 3 percent of the total amount of deposits of insured depository institutions in the state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. It also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal clearly are outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.[4]

BancWest and USDB compete directly in the Modesto and Stockton banking markets, both in California.[5] The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by BancWest and USDB,[6] 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"),[7] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in both banking markets.[8] The Modesto banking market would remain moderately concentrated and the Stockton banking market would remain highly concentrated, as measured by the HHI. In both markets the increases in concentration would be small and numerous competitors would remain.

The Department of Justice also has reviewed the competitive effects of the proposal and advised the Board that consummation of the proposal would not have a significantly adverse effect on competition in these banking markets or in any other relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on these and all other facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of 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 banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the various banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Applicants, and public comments received on the proposal.[9] The Board also has consulted with the French Banking Commission ("FBC"), which is responsible for the supervision and regulation of French financial institutions.

In evaluating financial factors in expansion proposals by banking organizations, the Board consistently has considered capital adequacy to be especially important. BNP and its U.S. subsidiary depository institutions are considered to be well capitalized and would remain so on consummation of the proposal. BNP's capital levels exceed the minimum levels that would be required under the Basel Capital Accord, and its capital levels are considered equivalent to the capital levels that would be required of a U.S. banking organization. The proposed transaction is structured as a share purchase, and the consideration to be received by

4. 12 U.S.C. § 1842(c)(1).

5. The Modesto banking market is defined as the Modesto Ranally Metro Area ("RMA") and the towns of Crows Landing, Denair, Gustine, Hilmar, Newman, Patterson, and Ripon. The Stockton banking market is defined as the Stockton RMA and the towns of Galt, Lockeford, Manteca, and Walnut Grove.

6. Market share data are based on Summary of Deposits reports filed as of June 30, 2003, updated to include transactions through September 10, 2004, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

7. Under the DOJ Guidelines, 49 *Federal Register* 26,823 (1984), a market is considered 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 by 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 institutions.

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

9. One commenter expressed several concerns about Applicants that related to employment discrimination litigation, business relationships with certain foreign projects or companies operating in foreign countries, and the United Nations' Oil-for-Food program. These concerns are discussed in the CFB Order. The Board hereby reaffirms and adopts the facts and findings detailed in the CFB Order with respect to these allegations and concerns.

USDB shareholders would be funded from BNP's available resources. The Board finds that the Applicants have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of BNP, BancWest, USDB, and their subsidiary banks, particularly the supervisory experience of the various bank supervisory agencies with the organizations and their records of compliance with applicable banking laws. The Board has reviewed assessments of the organizations' management and risk-management systems by the relevant federal and state banking supervisory agencies. Domestic banking organizations and foreign banks operating in the United States are required to implement and operate effective anti-money laundering programs. Accordingly, the Board has also considered the existing anti-money laundering programs at BNP and the assessment of these programs by the relevant federal supervisory agencies, state banking agencies, and the FBC. Furthermore, the Board has considered additional information provided by BNP on enhancements it has made and is currently making to its systems as the organization expands its operations. The Board expects that BNP will take all necessary steps to ensure that sufficient resources, training, and managerial efforts are dedicated to maintaining a fully effective anti-money laundering program. The Board also has considered BancWest's plans to implement the proposal, including its proposed management after consummation and the company's record of successfully integrating acquired institutions into its existing operations. Based on these and all other facts of record, the Board concludes that the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval.

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.[10] In addition, the foreign bank must have 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.[11] The Board has carefully reviewed these matters in light of the facts of record in considering Applicants' application for approval of the CFB transaction. For the reasons set forth in the CFB Order, the Board concludes that BNP continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor and that the other supervisory factors it is required to consider are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board 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").[12] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance records of the subsidiary banks of BancWest and USDB in light of all the facts of record, including public comment on the proposal. One commenter opposed the proposal and alleged, based on data reported under the Home Mortgage Disclosure Act ("HMDA"),[13] that Bank of the West and USDB Bank engaged in disparate treatment of minority individuals in home mortgage lending in the banks' assessment areas. The commenter also expressed concern about possible branch closures.

A. CRA Performance Evaluations

The Board has carefully reviewed the CRA performance records of Bank of the West and USDB Bank. 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.[14] Bank of the West, BancWest's largest subsidiary bank as measured by total deposits, received a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of February 3, 2003 ("February 2003 Evaluation").[15] Applicants have indicated that after the merger of Bank of the West and USDB Bank, the CRA activities of the resulting bank would conform to Bank of the West's current CRA program.

A detailed discussion of the February 2003 Evaluation and the policies and programs implemented by Bank of the West to help meet the credit needs of its communities is provided in the CFB Order. Based on its review of the record in this case, the Board hereby reaffirms and adopts the facts and findings detailed in the CFB Order.

In summary, examiners characterized Bank of the West's overall record of home mortgage and small business lending as good and stated that the bank had a high level of community development lending. Examiners noted favor-

10. 12 U.S.C. § 1842(c)(3)(B).

11. *See* 12 U.S.C. § 1842(c)(3)(A).

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

13. 12 U.S.C. § 2801 et seq.

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

15. First Hawaiian Bank, Honolulu, Hawaii, BancWest's other subsidiary bank, received an "outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of August 19, 2003.

ably that the bank offered several flexible lending products designed to address affordable housing needs of low-income and first-time homebuyers and reported that the bank had taken a leadership role in providing qualified investments. They also found that the bank provided a relatively high level of community development services and that the bank's branch distribution generally mirrored community demographics.

USDB Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of San Francisco, as of December 2, 2002 ("December 2002 Evaluation"). Examiners reported that USDB Bank had a good distribution of home mortgage and small business loans by geography, borrower income, and sizes of business. They also reported that the bank funded an adequate level of qualified investments and provided an adequate level of community development services.

B. HMDA Data, Subprime Lending, and Fair Lending Records

The Board has carefully considered the lending records of Applicants and USDB in light of comments on the HMDA data reported by their subsidiary banks. The commenter repeated the allegations it made about Applicants in connection with the CFB transaction. These allegations are addressed in detail in the CFB Order and the Board hereby reaffirms and adopts the HMDA analysis of Bank of the West detailed in the CFB order.

The commenter also alleged, based on 2002 HMDA data, that USDB Bank disproportionately excluded or denied African-American applicants for home mortgage loans in the Modesto and Stockton–Lodi Metropolitan Statistical Areas ("MSAs."). The Board reviewed HMDA data for 2002 and 2003 reported by USDB Bank in these MSAs. The data indicate that, in 2003, the bank's denial disparity ratios for African Americans for HMDA-reportable loans in these MSAs were less favorable than those ratios for the aggregate of lenders ("aggregate lenders") and that the bank's percentages of total HMDA-reportable loans to African-American borrowers in these areas were lower than the percentages for the aggregate lenders.[16] However, the bank's percentages of total HMDA-reportable loans to borrowers in predominantly minority census tracts in both MSAs in 2003 exceeded or was comparable with the percentages for the aggregate lenders in those MSAs.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups, the HMDA data generally do not indicate that Bank of the West and USDB Bank is excluding any racial groups or geographic areas on a prohibited basis. The Board is concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or income level. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending and provide only limited information about covered loans.[17] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance by the subsidiary depository institutions of BancWest and USDB with fair lending laws. Examiners noted no fair lending law issues or concerns in the February 2003 Evaluation or the December 2002 Evaluation. The Board has consulted with the Federal Reserve Bank of San Francisco about USDB Bank's record since the last examination. The Board also has consulted with the FDIC, which has responsibility for enforcing compliance with fair lending laws by Bank of the West, about this proposal and the record of the Bank of the West since the last examination.

The record also indicates that Bank of the West and USDB Bank have taken steps to ensure compliance with fair lending laws. The banks have instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Bank of the West's compliance programs include a second-review process, regular internal fair lending examinations, risk-based regulatory audits, and compliance self-assessments. USDB Bank's compliance program includes a second-review process, along with regular internal fair lending audits. Applicants have represented that, on consummation of the proposed bank merger, USDB Bank's compliance function will be integrated into Bank of the West's compliance management system.

The Board has also considered the HMDA data in light of the programs described above and the overall performance records of the subsidiary banks of BancWest and USDB under the CRA. These established efforts demonstrate that the banks are actively helping to meet the credit needs of their entire communities.

16. The lending data of the aggregate of lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a given market. The denial disparity ratio equals the denial ratio of a particular racial category (e.g., African-American) divided by the denial rate for whites.

17. 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. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

C. Branch Closings

The Board has considered the commenter's concern about possible branch closings in light of all the facts of record. Applicants have indicated that as a result of the transaction, they plan to consolidate three branches of USDB Bank with branches of Bank of the West in the same neighborhoods. The Board has considered Bank of the West's branch banking policy and its record of opening and closing branches. In the February 2003 Evaluation, examiners concluded that Bank of the West's record of opening and closing branches had not adversely affected the bank's delivery of services in LMI areas and to LMI individuals and that the bank's branch closing policy met all regulatory requirements.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.[18] Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the FDIC, as the appropriate federal supervisor of Bank of the West, will continue to review the bank's branch closing record in the course of conducting CRA performance evaluations.

D. Conclusion on Convenience and Needs Factor

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Applicants, public comments on the proposal, and confidential supervisory information. Applicants have stated that the proposal would provide USDB customers with access to BNP's international banking and financial services network. Based on all the facts of record, and for the reasons discussed above and in the CFB Order, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[19] 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.[20] The Board's approval is specifically conditioned on compliance by Applicants with the conditions imposed in this order and the commitments made to the Board in connection with the application, including compliance with state law. The commitments made to the Board in the applications process are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective October 15, 2004.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

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

19. The commenter requested that the Board extend the comment period. The Board believes that the record in this case does not warrant postponing its consideration of the proposal. During the applications process, the Board has accumulated a significant record, including reports of examination, supervisory information, public reports and information, and public comment. The Board believes this record is sufficient to allow it to assess the factors it is required to consider under the BHC Act. The BHC Act and the Board's processing rules establish time periods for consideration and action on acquisition proposals. Moreover, as discussed above, the CRA requires the Board to consider the existing record of performance of an organization and does not require an organization to enter into contracts or agreements with interested parties to implement its CRA programs. For the reasons discussed above, the Board believes that commenter has had ample opportunity to submit its views, and in fact, commenter has provided substantial written submissions that the Board has considered carefully in acting on the proposal. Based on a review of all the facts of record, the Board concludes that granting an extension of the comment period is not warranted.

20. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views, and in fact, commenter has submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately. The request also fails to identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Appendix

Banking Market Data

Modesto, California

BancWest operates the third largest depository institution in the Modesto banking market, controlling $340 million in deposits, which represents 7.6 percent of market deposits. USDB operates the eighth largest depository institution in the market, controlling $234 million in deposits, which represents 5.2 percent of market deposits. On consummation of the proposal, BancWest would continue to operate the third largest depository institution in the market, controlling deposits of approximately $575 million, which represent approximately 12.9 percent of market deposits. The HHI would increase 80 points to 1,104. Twenty-one bank and thrift competitors would remain in the market.

Stockton, California

BancWest operates the tenth largest depository institution in the Stockton banking market, controlling $153 million in deposits, which represents 1.8 percent of market deposits. USDB operates the fifth largest depository institution in the market, controlling $542 million in deposits, which represents 6.3 percent of market deposits. On consummation of the proposal, BancWest would operate the fourth largest depository institution in the market, controlling deposits of $695 million, which represent 8.1 percent of market deposits. The HHI would increase 22 points to 2,402. Twenty-five bank and thrift competitors would remain in the market.

Fifth Third Bancorp
Cincinnati, Ohio

Fifth Third Financial Corporation
Cincinnati, Ohio

Fifth Third Bank
Grand Rapids, Michigan

Order Approving the Acquisition of a Bank Holding Company, Merger of Banks, and Establishment of Branches

Fifth Third Bancorp and its wholly owned subsidiary, Fifth Third Financial Corporation (collectively "Fifth Third"), both financial holding companies within the meaning of the Bank Holding Company Act ("BHC Act"), have requested the Board's approval under section 3 of the BHC Act[1] to acquire First National Bankshares of Florida, Inc. ("First National") and its wholly owned subsidiary, First National Bank of Florida ("First National Bank"), both in Naples, Florida.[2] In addition, Fifth Third's subsidiary bank, Fifth Third Bank, Grand Rapids, Michigan ("Fifth Third Bank"), a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[3] ("Bank Merger Act") to merge with First National Bank, with Fifth Third Bank as the surviving entity.[4] Fifth Third Bank also has requested the Board's approval under section 9 of the Federal Reserve Act[5] ("FRA") to retain and operate branches at the locations of First National Bank's main office and branches.[6]

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the *Federal Register* (69 *Federal Register* 59,597 (2004)) and locally in accordance with the relevant statutes and the Board's Rules of Procedure.[7] As required by the BHC Act and the Bank Merger Act, reports on the competitive effects of the merger were requested from the United States Attorney General and the appropriate federal banking agencies. The time for filing comments has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.

Fifth Third, with total consolidated assets of approximately $98.3 billion, is the 16th largest depository organization in the United States. Fifth Third operates subsidiary depository institutions in Florida, Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and West Virginia. Fifth Third Bank is the 38th largest depository institution in Florida, controlling deposits of approximately $820.1 million.[8] First National, with total consolidated assets of approximately $5.5 billion is the 12th largest depository organization in Florida, controlling deposits of approximately $3.9 billion. On consummation of the proposal, Fifth Third would become the 15th largest depository organization in the United States and Fifth Third Bank would become the tenth largest depository institution in Florida, controlling deposits of approximately $4.7 billion, which represent approximately 1.7 percent of the total

1. 12 U.S.C. § 1842.

2. Fifth Third's other subsidiary depository institutions are Fifth Third Bank, Cincinnati, Ohio ("Fifth Third Ohio"), and Fifth Third Bank, N.A., Franklin, Tennessee ("Fifth Third, N.A.").

3. 12 U.S.C. § 1828(c).

4. Under the proposal, Fifth Third would acquire all the issued and outstanding stock of First National. Simultaneously with the acquisition of First National's stock, First National would merge with and into Fifth Third, and First National Bank would merge with and into Fifth Third Bank. Fifth Third proposes to acquire First National's nonbanking subsidiaries and engage only in activities listed in section 4(k)(4)(A)–(H) of the BHC Act, pursuant to section 4(k) and the post-transaction notice procedures of section 225.87 of Regulation Y. 12 U.S.C. § 1843(k)(4)(A)–(H); 12 CFR 225.87.

5. 12 U.S.C. § 321.

6. These branches are listed in Appendix A.

7. 12 CFR 262.3(b).

8. Asset data and national rankings are as of September 30, 2004. Deposit data and state rankings are as of June 30, 2004, and are adjusted to reflect mergers and acquisitions completed through December 8, 2004.

amount of deposits of insured depository institutions in the state.[9]

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company if certain conditions are met. Section 44 of the Federal Deposit Insurance Act[10] ("FDI Act") authorizes a bank to merge with another bank under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction adopted a law expressly prohibiting merger transactions involving out-of-state banks.[11] For purposes of the BHC Act, the home state of Fifth Third is Ohio,[12] and for purposes of section 44 of the FDI Act, the home state of Fifth Third Bank is Michigan. Fifth Third proposes to acquire a bank in Florida.[13]

Based on a review of all the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition and bank merger enumerated in section 3(d) of the BHC Act and section 44 of the FDI Act are met in this case.[14] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act and section 44 of the FDI Act.

Competitive Considerations

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 an attempt to monopolize the business of banking. The BHC Act and the Bank Merger Act 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 the probable effect of the proposal in meeting the convenience and needs of the community to be served.[15]

Fifth Third Bank and First National Bank compete directly in the Naples, Fort Myers, and Sarasota banking markets in Florida.[16] The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits of depository institutions in the markets ("market deposits") controlled by Fifth Third Bank and First National Bank,[17] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[18] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in each of these banking markets.[19] After consummation, the Naples, Fort Myers, and Sarasota banking markets would remain moderately concentrated, with only modest increases in market concentration as measured by the HHI. Numerous competitors would remain in all these banking markets.

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

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9. In this context, the term "insured depository institutions" includes insured commercial banks, savings banks, and savings associations.

10. 12 U.S.C. § 1831u.

11. Pub. L. No. 103-328, 108 Stat. 2338 (1994); *see* 12 U.S.C. § 1831u.

12. Under section 3(d) of the BHC Act, a bank holding company's home state is the state in which the total deposits of all 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. 12 U.S.C. § 1842(d). Under section 44 of the FDI Act, a state member bank's home state is the state where it is chartered. 12 U.S.C. § 1831u(g)(4).

13. For purposes of section 3(d), the Board considers a bank to be located in 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) & (d)(2)(B).

14. 12 U.S.C. § 1842(d)(1)(A) & (B), 1842(d)(2)(A) & (B); 12 U.S.C. § 1831u. Fifth Third and Fifth Third Bank are well capitalized and well managed, as defined by applicable law. First National Bank has been in existence and operated for the minimum period of time required by Florida law. On consummation of the proposal, Fifth Third and Fifth Third Bank 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 Florida. *See* Fla. Stat. ch. 658.295(8)(b) (2004). All other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act also would be met on consummation of the proposal.

15. 12 U.S.C. § 1842(c)(1); 12 U.S.C. § 1828(c)(5).

16. These banking markets are described in Appendix B.

17. Deposit and market share data are as of June 30, 2004, adjusted to reflect subsequent mergers and acquisitions through December 8, 2004, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group,* 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation,* 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.,* 77 *Federal Reserve Bulletin* 52 (1991).

18. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000 and moderately concentrated if the post-merger HHI is between 1000 and 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 by 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 institutions.

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

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the three banking markets in which Fifth Third and First National directly compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial and Managerial Resources and Future Prospects

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 banks involved in the proposal and to consider certain other supervisory factors under the BHC Act. The Board has carefully considered these factors in light of all the facts of record including, among other things, information provided by Fifth Third, confidential reports of examination and other supervisory information received from the federal and state banking supervisors of the organizations involved, publicly reported and other financial information, and public comments received on the proposal.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the effect of the transaction on the financial condition of the applicant and the target, including their capital positions, asset quality, and earnings prospects and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that Fifth Third has sufficient financial resources to effect the proposal. Fifth Third and its subsidiary banks are well capitalized and would remain so on consummation of this proposal. The proposed transaction is structured as a share exchange, and the cash consideration in lieu of fractional shares will be funded from Fifth Third's existing resources.[20]

The Board also has evaluated the managerial resources of the organizations involved, including the proposed combined organization. The Board has reviewed the examination records of Fifth Third, First National, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experience and that of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law.[21] Fifth Third, First National, and their subsidiary depository institutions are considered well managed. The Board also has considered Fifth Third's plans to integrate First National and its subsidiaries and the proposed management, including the risk-management systems, of the resulting organization.

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

Convenience and Needs Considerations

In acting on this proposal, 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 institution under the Community Reinvestment Act ("CRA").[22] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance records of the banks of Fifth Third and First National in light of all the facts of record, including public comment on the proposal.[23] Two commenters opposed the proposal and asserted, based in part on data reported under the Home Mortgage Disclosure Act ("HMDA"),[24] that Fifth Third engaged in disparate treatment of African-American and Hispanic individuals in its home mortgage lending opera-

20. A commenter expressed concern that the consideration Fifth Third would provide to effect this proposal was excessive and suggested that this issue reflected negatively on its managerial resources. The Board notes that the consideration has been disclosed to shareholders and that Fifth Third would remain well capitalized on consummation.

21. A commenter also expressed concern about Fifth Third's managerial record in light of a recent enforcement action against the organization by the Federal Reserve Bank of Cleveland. The Written Agreement required Fifth Third to enhance its risk-management systems, internal controls, and compliance procedures. After a careful review of the steps taken by Fifth Third to meet the requirements of the enforcement action, the Reserve Bank terminated the Written Agreement in April 2004.

22. 12 U.S.C. § 2901 et seq.

23. One commenter criticized Fifth Third's relationships with unaffiliated payday lenders, car-title lending companies, and other nontraditional providers of financial services. As a general matter, these businesses are licensed by the states where they operate and are subject to applicable state law. Fifth Third also responded that it has entered into lending relationships with several check-cashing organizations, pawn shops, and rent-to-own companies, but that it plays no role in the lending practices, credit review, or other business practices of those borrowers. Fifth Third represented that in all such cases, it requires borrowers to represent and warrant to Fifth Third that they comply with applicable laws.

24. 12 U.S.C. § 2801 et seq.

tions. In addition, one of these commenters expressed concern about potential branch closings. Approximately 25 commenters supported the proposal and commended Fifth Third for the technical and financial support provided to their community development organizations as well as the active involvement of the bank's officers and staff.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the 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.[25]

All the subsidiary insured depository institutions of Fifth Third received either "outstanding" or "satisfactory" ratings at the most recent examinations of their CRA performance. Fifth Third's lead bank, Fifth Third Ohio, which currently accounts for approximately 60 percent of the total consolidated assets of Fifth Third, received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Cleveland. Fifth Third Bank also received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago.[26] First National Bank, First National's only subsidiary bank, received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of August 5, 2002.

Fifth Third has indicated that Fifth Third's CRA program would continue to be implemented after First National Bank is merged into Fifth Third Bank, including Fifth Third's CRA-related loan products, tax credit and equity investment programs, and grant and donation programs. Fifth Third has also represented that Fifth Third's fair lending compliance program would continue to be implemented at the combined entity.

B. CRA Performance of Fifth Third and First National

Fifth Third Ohio. In the most recent CRA performance evaluation of Fifth Third Ohio, examiners commended the depository institution for its responsiveness to the credit needs of the communities it serves.[27] Examiners also praised Fifth Third Ohio's level of community development lending and noted favorably the use of diverse, flexible, innovative, and creative financing methods. Examiners stated that the bank's level of qualified investments was excellent and reported that Fifth Third Ohio's community development lending increased from $77 million during the previous examination period to $150.9 million during its most recent evaluation period. In addition, examiners praised Fifth Third Ohio's community development services, including the bank's partnerships with schools and various nonprofit organizations to provide educational and financial literacy programs to LMI individuals.

Fifth Third Bank. At Fifth Third Bank's most recent CRA performance evaluation, examiners commended the bank's loan volume and general responsiveness to the credit needs of the communities it serves. Examiners noted that Fifth Third Bank originated or purchased higher percentages of HMDA-reportable loans to LMI borrowers in its assessment areas during the evaluation period than the percentages for the aggregate of lenders[28] ("aggregate lenders") in those areas. Examiners also noted that the bank had increased the number of home mortgage loans it made in LMI areas during the previous year. In addition, examiners praised the bank's record of community development lending and its use of innovative and flexible loan products such as the Good Neighbor home mortgage loan program, which provides flexible underwriting standards for LMI borrowers. They also noted Fifth Third Bank's excellent level of qualified investments and stated that its investments had helped stabilize and revitalize various neighborhoods and had benefited each of the bank's assessment areas. According to examiners, Fifth Third Bank participated in almost $28 million in qualified investments during the evaluation period. In addition, examiners commended the bank's community development services, which included free credit and money-management counseling services as well as counseling on first-time home buying.

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

26. Both ratings are as of April 14, 2003. Fifth Third Bank, Florida, Naples, Florida ("Fifth Third Florida"); Fifth Third Bank, Indiana, Indianapolis, Indiana ("Fifth Third Indiana"); Fifth Third Bank, Kentucky, Inc., Louisville, Kentucky (Fifth Third Kentucky); and Fifth Third Bank, Northern Kentucky, Inc., Covington, Kentucky ("Fifth Third Northern Kentucky") were merged into Fifth Third Bank on December 31, 2003. The most recent CRA performance evaluation ratings for these banks, also as of April 14, 2003, are as follows: Fifth Third Florida—"satisfactory" rating from the Federal Reserve Bank of Atlanta; Fifth Third Indiana—"satisfactory" rating from the Federal Reserve Bank of Chicago; Fifth Third Kentucky—"outstanding" rating from the Federal Reserve Bank of St. Louis; and Fifth Third Northern Kentucky—"satisfactory" rating from the Federal Reserve Bank of Cleveland. Fifth Third's third subsidiary insured depository institution, Fifth Third, N.A., acquired Franklin National Bank, Franklin, Tennessee ("Franklin National"), on June 11, 2004. Franklin National received an "outstanding" rating from the Office of the Comptroller of the Currency ("OCC"), as of February 26, 2001.

27. In evaluating the CRA performance records of Fifth Third Ohio, Fifth Third Bank, and Fifth Third Florida, examiners considered mortgage loans by certain affiliates in the banks' assessment areas. The loans reviewed by examiners included loans reported by Fifth Third Mortgage Company, Dayton, Ohio (a subsidiary of Fifth Third Ohio), and Fifth Third Mortgage-MI, LLC, Grand Rapids, Michigan (a subsidiary of Fifth Third Bank). The evaluation period for the three performance evaluations was from January 1, 2001, to December 31, 2002.

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

Fifth Third Florida. In the most recent CRA performance evaluation of Fifth Third Florida, examiners found that the depository institution's lending levels were responsive to the credit needs of the communities it served and reflected adequate penetration among customers of different income levels, including LMI individuals. For instance, approximately 20 percent of the HMDA-reportable loans that Fifth Third Bank originated or purchased during the evaluation period were made to LMI borrowers. This compared adequately with the 21.6 percent of HMDA-reportable loans to LMI borrowers that the aggregate of lenders in the bank's assessment areas originated or purchased during the same period. In addition, examiners commended Fifth Third Florida's level of community development investments and grants, particularly those not routinely provided by private investors. Examiners also noted the bank's strong efforts to reach out to the growing Hispanic and Latino community.

First National Bank. Examiners at First National Bank's most recent CRA performance evaluation commended the bank's home mortgage loan record among borrowers of different income levels, including LMI individuals. In particular, examiners noted that the bank originated a higher percentage of its home purchase loans in the Naples Metropolitan Statistical Area ("MSA") to LMI borrowers than the percentage of LMI families residing in the MSA.[29] Examiners also noted the bank's use of a flexible home mortgage loan product called "Own-A-Home," which is designed to increase mortgage lending to LMI individuals. Features of the program include a loan-to-value ratio of up to 97 percent and no requirement for private mortgage insurance. Examiners stated that First National Bank's level of qualified investments was responsive to the credit and community development needs of the bank's assessment areas. In addition, examiners commended the bank's high level of community development services, noting that more than 90 percent of its qualified investments were mortgage-backed securities with underlying mortgages to LMI individuals.

C. HMDA and Fair Lending Record

The Board has carefully considered the lending record of Fifth Third in light of public comment on the HMDA data reported by its subsidiaries. Based on 2003 HMDA data, two commenters alleged that Fifth Third disproportionately excluded or denied applications by minorities for HMDA-reportable loans.[30]

The HMDA data for 2002 and 2003 indicate that Fifth Third's denial disparity ratios[31] for African-American and Hispanic applicants in 2002 and 2003 were generally higher than or comparable with the ratios for the aggregate lenders in the markets reviewed.[32] However, the bank's denial disparity ratios for African-American and Hispanic applicants decreased from 2002 to 2003 in most of the markets reviewed. The percentages of total HMDA-reportable loans originated by Fifth Third to African Americans and Hispanics generally was comparable with or lagged the performance of the aggregate lenders in the markets reviewed. The data also indicate that the percentages of Fifth Third's total HMDA-reportable loans to African Americans and Hispanics increased from 2002 to 2003 in most of the markets reviewed.[33]

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups in certain local areas, the HMDA data generally do not indicate that Fifth Third is excluding any racial group or geographic area on a prohibited basis. The Board nevertheless is concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of their race. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.[34] HMDA data, therefore, have limitations that make

29. Examiners conducted a full-scope review of the Naples MSA, which represents the bank's major market and accounts for 56 percent of all loan originations and for 35 percent of First National Bank's deposits.

30. A commenter also criticized generally First National Bank's record of lending to minorities and its CRA performance.

31. The denial disparity ratio equals the denial rate for a particular racial category (e.g., African-American) divided by the denial rate for whites.

32. For purposes of this review, Fifth Third's HMDA data include data reported by its mortgage subsidiaries operating in the relevant markets. The Board analyzed HMDA data for 2002 and 2003 reported by Fifth Third in the Naples, Florida, and Chicago, Illinois MSAs, and in certain MSAs on a statewide basis in Michigan and Ohio. The statewide data include the relevant data from the MSAs in Fifth Third Bank's and Fifth Third Ohio's assessment areas in Michigan and Ohio. Fifth Third's percentages of HMDA-reportable loan originations to Hispanic applicants in 2003 exceeded or were generally comparable with the performance of the aggregate lenders in Michigan and Ohio, but lagged the percentages for the aggregate lenders in the Naples and Chicago MSAs.

33. One commenter criticized Fifth Third's response to a fair lending complaint filed by the Department of Justice in May 2004 against Old Kent Financial Corporation and Old Kent Bank (collectively "Old Kent"). Fifth Third acquired Old Kent in 2001. The Board notes that the alleged lending violations at Old Kent occurred between 1996 and 2000 and that Fifth Third was accused of no wrongdoing. The Board also notes that Fifth Third cooperated fully with the Department of Justice's investigation into the earlier lending practices at Old Kent and in May 2004 agreed to settle the matter without contested litigation.

The commenter also expressed concern that Fifth Third Ohio's home purchase loan data were reported in violation of HMDA. The Board reviewed the data reported by Fifth Third Ohio and has found that its home purchase loan data were reported in compliance with HMDA.

34. 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. Credit history problems and excessive debt levels relative to income (reasons most

them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information, including examination reports that provide an on-site evaluation of compliance by the subsidiary depository institutions of Fifth Third with fair lending laws. The record also indicates that Fifth Third has taken steps to ensure compliance with fair lending laws. The bank has implemented corporate-wide fair lending policies, procedures, and training programs, and it regularly conducts internal reviews for compliance with policies and procedures. In addition, Fifth Third has a compliance function with 17 full-time professionals devoted to consumer-law compliance issues. Fifth Third's compliance programs include compliance training and testing and input from the heads of business units as well as from Fifth Third's corporate Legal, Internal Audit, Consumer Credit, Commercial Credit, Compliance, and Community Development functions.

In addition, Fifth Third has taken various steps to increase its mortgage lending to minorities. For example, to market its home mortgage loan products more effectively to Hispanics, Fifth Third Bank implemented a Spanish Language Outreach Program ("Outreach Program"). Under the Outreach Program, the bank instituted new-account opening procedures and a Spanish-language advertising campaign, provided information about homeownership in Spanish, created loan documents in Spanish, and increased the availability of Spanish-speaking service representatives.[35]

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance records of Fifth Third's subsidiary banks under the CRA. These established efforts demonstrate that the banks are active in helping to meet the credit needs of their entire communities.

D. Branch Closures

One commenter expressed concern about possible branch closures and reductions in service after consummation of this proposal.[36] Fifth Third has stated that it plans to close or consolidate five branches as a result of this proposal, but that these actions would not leave any markets without service. In addition, Fifth Third has represented that none of the branches it plans to close or consolidate as a result of this proposal is in an LMI census tract.

The Board has reviewed Fifth Third's branch closing policy. The policy requires Fifth Third to consider the impact on the community, the business viability and profitability of the branch, branch usage, demographic growth or decline in the community, the impact on credit access, and the necessity of ensuring that the branch closing has no discriminatory impact. The policy requires that, before a final decision is made to close a branch, management must conduct an impact study to assess the likely effects of any closure. The impact study of a branch in an LMI area includes consideration of concerns and ideas from the local community, an assessment of the closure's potential impact on customers, and other possible ways the community's credit needs will be met. In addition, examiners noted no instance in which Fifth Third's subsidiary depository institutions' records of opening and closing branches had adversely affected the level of services available in LMI areas during their most recent CRA performance evaluations.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.[37] In addition, the Board notes that the Board and the OCC, as the appropriate federal supervisors of Fifth Third's subsidiary banks, will continue to review the banks' branch closing records in the course of conducting CRA performance evaluations.

E. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record,[38] including reports of examination of the CRA performance records of the institutions involved, information provided

frequently cited for a credit denial) are not available from HMDA data.

35. Fifth Third represented that the Outreach Program will be implemented at all Fifth Third subsidiary banks.

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

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

38. One commenter requested that the Board condition its approval of the proposal on Fifth Third's making certain community reinvestment and other commitments. As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future actions. The Board has consistently stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., Wachovia Corporation,* 91 *Federal Reserve Bulletin* 77 (2005); *J.P. Morgan Chase & Co.,* 90 *Federal Reserve Bulletin* 352 (2004). In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the applicant and the programs that the applicant has in place to serve

by Fifth Third, public comments received on the proposal, confidential supervisory information, and Fifth Third's plans to continue to implement its CRA-related policies and programs and its consumer compliance programs after First National Bank merges into Fifth Third Bank. The Board notes that the proposal would provide the combined entity's customers with access to a broader array of products and services in an expanded service area, including access to an expanded branch and ATM network and increased capital resources. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the applications should be, and hereby are, approved.[39] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and the FRA.[40] The Board's approval is specifically conditioned on compliance by Fifth Third and Fifth Third Bank with the condition imposed in this order and the commitments made to the Board in connection with the applications. For purposes of this transaction, the condition and these commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective December 14, 2004.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix A

Addresses of Main Office and Branches to be Acquired by Fifth Third

Altamonte Springs
254 West State Road 436

Apopka
211 S. Edgewood Avenue

Belleair Bluffs
601 Indian Rocks Road North

Boca Raton
1850 North Federal Highway

Bonita Springs
9021 Bonita Beach Road
8800 West Terry Street

Bradenton
5305 26th Street

the credit needs of its CRA assessment areas when the Board reviews the proposal under the convenience and needs factor. In reviewing future applications by Fifth Third under this factor, the Board similarly will review Fifth Third's actual CRA performance record and the programs it has in place to meet the credit needs of its communities at the time of such review.

39. A commenter requested that the Board deny the proposal, delay action on the proposal, or extend the comment period until Fifth Third provides information that the commenter has requested. The Board believes that the record in this case does not warrant postponement of its consideration of the proposal. During the application process, the Board has accumulated a significant record, including reports of examination, supervisory information, public reports and information, and considerable public comment. The Board believes this record is sufficient to allow it to assess the factors it is required to consider under the BHC Act, the Bank Merger Act, and the FRA. The BHC Act and the Board's rules establish time periods for consideration and action on proposals such as the current proposal. For the reasons discussed above, the Board believes that the commenter has had ample opportunity to submit its views and, in fact, has provided substantial written submissions that the Board has considered carefully in acting on the proposal. Based on a review of all the facts of record, the Board concludes that delaying consideration of the proposal, granting an extension of the comment period, or denying the proposal on the grounds discussed above is not warranted.

40. A commenter also requested that the Board hold a public hearing or meeting on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authority. The Bank Merger Act and the FRA do not require the Board to hold a public hearing or meeting.

Under its rules, the Board may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit comments on the proposal, and, in fact, the commenter has submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why its written comments do not adequately present its evidence and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Cape Coral
859 Cape Coral Parkway
1600 East Cape Coral Parkway
2724 Del Prado Boulevard
1801 Pine Island Road
1530 Santa Barbara Boulevard

Clearwater
11030 49th Street North
1150 Cleveland Street
100 Island Way

Daytona Beach
519 North Oleander Avenue
444 Seabreeze Boulevard, Suite 100
1030 West International Speedway Boulevard

Fort Lauderdale
600 South Andrew Avenue, Suite 100

Fort Myers
7130 College Parkway
2915 Colonial Boulevard
15221 Tamiami Trail South

Indian Shores
18395 Gulf Boulevard

Lake Mary
175 Timucuan Boulevard

Largo
705 8th Avenue SW
12360 Indian Rocks Road

Longwood
2491 West State Road 434

Maitland
100 South Orlando Avenue

Marco Island
650 East Elkcam Circle

Naples
7925 Airport Road
5475 Airport Pulling Road North
4794 Golden Gate Parkway
900 Goodlette Road
2150 Goodlette Road North[1]
2470 Immokalee Road
4025 Radio Road
8771 Tamiami Trail North
5101 Tamiami Trail East
2911 Tamiami Trail North

North Dunedin
1255 Belcher Road

North Port
12767 Tamiami Trail South

North Ruskin
1020 US Highway 41

Orlando
1401 Lee Road
250 North Orange Avenue
2324 Sand Lake Road
5292 South Orange Blossom Trail

Ormond Beach
4 North Beach Street

Oviedo
1753 East Broadway

Palm Beach Gardens
319 Peruvian South
4400 PGA Boulevard, Suite 100

Palm Harbor
1100 East Lake Road
1027 Nebraska Avenue

Port Orange
5100 Clyde Morris Boulevard

Saint Petersburg
4105 Gulf Boulevard

Sarasota
2035 Cattleman Road
3700 Tamiami Trail South

Seffner
11710 Martin Luther King Jr. Boulevard East

Seminole
9111 Oakhurst Road
10899 Park Boulevard
11201 Park Boulevard #71

1. Main Office of First National Bank.

Tampa
2028 East 7th Avenue
2001 Adamo Drive
3117 West Columbus Drive
1921 South Dale Mabry Highway
719 Harbour Post Drive
8603 West Hillsborough Avenue
4401 West Kennedy Boulevard
4427 West Kennedy Boulevard
1901 West Swann Avenue
8809 West Waters Avenue

Treasure Island
180 Treasure Island Causeway

Valrico
3402 Lithia Pinecrest Road

Venice
1340 East Venice Avenue
1641 Jacaranda Boulevard
273 Tamiami Trail South

West Palm Beach
606 North Olive Avenue

Winter Park
1500 Lee Road

Appendix B

Florida Banking Market Definitions

Naples

Collier County, excluding the town of Immokalee.

Fort Myers

Lee County, excluding Gasparilla Island, and the town of Immokalee in Collier County.

Sarasota

Manatee and Sarasota Counties, excluding the towns of Northport and Port Charlotte; the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West, and Placido in Charlotte County; and Gasparilla Island in Lee County.

Appendix C

Banking Market Data

Naples, Florida

Fifth Third operates the sixth largest depository institution in the Naples banking market, controlling $511.4 million in deposits, which represents 6.5 percent of market deposits. First National operates the second largest depository institution in the market, controlling $1.2 billion in deposits, which represents 15.3 percent of market deposits. On consummation of the proposal, Fifth Third would be the largest depository organization in the market, controlling deposits of approximately $1.7 billion, which represent approximately 21.8 percent of market deposits. The HHI would increase 198 points to 1,261. Thirty-one other bank and thrift competitors would remain in the market.

Fort Myers, Florida

Fifth Third operates the seventh largest depository institution in the Fort Myers banking market, controlling $288.6 million in deposits, which represents 3.4 percent of market deposits. First National operates the fourth largest depository institution in the market, controlling $636.8 million in deposits, which represents 7.6 percent of market deposits. On consummation of the proposal, Fifth Third would be the fourth largest depository organization in the market, controlling deposits of approximately $925.5 million, which represent approximately 11 percent of market deposits. The HHI would increase 52 points to 1,212. Twenty-five other bank and thrift competitors would remain in the market.

Sarasota, Florida

Fifth Third operates the 38th largest depository institution in the Sarasota banking market, controlling $20.1 million in deposits, which represents less than 1 percent of market deposits. First National operates the eighth largest depository institution in the market, controlling $308.6 million in deposits, which represents 2.2 percent of market deposits. On consummation of the proposal, Fifth Third would be the eighth largest depository organization in the market, controlling deposits of approximately $328.7 million, which represent approximately 2.4 percent of market deposits. The HHI would increase one point to 1,258. Thirty-nine other bank and thrift competitors would remain in the market.

First National Bank Group, Inc.
Edinburg, Texas

Order Approving the Acquisition of Shares of a Bank Holding Company

First National Bank Group, Inc. ("First National"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire up to 14.99 percent of the voting shares and control of Alamo Corporation of Texas, Alamo, Texas ("Alamo"), and thereby acquire control of Alamo Corporation of Delaware, Wilmington, Delaware ("ACD"), and Alamo's sub-

1. 12 U.S.C. § 1842.

sidiary bank, Alamo Bank of Texas, ("Alamo Bank"), also in Alamo.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 56,765 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

First National, with total consolidated assets of $2.6 billion, is the 22nd largest depository organization in Texas. It controls First National Bank of Edinburg ("First National Bank"), Edinburg, Texas, with deposits of $2.2 billion, which represent less than 1 percent of total deposits of insured depository institutions in Texas ("state deposits").[3] Alamo, with total consolidated assets of $284 million, is the 144th largest depository organization in Texas, controlling deposits of $236 million. On consummation of the proposal, First National would become the 19th largest depository organization in Texas, controlling deposits of approximately $2.47 billion, which would represent less than 1 percent of state deposits.

Although First National would be acquiring only 14.99 percent of the voting shares of Alamo, First National has requested approval to control Alamo for purposes of the BHC Act. In doing so, First National would be subject to certain obligations imposed by the BHC Act and other federal statutes, including obligations to serve as a source of financial and managerial strength to Alamo and to treat Alamo Bank as a subsidiary of First National.[4]

The Board received a comment from the management of Alamo objecting to the proposal and alleging that First National already owned or controlled, directly and indirectly, more than 5 percent of the voting shares of Alamo without having obtained prior Board approval.[5] Alamo also questioned First National's financial ability to acquire additional shares of Alamo and asserted that future acquisitions by First National could negatively affect its financial condition and its ability to serve as a source of strength to its own subsidiary bank.[6] The Board has considered carefully Alamo's comment in light of the factors it must consider under section 3 of the BHC Act.

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 banks involved in the proposal and certain other supervisory factors. The Board has considered carefully these factors in light of all the facts of record, including the comment submitted by the management of Alamo. The Board has considered, among other things, information provided by First National, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations and institutions involved in the proposal, the Federal Reserve System's confidential supervisory information, publicly reported and other financial information, and public comment received on the proposal.[7]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the effect of the transaction on the financial condition of the applicant, including its capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.[8]

Based on its review of these factors, the Board finds that First National has sufficient resources to effect the proposal. First National and its subsidiary bank are well capitalized and would remain so on consummation of this proposal. The proposed transaction is structured as a share purchase, and the consideration to be received by Alamo's shareholders would be funded from First National's existing liquid assets.

2. ACD is a wholly owned subsidiary of Alamo that directly owns all the voting shares of Alamo Bank.

3. Asset data and statewide deposit and ranking data are as of June 30, 2004.

4. *See* 12 CFR 225.4; 12 U.S.C. § 1815(e)(1).

5. Alamo claimed that First National, its president, and a certain First National shareholder acted together to acquire more than 5 percent of the shares of Alamo. The Board has reviewed information provided by First National and Alamo and confidential supervisory information regarding the current ownership of both organizations, including information about the ownership of Alamo's shares by individuals associated with First National. Although the Board's rules would require aggregation of the shares held by First National's president with the shares owned by First National in determining First National's current ownership percentage, that total is less than the 5 percent of the shares of Alamo and, therefore, would not require prior Board approval. The record does not support a finding that First National or its president acted with or through the identified First National shareholder to acquire additional shares of Alamo. Based on all the facts of record, the Board has determined that First National did not acquire 5 percent or more of Alamo's shares without prior approval by the Board in violation of the BHC Act.

6. Alamo also contended that certain information contained in First National's application is inaccurate. First National subsequently submitted to the Board information correcting the inaccuracies in its application.

7. As noted above, Alamo contended that any future acquisitions of its shares by First National could negatively affect First National's financial condition and impede its ability to serve as a source of strength to its own subsidiary bank. First National has committed not to acquire any additional shares of Alamo without obtaining prior Board approval. The financial and managerial impact on First National of any future acquisition of Alamo's shares, along with all other factors the Board is required to consider under section 3 of the BHC Act, cannot be predicted at this time and would be evaluated if and when an acquisition is proposed in the future.

8. As previously noted, the current proposal provides that First National would acquire only up to 14.99 percent of Alamo. Under these circumstances, the financial statements of Alamo and First National would not be consolidated.

The Board also has considered the managerial resources of First National, Alamo, and Alamo Bank, particularly the supervisory experience of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws. The Board has reviewed assessments by the relevant federal and state banking supervisory agencies of the organizations' management, the risk-management systems of First National, and the operations of Alamo and Alamo Bank. First National, Alamo, and their subsidiary depository institutions are considered well managed overall.

Based on all the facts of record, the Board has concluded that the financial and managerial resources and the future prospects of First National, Alamo, and their subsidiaries are consistent with approval of this application, as are the other supervisory factors the Board must consider under section 3 of the BHC Act.

Competitive and Convenience and Needs Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. Section 3 also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are 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]

First National and Alamo compete directly in the Brownsville and McAllen, Texas banking markets.[10] The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in the markets ("market deposits") controlled by First National and Alamo,[11] 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"),[12] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and the DOJ Guidelines in each of these banking markets. The Brownsville and McAllen banking markets would remain moderately concentrated as measured by the HHI, and the increases in concentration would be small in both markets. In addition, numerous competitors would remain in these markets after consummation of the proposal.

The Department of Justice also has conducted a detailed review of the competitive effects of the proposal and has advised the Board that consummation would not have a significantly adverse effect on competition in either market or in any relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on these and all other facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

In addition, considerations relating to the convenience and needs of the communities to be served, including the records of performance of the institutions involved under the Community Reinvestment Act ("CRA"),[13] are consistent with approval of the application. First National Bank received an "outstanding" rating at its most recent examination for CRA performance by the Office of the Comptroller of the Currency, as of October 7, 2002. Alamo Bank received a "satisfactory" rating at its most recent examination for CRA performance by the Federal Deposit Insurance Corporation, as of February 3, 2003.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by First National with the condition imposed in this order and the commitment made to the Board in connection with the application. The condition and commitment 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.

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9. 12 U.S.C. § 1842(c)(1).

10. The Brownsville banking market is defined as Cameron County, and the McAllen banking market is defined as Hildago County, both in Texas. Market data for both of these markets is provided in the Appendix.

11. Deposit and market share data are as of June 30, 2004, adjusted to reflect subsequent mergers and acquisitions through October 29, 2004, 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).

12. Under the revised DOJ Guidelines, 49 *Federal Register* 26,823 (June 29, 1984), a market in which the post-merger HHI is between 1000 and 1800 is considered moderately concentrated. 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 by more than 200 points. The Department of Justice has stated that the higher than normal thresholds for an increase in the HHI when screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

13. 12 U.S.C. § 2901 et seq.

The acquisition of Alamo's voting shares may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Dallas, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 12, 2004.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

Banking Market Data

Brownsville, Texas

First National operates the fourth largest depository institution in the Brownsville banking market, controlling $354.5 million in deposits, which represents 10.4 percent of market deposits. Alamo operates the 12th largest depository institution in the market, controlling $44 million in deposits, which represents 1.3 percent of market deposits. On consummation of the proposal, First National would continue to operate the fourth largest depository institution in the market, controlling approximately $399 million in deposits, which represents 11.7 percent of market deposits. The HHI would increase by 28 points to 1438. Fourteen depository institution competitors would remain in the market.

McAllen, Texas

First National operates the second largest depository institution in the McAllen banking market, controlling $982 million in deposits, which represents 15.4 percent of market deposits. Alamo operates the seventh largest depository institution in the market, controlling $175.5 million in deposits, which represents 2.8 percent of deposits in the market. On consummation of the proposal, First National would continue to operate the second largest depository institution in the market, controlling approximately $1.2 billion in deposits, which represents approximately 18.2 percent of market deposits. The HHI would increase by 84 points to 1548. Sixteen depository institution competitors would remain in the market.

S&T Bancorp, Inc.
Indiana, Pennsylvania

Order Approving Acquisition of Shares of a Bank Holding Company

S&T Bancorp, Inc. ("S&T"), 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 (12 U.S.C. § 1842) to acquire up to 24.9 percent of the voting shares of Allegheny Valley Bancorp, Inc. ("AVB"), and thereby indirectly acquire an interest in AVB's subsidiary bank, Allegheny Valley Bank of Pittsburgh ("Allegheny Bank"), both in Pittsburgh, Pennsylvania.[1]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 52,506 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

S&T, with consolidated assets of $3.0 billion, is the 20th largest banking organization in Pennsylvania, controlling total deposits of $2.0 billion, which represents 1 percent of total deposits in banking organizations in the state ("state deposits").[2] AVB, with consolidated assets of $317 million, is the 97th largest banking organization in Pennsylvania, controlling $264 million in deposits. If S&T were deemed to control AVB on consummation of the proposal, S&T would become the 18th largest banking organization in Pennsylvania, controlling approximately $2.2 billion in deposits, which would represent 1.2 percent of state deposits.

The Board received a comment from AVB objecting to the proposal on the grounds that the investment could create uncertainty about the future independence of AVB and Allegheny Bank or result in S&T acquiring control of AVB. The Board has considered carefully AVB's comment in light of the factors that the Board must consider under section 3 of the BHC Act.

The Board previously has stated that the acquisition of less than a controlling interest in a bank or bank holding company is not a normal acquisition for a bank holding company.[3] However, the requirement in section 3(a)(3) of the BHC Act that the Board's approval be obtained before a bank holding company acquires more than 5 percent of the voting shares of a bank suggests that Congress contemplated the acquisition by bank holding companies of between 5 and 25 percent of the voting shares of banks.[4] On this basis, the Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company.[5]

1. S&T owns 4.95 percent of AVB's voting shares. S&T proposes to acquire the additional voting shares in a negotiated purchase from a shareholder and through open market purchases.

2. Asset data are as of June 30, 2004. Deposit and ranking data are also as of June 30, 2004, and reflect merger activity through November 18, 2004.

3. *See, e.g., Brookline Bancorp, MHC,* 86 *Federal Reserve Bulletin* 52 (2000) ("*Brookline*"); *North Fork Bancorporation, Inc.,* 81 *Federal Reserve Bulletin* 734 (1995); *First Piedmont Corp.,* 59 *Federal Reserve Bulletin* 456, 457 (1973).

4. *See* 12 U.S.C. § 1842(a)(3).

5. *See, e.g., S&T Bancorp, Inc.,* 90 *Federal Reserve Bulletin* 82 (2004) (acquisition of up to 9.9 percent of the voting shares of a bank holding company); *Brookline* (acquisition of up to 9.9 percent of the voting shares of a bank holding company); *GB Bancorporation,* 83 *Federal Reserve Bulletin* 115 (1997) (acquisition of up to 24.9 percent of the voting shares of a bank).

S&T has stated that the acquisition is intended as a passive investment and that it does not propose to control or exercise a controlling influence over AVB or Allegheny Bank. S&T has agreed to abide by certain commitments previously relied on by the Board in determining that an investing bank holding company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act.[6] For example, S&T has committed not to exercise or attempt to exercise a controlling influence over the management or policies of AVB or any of its subsidiaries; not to seek or accept representation on the board of directors of AVB or any of its subsidiaries; and not to have any director, officer, employee, or agent interlocks with AVB or any of its subsidiaries. S&T also has committed not to attempt to influence the dividend policies, loan decisions, or operations of AVB or any of its subsidiaries. Moreover, the BHC Act prohibits S&T from acquiring additional shares of AVB or attempting to exercise a controlling influence over AVB without the Board's prior approval.[7]

The Board has adequate supervisory authority to monitor compliance by S&T with its commitments and has the ability to take enforcement action against S&T if it violates any of the commitments.[8] The Board also has authority to initiate a control proceeding against S&T if facts presented later indicate that S&T or any of its subsidiaries or affiliates in fact controls AVB for purposes of the BHC Act.[9] Based on these considerations and all other facts of record, the Board has concluded that S&T would not acquire control of, or have the ability to exercise a controlling influence over, AVB through the proposed acquisition of voting shares.

Financial, Managerial, and Supervisory Considerations

The Board also is required under section 3(c) of the BHC Act to consider the financial and managerial resources and future prospects of the companies and banks concerned and certain other supervisory factors. The Board has considered carefully these factors in light of all the facts of record. The Board has considered, among other things, information provided by S&T, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations involved in the proposal, the Federal Reserve System's confidential supervisory information, publicly reported and other financial information, and the public comments submitted by AVB.

In evaluating financial factors in proposals under section 3 of the BHC Act by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking subsidiaries. In this evaluation, the Board considers a variety of areas, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the effect of the transaction on the financial condition of the applicant and the target, including their capital position, asset quality, earnings prospects, and the impact of the proposed funding of the transaction.[10]

Based on its review of these factors, the Board finds that S&T has sufficient resources to effect the proposal. S&T, AVB, and their subsidiary banks are well capitalized and would remain so on consummation of the proposal. The proposed acquisition of shares would be funded from S&T's general corporate resources.

The Board also has considered the managerial resources of S&T and AVB, particularly in light of the supervisory experience of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws. The Board has reviewed assessments by the relevant federal and state banking supervisory agencies of the organizations' management, the risk-management systems of S&T, and the operations of AVB and Allegheny Bank. S&T, AVB, and their subsidiary depository institutions are considered well managed overall.

AVB contends that S&T's investment would cause confusion among AVB's shareholders, customers, and employees about the continued independence of AVB; compromise AVB's ability to recruit executive leadership and retain other employees; and adversely affect the price of AVB's shares.[11] The Board believes that the commitments made by S&T to maintain its investment as a passive investment and not to exercise a controlling influence over

6. *See, e.g., Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996); *First Community Bancshares, Inc.*, 77 *Federal Reserve Bulletin* 50 (1991). These commitments are set forth in the Appendix.

7. AVB contends that, despite S&T's commitments, S&T would nonetheless control AVB after consummation of the proposal because one major individual shareholder of S&T also owns 3 percent of the voting shares of AVB. The Board's rules provide for aggregation of shares held by officers or directors of S&T with the shares owned by S&T in determining S&T's ownership percentage of AVB. No officer or director of S&T owns any voting shares of AVB. In reaching this conclusion, the Board reviewed information provided by S&T regarding the current ownership of AVB's shares by officers and directors of S&T, and the ownership of S&T's shares by an individual who sits on one of its local advisory boards but is not an officer or director of S&T. Based on S&T's description of this individual's relationship with S&T and the limited functions of S&T's local advisory boards, the Board has concluded that this individual is not a controlling shareholder or advisory director of S&T for purposes of the Board's Regulation Y. The record does not support a finding that any shares of AVB owned by S&T shareholders should be attributed to S&T for purposes of determining control of AVB under the BHC Act.

8. *See* 12 U.S.C. § 1818(b)(1).

9. *See* 12 U.S.C. § 1841(a)(2)(C).

10. As previously noted, the current proposal provides that S&T would acquire only up to 24.9 percent of AVB's voting shares and would not be considered to control AVB. Under these circumstances, the financial statements of S&T and AVB would not be consolidated.

11. The Board is limited under the BHC Act to the consideration of factors specified in the Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). The potential effect of a proposal on the share price of the parties to the proposed transaction is not among the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *Id.; see also S&T Bancorp, Inc.*, 90 *Federal Reserve Bulletin* 79, 81 n.16 (2004).

AVB reduce the potential adverse effects of the proposal. As noted above, S&T has committed that it will not attempt to influence the operations, activities, or the dividend, loan, or credit policies of AVB. No evidence has been presented to show that the purchase of shares of AVB on the open market by S&T would adversely affect the financial condition of AVB or S&T.

Based on all the facts of record, the Board has concluded that the financial and managerial resources and the future prospects of S&T, AVB, and their subsidiaries are consistent with approval of this application, as are the other supervisory factors the Board must consider under section 3 of the BHC Act.

Competitive and Convenience and Needs Considerations

In considering an application under section 3 of the BHC Act, the Board is required to evaluate a number of factors, including the competitive effects of the proposal. Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. It also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effects in meeting the convenience and needs of the community to be served.[12]

The Board previously has noted that one company need not acquire control of another company to lessen competition between them substantially.[13] The Board has found that noncontrolling interests in directly competing depository institutions may raise serious questions under the BHC Act and has concluded that the specific facts of each case will determine whether the minority investment in a company would be anticompetitive.[14]

S&T and AVB compete directly in the Pittsburgh, Pennsylvania banking market ("Pittsburgh market").[15] AVB asserts that S&T's ownership of up to 24.9 percent of AVB's voting shares would provide S&T with the ability to exert control over AVB and Allegheny Bank, with a resulting adverse effect on competition. The Board concludes that the commitments made by S&T to maintain its investment as a passive investment and not to exercise a controlling influence over AVB reduce the potential adverse competitive effects of the proposal. Moreover, the Board notes that if S&T and AVB were viewed as a combined organization, consummation of the proposal would be consistent with Board precedent and the Department of Justice Merger Guidelines[16] in the Pittsburgh market. The market would remain moderately concentrated as measured by the HHI, with only a small increase in concentration and numerous competitors would remain in the market.[17]

The Department of Justice also has reviewed the proposal and has advised the Board that it does not believe that the acquisition would likely have a significantly adverse effect on competition in any relevant banking market. The appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Accordingly, in light of all the facts of record, the Board concludes that consummation of the proposal would not have a significant adverse effect on competition or on the concentration of resources in any relevant banking market and that competitive considerations are consistent with approval of the proposal.

In addition, considerations relating to the convenience and needs of the communities to be served, including the

12. *See* 12 U.S.C. § 1842(c)(1).

13. *See, e.g., SunTrust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990); *First State Corp.*, 76 *Federal Reserve Bulletin* 376, 379 (1990); *Sun Banks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985) ("*Sun Banks*").

14. *See, e.g., BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052, 1053–54 (1995); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37, 38 (1993); *Sun Banks* at 244.

15. The Pittsburgh market is defined as Allegheny County; the townships of Gilpin, Kiskiminetas, Parks, and South Buffalo in Armstrong County; Beaver County; the townships of Adams, Buffalo, Clinton, Cranberry, Forward, Jackson, Jefferson, Lancaster, Middlesex, Muddy Creek, Penn, and Winfield in Butler County; the townships of Bullskin, Jefferson, Lower Tyrone, Perry, Salt Lick, Upper Tyrone, and Washington in Fayette County; the townships of Burrell, Conemaugh, and West Wheatfield in Indiana County; the townships of Little Beaver, New Beaver, Perry, and Wayne in Lawrence County; Washington County; and Westmoreland County, excluding St. Clair township, all in Pennsylvania.

16. Under the revised Department of Justice Merger Guidelines, 49 *Federal Register* 26,823 (June 29, 1984), a market in which the post-merger Herfindahl–Hirschman Index ("HHI") is between 1000 and 1800 is considered moderately concentrated. 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 by more than 200 points. The Department of Justice has stated that the higher than normal thresholds for an increase in the HHI when screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

17. S&T is the ninth largest depository institution in the market, controlling $664.2 million in deposits, which represents 1.3 percent of the total deposits in depository institutions in the market ("market deposits"). AVB is the 19th largest depository institution in the market, controlling $249 million in deposits, which represents less than 1 percent of market deposits. If considered a combined banking organization on consummation of the proposal, S&T and AVB would be the eighth largest depository institution in the Pittsburgh market, controlling $913.2 million in deposits, which would represent 1.9 percent of market deposits. The HHI for the Pittsburgh market would increase 2 points to 1586, and numerous competitors would remain in the market. Market deposit data are as of June 30, 2003, and reflect mergers and acquisitions through August 3, 2004.

In this context, depository institutions include commercial banks, savings banks, and savings associations. Market share data are based on calculations that include the deposits of thrift institutions 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 calculation of market share on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52, 55 (1991).

records of performance of the institutions involved under the Community Reinvestment Act ("CRA"),[18] are consistent with approval of the application. S&T's lead subsidiary bank, S&T Bank, Indiana, Pennsylvania, and Allegheny Bank each received "satisfactory" ratings at their most recent evaluations for CRA performance by the Federal Deposit Insurance Corporation, as of April 1, 2002, and October 25, 1999, respectively.

Conclusion

Based on the foregoing and all other facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching this conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by S&T with the condition imposed in this order and all the commitments made to the Board in connection with the application, including the commitments discussed in this order. The condition and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of AVB's voting shares shall not be consummated before the fifteenth 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 December 6, 2004.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

As part of this proposal, S&T Bancorp, Inc. ("S&T"), Indiana, Pennsylvania, commits that S&T will not, without the prior approval of the Federal Reserve, directly or indirectly:

(1) Exercise or attempt to exercise a controlling influence over the management or policies of Allegheny Valley Bancorp, Inc. ("AVB") or any of its subsidiaries;
(2) Seek or accept representation on the board of directors of AVB or any of its subsidiaries;
(3) Have or seek to have any employee or representative serve as an officer, agent, or employee of AVB or any of its subsidiaries;
(4) Take any action that would cause AVB or any of its subsidiaries to become a subsidiary of S&T, or any of S&T's subsidiaries;
(5) Acquire or retain shares that would cause the combined interests of S&T and any of S&T's subsidiaries and their officers, directors, and affiliates to equal or exceed 25 percent of the outstanding voting shares of AVB or any of its subsidiaries;
(6) Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or the board of directors of AVB or any of its subsidiaries;
(7) Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of AVB or any of its subsidiaries;
(8) Attempt to influence the dividend policies or practices; the investment, loan, or credit decisions or policies; the pricing of services; personnel decisions; operations activities (including the location of any offices or branches or their hours of operation, etc.); or any similar activities or decisions of AVB or any of its subsidiaries;
(9) Dispose or threaten to dispose of shares of AVB or any of its subsidiaries as a condition of specific action or nonaction by AVB or any of its subsidiaries; or
(10) Enter into any banking or non-banking transactions with AVB or any of its subsidiaries, except that S&T may establish and maintain deposit accounts with any depository institution subsidiary of AVB; provided that the aggregate balance of all such accounts does not exceed $500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with AVB or any of its subsidiaries.

18. 12 U.S.C. § 2901 et seq.

Wachovia Corporation
Charlotte, North Carolina

Order Approving the Merger of Financial Holding Companies

Wachovia Corporation ("Wachovia"), 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 to merge with SouthTrust Corporation, Birmingham, Alabama ("SouthTrust"), and to acquire SouthTrust's subsidiary bank, SouthTrust Bank, also in Birmingham.[1] In addition, Wachovia proposes to acquire SouthTrust International, Inc., also in Birmingham, an agreement corporation subsid-

1. 12 U.S.C. § 1842. Wachovia has also applied to acquire SouthTrust of Alabama, Inc., Birmingham, Alabama ("SouthTrust of Alabama"), an intermediate subsidiary bank holding company of SouthTrust. In addition, Wachovia has requested the Board's approval to hold and exercise an option to purchase up to 19.5 percent of SouthTrust's common stock. The option would expire on consummation of the proposal.

iary of SouthTrust of Alabama, pursuant to sections 25 and 25A of the Federal Reserve Act and the Board's Regulation K.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 43,419 (2004)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act and the Federal Reserve Act.

Wachovia, with total consolidated assets of approximately $418 billion, is the fifth largest insured depository organization in the United States, controlling deposits of approximately $251 billion, which represent approximately 4 percent of the total amount of deposits of insured depository institutions in the United States.[3] Wachovia operates insured depository institutions in Connecticut, Delaware, Florida, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Virginia, and the District of Columbia[4] and engages nationwide in numerous nonbanking activities that are permissible under the BHC Act.

SouthTrust, with total consolidated assets of approximately $53 billion, is the 25th largest insured depository organization in the United States, controlling deposits of approximately $37 billion, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the United States. SouthTrust operates depository institutions in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. It also engages in a broad range of permissible nonbanking activities in the United States and abroad.[5]

On consummation of the proposal, Wachovia would become the fourth largest insured depository organization in the United States, with total consolidated assets of approximately $471 billion and total deposits of approximately $288 billion, representing approximately 4.6 percent of the total amount of deposits of insured depository institutions in the United States.

2. 12 U.S.C. §§601 et seq. and 611 et seq.; 12 CFR Part 211.

3. Asset data are as of June 30, 2004, and national ranking data are as of June 30, 2004, and are adjusted to reflect mergers and acquisitions completed through October 4, 2004. Deposit data are as of June 30, 2004, and reflect the unadjusted total of their deposits reported by each organization's insured depository institutions in their Consolidated Reports of Condition and Income for June 30, 2004. In this context, the term "insured depository institutions" includes insured commercial banks, savings associations, and savings banks.

4. Wachovia's subsidiary depository institutions are Wachovia Bank, N.A., Charlotte, North Carolina ("Wachovia Bank"); Wachovia Bank of Delaware, N.A. ("Wachovia Bank-DE") and Wachovia Trust Company, N.A., both in Wilmington, Delaware; and First Union Direct Bank, N.A., Augusta, Georgia.

5. Wachovia proposes to acquire SouthTrust's domestic and foreign nonbanking subsidiaries, all of which are engaged in permissible activities listed in section 4(k)(4)(A)–(H) of the BHC Act, pursuant to section 4(k) and the post-transaction notice procedures of section 225.87 of Regulation Y.

Factors Governing Board Review of the Transaction

The BHC Act enumerates the factors the Board must consider when reviewing the merger of bank holding companies or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the transaction; the convenience and needs of the communities to be served, including the records of performance under the Community Reinvestment Act ("CRA")[6] of the insured depository institutions involved in the transaction; and the availability of information needed to determine and enforce compliance with the BHC Act. In cases involving interstate bank acquisitions, the Board also must consider the concentration of deposits nationwide and in certain individual states, as well as compliance with other provisions of the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994.[7]

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 Wachovia is North Carolina,[8] and SouthTrust's subsidiary bank is located in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.[9]

Based on a review of all the facts of record, including relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) are met in this case.[10] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

6. 12 U.S.C. §2901 et seq.

7. Pub. L. No. 103-328, 108 Stat. 2338 (1994).

8. *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.

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

10. *See* 12 U.S.C. §§1842(d)(1)(A)–(B) and 1842(d)(2)(A)–(B). Wachovia is adequately capitalized and adequately managed, as defined by applicable law. On consummation of the proposal, Wachovia and its affiliates would control less than 10 percent of the total amount of deposits in insured depository institutions in the United States and less than 30 percent of total deposits, or the applicable percentage established by state law, in each state in which subsidiary banks of both organizations are located (Florida, Georgia, North Carolina, South Carolina, and Virginia). In addition, SouthTrust Bank has been in existence for more than five years, and all other requirements under section 3(d) of the BHC Act also would be met on consummation of the proposal.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. It also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effects in meeting the convenience and needs of the community to be served.[11]

Wachovia and SouthTrust have subsidiary depository institutions that compete directly in forty-one banking markets in five states.[12] 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, including public comment on the proposal.[13] In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of total deposits of depository institutions in the markets ("market deposits") controlled by Wachovia and SouthTrust,[14] 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 Guidelines ("DOJ Guidelines"),[15] and other characteristics of the markets. In addition, the Board has considered commitments made by Wachovia to the Board to reduce the potential that the proposal would have adverse effects on competition by divesting eighteen SouthTrust Bank branches (the "divestiture branches"), which account for approximately $592 million in deposits, in four banking markets (the "divestiture markets").[16]

A. Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in 35 banking markets.[17] Three banking markets would remain unconcentrated;[18] twenty-six banking markets would remain moderately concentrated;[19] and six banking markets would remain highly concentrated,[20] with only modest increases in market concentration as measured by the HHI. Numerous competitors would remain in each of the 35 banking markets.

B. Six Banking Markets in which Special Scrutiny Is Appropriate

Wachovia and SouthTrust compete directly in six banking markets that warrant a detailed review: Jacksonville, Polk County, Daytona Beach, and Punta Gorda, all in Florida; and Transylvania and Charlotte–Rock Hill, both in North Carolina. In each of these six markets, the concentration levels on consummation would exceed the DOJ Guidelines or the resulting market share would be significant.

For each of these six markets, 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 market. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in and resulting level of concentration in a banking market.[21] In each of these markets, the Board has

11. *See* 12 U.S.C. § 1842(c)(1).

12. These banking markets are described in Appendix A.

13. Two commenters expressed general concerns about the competitive effects of this proposal.

14. Deposit and market share data are as of June 30, 2003, adjusted to reflect subsequent mergers and acquisitions through July 12, 2004, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group,* 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation,* 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.,* 77 *Federal Reserve Bulletin* 52 (1991).

15. 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 by 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 institutions.

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

17. The effects of the proposal on the concentration of banking resources are described in banking markets without divestitures in Appendix B and in banking markets with divestitures in Appendix C.

18. The unconcentrated banking markets are: Fort Walton Beach and Miami–Fort Lauderdale, both in Florida; and Athens, Georgia.

19. The moderately concentrated banking markets without divestitures are: Brevard, Fort Myers, Fort Pierce, Gainesville, Highlands, Indian River, Naples, North Lake/Sumter, Ocala, Pensacola, Sarasota, Tallahassee, Tampa Bay, and West Palm Beach, all in Florida; Atlanta and Dalton, both in Georgia; Greensboro–High Point and Raleigh, both in North Carolina; Charleston, Columbia, Greenville, and Spartanburg, all in South Carolina; and Newport News–Hampton and Norfolk–Portsmouth, both in Virginia. The moderately concentrated banking markets with divestitures are Orlando, Florida, and Augusta, Georgia.

20. The highly concentrated banking markets are: St. Augustine, Florida; Columbus, Georgia; Rutherford, Salisbury, and Shelby, all in North Carolina; and Richmond, Virginia.

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

identified factors that indicate the proposal would not have a significantly adverse impact on competition, despite the size of increase in and resulting level of the HHI or market share.

Jacksonville. Wachovia is the second largest depository organization in the Jacksonville banking market, controlling $4.7 billion of deposits, which represents approximately 31.1 percent of market deposits. SouthTrust is the fourth largest depository organization in the market, controlling approximately $806 million of deposits, which represents approximately 5.4 percent of market deposits. To reduce the potential for adverse effects on competition in the Jacksonville banking market, Wachovia has committed to divest nine SouthTrust branches with at least $275 million in deposits in the market to an out-of-market depository organization. After accounting for the proposed divestiture, Wachovia would operate the largest depository organization in the market on consummation of the merger, controlling approximately $5.2 billion of deposits, which represents approximately 34.8 percent of market deposits. The HHI would increase by not more than 210 points and would not exceed 2416.

A number of factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the Jacksonville banking market. As a result of the proposed divestiture to an out-of-market depository organization, 27 competitors would remain in the market. In addition, the size of the proposed divestiture helps create a competitively viable market participant. Moreover, the second largest bank competitor in the market would control 30 percent of market deposits and operate a large number of branches, and another bank competitor would control more than 5 percent of market deposits.

In addition, one thrift institution operating in the market serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products. Competition from this thrift institution closely approximates competition from a commercial bank. Accordingly, the Board has concluded that deposits controlled by this institution should be weighted at 100 percent in market share calculations.[22] Accounting for the revised weighting of these deposits, Wachovia would control 34.7 percent of market deposits and the HHI would increase by not more than 208 points and would not exceed 2397 on consummation of the proposal.

The Board also has considered that the market has six credit unions that are accessible to the public and offer a wide range of consumer products and services.[23] These credit unions have street-level branches and their memberships are open to at least 73 percent of the market's residents.[24] The Board concludes that these credit unions exert a competitive influence that mitigates, in part, the potential anticompetitive effects of the proposal.

In addition, two depository institutions entered the Jacksonville banking market de novo in 2001 and 2002, indicating that the market has been attractive for entry. Other factors indicate that the Jacksonville banking market would remain attractive for entry. Deposit growth in the five major counties in the market[25] was more than twice the average growth in the metropolitan counties in the state between 2001 and 2003. In those major counties, both population growth between 2001 and 2003 and the level of per capita income in 2003 also slightly exceeded the averages for metropolitan counties in Florida.

Polk County. In the Polk County banking market, Wachovia is the third largest depository organization, controlling $746 million of deposits, which represents approximately 17.1 percent of market deposits. SouthTrust is the fifth largest depository organization in the market, controlling approximately $490 million of deposits, which represents approximately 11.2 percent of market deposits. To reduce the potential for adverse effects on competition in the Polk County banking market, Wachovia has committed to divest five SouthTrust branches with at least $95 million in deposits to an out-of-market depository organization. On consummation of the merger and after accounting for the proposed divestitures, Wachovia would operate the largest depository organization in the market, controlling approximately $1.1 billion of deposits, which represents approximately 26.2 percent of market deposits. The HHI would increase by not more than 270 points and would not exceed 1841.

Certain factors indicate that the proposal is not likely to have a significantly adverse competitive effect in the Polk County banking market. After consummation of the proposal, 12 other depository institutions would remain in the market. The two largest bank competitors in the market, one of which would have a branch network comparable to Wachovia's, would each control at least 20 percent of market deposits. Another bank competitor would control more than 10 percent of market deposits. Moreover, one depository institution has entered the market de novo since 2001.

The Board also has considered the competitive influence of two credit unions that offer a wide range of consumer products and services and have a significant competitive presence in the market.[26] These credit unions have street-

22. The Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate. *See, e.g., Banknorth Group, Inc., 75 Federal Reserve Bulletin* 703 (1989). The thrift in this case has a ratio of commercial and industrial loans to assets of 9.04 percent, which is comparable to the national average for all commercial banks. *See First Union Corporation, 84 Federal Reserve Bulletin* 489 (1998).

23. These credit unions collectively account for approximately 9.3 percent of total market deposits.

24. After accounting for the proposed divestiture and including the deposits of these credit unions in market share calculations at 50 percent, Wachovia would become the largest depository organization in the market with 31.4 percent of market deposits. The HHI would increase by not more than 171 points and would not exceed 2022 as a result of this transaction.

25. These major counties are Baker, Clay, Duval, Nassau, and St. Johns Counties.

26. These two credit unions collectively account for approximately 5.3 percent of total market deposits.

level branches accessible to the public and their memberships are open to all residents of the banking market.[27] The Board concludes that these credit unions exert a competitive influence that mitigates, in part, the potential anticompetitive effects of the proposal.

Daytona Beach. In the Daytona Beach banking market, Wachovia is the largest depository organization, controlling $1.3 billion of deposits, which represents approximately 23.1 percent of market deposits. SouthTrust is the fifth largest depository organization in the market, controlling approximately $413 million of deposits, which represents approximately 7.2 percent of market deposits. On consummation of the merger, Wachovia would remain the largest depository organization in the market, controlling approximately $1.7 billion of deposits, which represents approximately 30.3 percent of market deposits. The HHI would increase by 335 points to 1880.

Several factors indicate that the proposal is not likely to have a significantly adverse competitive effect in the Daytona Beach banking market. After consummation of the proposal, 19 other depository institution competitors would remain in the market. The second and third largest bank competitors in the market would operate branch networks comparable to that of Wachovia's and each would control at least 20 percent of market deposits. Another bank competitor would control approximately 8 percent of market deposits.

In addition, the Daytona Beach banking market has been attractive for entry, as indicated by the de novo entry of three depository institutions in 2001. The market also appears to remain attractive for entry. For example, the annual population growth rate of the two major counties in the market[28] exceeded the average growth rate for metropolitan counties in Florida between 2001 and 2003.

Punta Gorda. In the Punta Gorda banking market, Wachovia is the fourth largest depository organization, controlling approximately $282 million of deposits, which represents approximately 13.4 percent of market deposits. SouthTrust is the third largest depository organization in the market, controlling approximately $339 million of deposits, which represents approximately 16.1 percent of market deposits. On consummation of the merger, Wachovia would operate the largest depository organization in the market, controlling approximately $620 million of deposits, which represents approximately 29.4 percent of market deposits. The HHI would increase by 428 points to 1872.

A number of factors mitigate the potential for anticompetitive effects in this market. After consummation of the proposal, 11 other depository institution competitors would remain in the market. The second and third largest bank competitors in the market would control 22 percent and 20 percent of market deposits, respectively.

In addition, the Board has considered the entry of two depository institutions in the Punta Gorda banking market since 2001 and factors indicating that the market remains somewhat attractive for entry. The market contains deposits of more than $2 billion. Moreover, the annualized rate of population growth in Charlotte County, the main county in the market, exceeded the rate for metropolitan counties in Florida between 2001 and 2003.

Transylvania. In the Transylvania banking market, Wachovia is the third largest depository organization, controlling approximately $73 million of deposits, which represents approximately 14.9 percent of market deposits. SouthTrust is the fifth largest depository organization in the market, controlling approximately $36 million of deposits, which represents approximately 7.5 percent of market deposits. On consummation of the merger, Wachovia would operate the second largest depository organization in the market, controlling approximately $109 million of deposits, which represents approximately 22.5 percent of market deposits. The HHI would increase by 224 points to 2077.

Numerous factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the Transylvania banking market. After consummation of the proposal, seven other depository institutions would remain in the market. The largest bank competitor in the market would control approximately 32.5 percent of market deposits and two other bank competitors would control 17 percent and 12 percent of market deposits, respectively.

In addition, several factors indicate that the Transylvania banking market is attractive for entry. One competitor has entered the market de novo since 2001. In 2003, the average level of per capita income in the market substantially exceeded the average per capita income levels for nonmetropolitan counties in North Carolina. Moreover, deposits in the banking market increased at an annualized rate of at least 5.9 percent from June 2001 to June 2003, which exceeded the 3.5 percent annualized rate of deposit growth for nonmetropolitan counties in North Carolina during the same period.

Charlotte–Rock Hill. In the Charlotte–Rock Hill banking market, Wachovia is the second largest depository organization, controlling approximately $24.3 billion of deposits, which represents approximately 37.3 percent of market deposits. SouthTrust is the seventh largest depository organization in the market, controlling approximately $535 million of deposits, which represents less than 1 percent of market deposits. On consummation of the merger, Wachovia would remain the second largest depository organization in the market, controlling approximately $24.9 billion of deposits, which represents approximately 38.2 percent of market deposits. The HHI would increase by 62 points to 3853.

27. After accounting for the proposed divestiture and including the deposits of these credit unions in market share calculations at 50 percent, Wachovia would become the largest depository organization in the Polk County banking market with 24.8 percent of market deposits. The HHI would increase by not more than 243 points and would not exceed 1673 as a result of this transaction.

28. Flagler and Volusia Counties are the major counties in the Daytona Beach banking market.

Although the proposal would be consistent with the DOJ Guidelines in this market, its unique structure warrants careful consideration. Two of the nation's largest depository organizations, Wachovia and Bank of America Corporation, are headquartered in Charlotte. Bank of America controls approximately 49 percent of market deposits and Wachovia currently controls approximately 37 percent of market deposits. On consummation of the proposal, Wachovia's market share would increase by less than 1 percent. In addition, 33 other depository institution competitors would remain in the market.

Certain other factors indicate that the proposal is not likely to have a significantly adverse competitive effect in the Charlotte–Rock Hill banking market. The market has been attractive for entry, as indicated by the de novo entries of three depository institutions since 2001. In addition, the market is the largest banking market in North Carolina and its four major counties[29] have experienced above-average population growth between 2001 and 2003 relative to the average growth rate of metropolitan counties in the state. Moreover, the market's per capita income level in 2003 exceeded the average for metropolitan counties in North Carolina. Thus, consummation of the proposal does not appear to have a significantly adverse competitive effect in the Charlotte–Rock Hill banking market.

C. Views of Other Agencies and Conclusion on Competitive Considerations

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

Based on these and all other facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or the concentration of resources in any of the 41 banking markets in which Wachovia and SouthTrust directly compete or in any other relevant banking market. Accordingly, based on all the facts of record and subject to completion of the proposed divestitures, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record. The Board has considered, among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations and institutions involved in the proposal, the Federal Reserve System's confidential supervisory information, information provided by the Securities and Exchange Commission ("SEC"), and public comments on the proposal. In addition, the Board has consulted with the relevant supervisory agencies, including the Office of the Comptroller of the Currency ("OCC"), the primary supervisor for all of Wachovia's subsidiary banks. The Board also has considered publicly available financial and other information on the proposal's financial and managerial aspects submitted by Wachovia during the application process.

In evaluating financial factors in this and other expansionary proposals by banking organizations, the Board reviews the financial condition of the holding companies on both a parent-only and consolidated basis and the financial condition of each of their subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of areas, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the pro forma financial condition of the combined organization, including its capital position, earnings prospects, and the impact of the proposed funding of the transaction. Based on its review of these factors, the Board finds that the organization has sufficient financial resources to effect the proposal. Wachovia, SouthTrust, and their subsidiary banks are well capitalized and the resulting organization and its subsidiary banks would remain so on consummation of the proposal. The proposal is structured as an exchange of shares and would not increase the debt service requirements of the combined organization.

The Board also has considered the managerial resources of the proposed combined organization. The Board has reviewed the examination records of Wachovia, SouthTrust, and their subsidiary depository institutions, including assessments of their risk-management systems. In addition, the Board has considered its supervisory experience and that of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Wachovia, SouthTrust, and their subsidiary depository institutions are considered well managed overall. The Board also has considered Wachovia's plans to integrate SouthTrust and its subsidiaries and the proposed management, including the risk-management systems, of the resulting organization.

In addition, the Board has taken account of two publicly reported SEC investigations involving Wachovia, one related to Wachovia's mutual fund business and one related to conduct by the former Wachovia Corporation in connection with its merger with First Union Corporation.[30] Con-

29. These major counties are Cabarrus, Gaston, and Mecklenberg Counties in North Carolina and York County in South Carolina.

30. In 2001, First Union Corporation acquired the former Wachovia Corporation, Winston-Salem, North Carolina ("Old Wachovia"), and subsequently changed its name from First Union Corporation to Wachovia Corporation. *See First Union Corporation*, 87 *Federal Reserve Bulletin* 683 (2001).

sistent with the provisions of section 5 of the BHC Act, as amended by the Gramm–Leach–Bliley Act,[31] the Board has relied on examination and other supervisory information provided by the SEC and other appropriate functional regulators about functionally regulated subsidiaries, such as mutual funds and securities broker–dealers. The Board also has consulted with the SEC about its review of the efforts of Wachovia to comply with federal securities laws. Wachovia has provided the Board with information pertinent to the SEC's investigations and has conducted internal inquiries into these matters. The Board also has considered the willingness and efforts undertaken by Wachovia's management to ensure compliance with all applicable state and federal law and to improve compliance programs and policies in light of these investigations.

Based on these and all the facts of record, including a review of the comments received, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Wachovia, SouthTrust, and their respective subsidiaries are consistent with approval of the proposal, as are the other supervisory factors that the Board must consider under section 3 of the BHC Act.[32]

Convenience and Needs Considerations

Section 3 of the BHC Act requires the Board 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 CRA.[33] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals. The Board has carefully considered the convenience and needs factor and the CRA performance records of the subsidiary depository institutions of Wachovia and SouthTrust, including public comments received on the effect the proposal would have on the communities to be served by the resulting organization.

A. Summary of Public Comments on Convenience and Needs

In response to the Board's request for public comment, approximately 200 commenters submitted their views on the proposal. Approximately 190 commenters commended Wachovia or SouthTrust for the financial and technical support provided to community development organizations or related their favorable experiences with specific programs or services offered by Wachovia or SouthTrust. Most of these commenters also expressed their support for the proposal.

Seven commenters expressed concern about the lending records of Wachovia or SouthTrust or opposed the proposal. Some commenters contended that data submitted under the Home Mortgage Disclosure Act ("HMDA")[34] demonstrated that Wachovia and SouthTrust engaged in disparate treatment of minority individuals in home mortgage lending in certain markets.[35] In addition, several commenters expressed concern about branch closures or other reductions in service resulting from the proposed merger.[36]

B. CRA Performance Evaluations

As provided in the BHC Act, the Board has evaluated the convenience and needs factor in light of the appropriate federal supervisors' examinations 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.[37]

Wachovia's lead bank, Wachovia Bank, received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of September 30, 2000, when it was known as First Union National Bank, Charlotte, North Carolina ("FUNB") ("FUNB Evaluation"). This evaluation was conducted before the merger of First Union Corporation with Old Wachovia, and the merger of Old

31. Pub. L. No. 106-102, 113 Stat. 1338 (1999).

32. A commenter expressed concern about the degree of ethnic diversity in senior management positions in both organizations. This concern is outside the statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

33. 12 U.S.C. § 2901 et seq.

34. 12 U.S.C. § 2801 et seq.

35. Several commenters also expressed concern that Wachovia and SouthTrust finance unaffiliated lenders who provide alternative products such as payday loans. Wachovia reviews loans to payday lenders, check cashing companies, and pawnshops; and it imposes increased documentation requirements, monitoring, and annual reviews of these loans to account for the potential increased risks, including legal and reputational risks, associated with these loans. Wachovia plays no role in the lending practices or credit review processes of these lenders.

One commenter disagreed with a statement in the application that SouthTrust has a policy not to lend to payday lenders, pawnshops, and other "money service businesses" ("MSBs"). Wachovia acknowledged that SouthTrust has made several exceptions to this policy and, as a result, has ten loans outstanding to pawnshops or related entities worth $755,056, representing a de minimis portion of SouthTrust's total loan portfolio.

36. One commenter alleged mismanagement of his accounts by Wachovia Bank, and another commenter alleged improper handling by SouthTrust Bank of a loan request. The Board has reviewed these comments about individual accounts and transactions in light of the facts of record, including information provided by Wachovia and SouthTrust. These letters have been forwarded to the consumer complaint function at the OCC and the Board, the primary supervisors of Wachovia Bank and SouthTrust Bank, respectively.

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

Wachovia's lead bank, Wachovia Bank, N.A., Winston-Salem, North Carolina ("Old Wachovia Bank"), into FUNB, which was then renamed Wachovia Bank. Old Wachovia Bank also received an "outstanding" rating at its last CRA performance evaluation by the OCC, as of December 31, 2000 ("Old Wachovia Bank Evaluation"). Wachovia Bank-DE received a "satisfactory" rating from the OCC at its most recent CRA performance evaluation, as of December 31, 2000.[38]

SouthTrust's only subsidiary bank, SouthTrust Bank, received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta ("Reserve Bank"), as of May 5, 2003 ("SouthTrust Bank Evaluation").

C. CRA Performance of Wachovia

1. *CRA Performance Record of FUNB*—As noted, the most recent CRA performance evaluation for Wachovia Bank occurred before its 2001 merger with Old Wachovia Bank, when it was known as FUNB. FUNB received an overall "outstanding" rating from the OCC for its performance under the CRA during the period covered by the FUNB Evaluation.[39]

FUNB received an "outstanding" rating under the lending test. Examiners concluded that FUNB's level of lending reflected an excellent responsiveness to the credit needs of its assessment areas.[40] They characterized the bank's lending performance as "outstanding" or "high satisfactory" in each of the eleven states and four of the five multistate metropolitan statistical areas ("MSAs") where FUNB operated during the evaluation period. Examiners also found that FUNB's lending record showed excellent distribution of loans among geographies of different income levels and a good distribution of loans among borrowers of different income levels. These assessments were based on a review of FUNB's housing-related loans reported under HMDA, small business and small farm loans, and qualified community development loans.

During the evaluation period, FUNB and its affiliates made more than 398,000 home mortgage loans, totaling more than $37 billion, throughout the bank's assessment areas.[41] Examiners reported that the distribution of HMDA-reportable loans, both by geography income level and by borrower income level, was good or excellent in each of the eleven states and four of the five multistate MSAs.[42]

FUNB originated more than 62,500 small loans to businesses and farms, totaling approximately $7.8 billion, in its assessment areas.[43] Examiners generally characterized FUNB's small business lending in each of its primary rating areas as excellent or good. In assessing FUNB's small business lending, examiners focused on the distribution of loans among geographies of differing income levels and, particularly, to businesses in LMI areas. Examiners placed special emphasis on those areas where FUNB made a large number of small-denomination loans to businesses. For example, examiners noted that the proportion of FUNB's small loans to businesses that had originated amounts of $100,000 or less was 69 percent in Pennsylvania and 75 percent in the Washington, D.C., MSA.

The FUNB Evaluation found that FUNB achieved a good or excellent level of community development lending in 19 of the 21 assessment areas selected by the examiners for full-scope review. In total, FUNB originated 410 community development loans totaling approximately $1.24 billion during the evaluation period. These loans principally supported affordable housing projects, including $30 million to finance the acquisition and renovation of a 1,235-unit multifamily housing complex in Philadelphia; two loans totaling $9.5 million to help develop 870 affordable housing units in Washington, D.C.; and a $110 million loan to an Atlanta-area hospital authority that is the primary provider of health care services for indigent persons in Georgia.

Under the investment test, examiners rated FUNB "outstanding" and concluded that the bank's investments reflected an excellent responsiveness to the needs of its assessment areas. During the evaluation period, FUNB made more than 7,300 qualified community development investments in its assessment areas, totaling approximately $647 million. These investments included equity investments in community development financial institutions and small business investment corporations ("SBICs"), low-income housing tax credits ("LIHTCs"), grants, and financial and in-kind contributions. Among the areas supported by FUNB's community development investments were affordable housing activities, community revitalization and stabilization projects, and job creation programs for LMI

38. Wachovia's other subsidiary depository institutions, Wachovia Trust Company, N.A. and First Union Direct Bank, N.A., are limited-purpose banks that do not accept deposits from the public and are not subject to the CRA.

39. The evaluation period was from January 1, 1997, to December 31, 1999, for lending; for community development loans, investments, and services, the evaluation period extended through September 30, 2000. As part of the FUNB Evaluation, examiners also considered the lending and community development activities of several affiliates of FUNB, including First Union Mortgage Corporation (now Wachovia Mortgage Corporation ("Wachovia Mortgage")) and First Union Home Equity Bank, N.A., both in Charlotte, North Carolina (since merged into Wachovia Bank-DE).

40. At the time of the FUNB Evaluation, FUNB had 104 assessment areas, 21 of which received full-scope reviews. The overall rating for FUNB was a composite of its state/multistate ratings, although examiners placed special emphasis on FUNB's performance in five areas selected as "primary rating areas" based on FUNB's deposits in those areas: Florida, Georgia, New Jersey, North Carolina, and Pennsylvania and Philadelphia.

41. In the FUNB Evaluation, home mortgage lending data included home purchase, refinance, and improvement loans, as well as loans for multifamily dwellings and manufactured housing, reported under HMDA by FUNB and its reviewed affiliates. The data included loans originated and purchased.

42. In the remaining multistate MSA, FUNB's distribution of HMDA-reportable loans by geography income level was described as adequate.

43. "Small loans to business" 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. "Small loans to farms" are farm or agricultural loans with original amounts of $500,000 or less that are secured by farmland or finance agricultural production and other loans to farmers.

individuals. Examiners praised FUNB for its use of complex investments such as LIHTCs in several of its assessment areas and noted that FUNB helped finance various projects instead of simply purchasing the tax credits.

FUNB's performance under the service test was rated "high satisfactory" because of a good distribution of branches that were accessible to geographies and individuals of different income levels and a good level of responsiveness to area needs through community services. Examiners found that, although FUNB had closed branches during the evaluation period, including some in LMI areas, these closures did not have a significantly adverse impact on access to FUNB's services in LMI areas, in part because FUNB had made alternative delivery channels available to individuals and areas of all income levels. Examiners singled out FUNB's "eCommunities First" initiative that it launched in 2000 in partnership with 15 community organizations and the city of Charlotte. This initiative sought to provide computer and financial literacy education to LMI communities, senior citizens, and students.

2. *CRA Performance Record of Old Wachovia Bank*—As noted above, Old Wachovia Bank received an overall rating of "outstanding" from the OCC at its last CRA performance evaluation, including separate "outstanding" ratings for its performance in each of the five states and two multistate MSAs where it operated during the evaluation period.[44] It also received an "outstanding" rating under the lending test, due in part to what examiners considered to be especially strong lending in several MSAs, including Charlotte–Gastonia–Rock Hill, Norfolk–Virginia Beach–Newport News, and Atlanta. Examiners also considered Old Wachovia Bank to have good overall farm lending performance and emphasized that the bank reported more than $2 billion in community development loans during the evaluation period.

Examiners gave separate "outstanding" ratings to Old Wachovia Bank for its lending performance in each of its states and multistate MSAs. During the evaluation period, Old Wachovia Bank made more than 54,500 home mortgage loans, totaling more than $8 billion, throughout its assessment areas.[45] Examiners characterized the distribution of the bank's loans among geographies of different income levels as good in each of the five states and both multistate MSAs.

Examiners commended Old Wachovia Bank and WCDC for offering innovative and flexible loan products, including participating as a Small Business Administration Preferred Lender in North and South Carolina. The evaluation also noted that Old Wachovia Bank's Neighborhood Revitalization Program offered various affordable housing loan products and first-time homebuyer assistance programs.

Old Wachovia Bank made 41,775 small loans to businesses or farms during the evaluation period, for a total of approximately $4 billion. The geographic distribution by income level of the bank's small loans to businesses was found to be good or excellent in each of the nine MSAs where examiners conducted a full-scope review. The distribution of these loans by businesses of different annual revenue levels ranged from adequate to excellent across the nine MSAs.

Old Wachovia Bank's community development lending was considered to be excellent in all geographic areas reviewed, and examiners noted that the bank, together with WCDC, was one of the largest community development lenders on the East Coast. Examiners found that much of the bank's community development lending supported affordable housing needs. The bank's lending financed the creation or retention of more than 9,210 units of affordable housing in the Augusta–Aiken, Charlotte–Gastonia–Rock Hill, Atlanta, and Raleigh–Durham MSAs. Old Wachovia Bank's lending also supported community development services and job creation and retention programs for LMI individuals, including programs that created or retained more than 1,830 such jobs in the Atlanta MSA and almost 1,500 such jobs in the Greenville–Spartanburg MSA.

Examiners also gave Old Wachovia Bank a rating of "outstanding" for performance under the investment test, finding that it had an excellent volume of investments addressing affordable housing and economic development needs in its communities. They also noted favorably that the bank invested in an SBIC pursuing economic development in areas across the bank's geographic footprint, as well as in tax credit investments.

Old Wachovia Bank received a "high satisfactory" rating under the service test portion of the evaluation. Examiners found the bank had a good overall geographic distribution of its branches, particularly in LMI areas. They also viewed the bank as taking a leadership role in providing community development services in each of the nine MSAs selected for full-scope review. These services included workshops and seminars to assist small businesses and homebuyers, housing education and counseling services for LMI families, and technical assistance to community development corporations.

3. *CRA Performance Record of Wachovia Bank-DE*—At its most recent evaluation for CRA performance by the OCC, Wachovia Bank-DE received an overall rating of "satisfactory" and a "high satisfactory" rating for its performance under each of the lending, investment, and service tests.[46]

44. The evaluation period was from January 1, 1998, to December 31, 2000. In reviewing Old Wachovia Bank's community development lending, examiners also included the activities of several of Old Wachovia Bank's affiliates, particularly Wachovia Community Development Corporation, Winston-Salem, North Carolina ("WCDC"). Full-scope reviews were done for nine assessment areas, including both the bank's multistate MSAs and seven other MSAs, with at least one in each of the bank's five states.

45. In the Old Wachovia Bank Evaluation, home mortgage lending data included home purchase, refinance, and improvement loans reported under HMDA by the bank, including loans for multifamily dwellings and manufactured housing. The data included loans originated and purchased.

46. The evaluation period was from January 1, 1999, to December 31, 2000.

Examiners found the bank to have an excellent overall level of lending and a good distribution of loans among borrowers of different income levels. During the evaluation period, Wachovia Bank-DE originated or purchased HMDA-reportable loans totaling $269 million in its three assessment areas and small loans to businesses or farms totaling $67 million. Examiners noted that the bank had developed three home loan products offering flexible terms and conditions, including one requiring no down payment. During the evaluation period, the bank originated loans totaling $34.2 million using these three products.

Wachovia Bank-DE focused its community development lending during the evaluation period on the Wilmington–Newark MSA.[47] Its most significant loan was a $2.65 million loan to construct a charter school in a low-income census tract in downtown Wilmington.

Examiners characterized the bank's performance under the investment test as excellent in both the Dover MSA and the Sussex Non-MSA assessment areas. During the evaluation period, Wachovia Bank-DE made 53 qualified community development investments totaling approximately $743 thousand, which increased its community development investment portfolio to more than $24 million. The bulk of these investments was in the First Union Regional Foundation (now the Wachovia Regional Foundation), which supports economic and community development initiatives designed to help residents of low-income neighborhoods in Delaware, New Jersey, and eastern Pennsylvania.

Wachovia Bank-DE also received a "high satisfactory" rating for its performance under the service test. Examiners found its service delivery systems to be accessible to geographies and individuals in all three of its assessment areas. They noted that the one branch closing during the evaluation period did not adversely affect the accessibility of the bank's delivery systems.

4. *Recent CRA Activities of Wachovia*—Since the FUNB Evaluation and the Old Wachovia Bank Evaluation, Wachovia Bank and its affiliates have continued to serve the convenience and needs of their communities. For example, in 2003 Wachovia provided more than $1.2 billion in community development loans and also delivered financial counseling and education to approximately 16,000 LMI seminar attendees.

Wachovia's recent CRA-related lending programs have focused on affordable housing needs, small business support, and community development. Wachovia's proprietary affordable mortgage products include loans for up to 100 percent of the value of the property and down payments as low as $500, if the purchaser attends a homeownership counseling class. Wachovia also offers mortgage products sponsored or guaranteed by Fannie Mae, the Federal Housing Administration, and the Veterans Administration and has participated in several programs designed to promote home ownership by LMI individuals, such as by providing matching funds for assistance with down payments. Wachovia has also partnered with nonprofit organizations and some local governments to create regional mortgage programs. For example, in May 2003, Wachovia signed an agreement to provide its mortgage loans through minority credit unions to LMI minority borrowers in North Carolina.

Between January 2001 and December 2003, Wachovia made 1,267 community development loans, totaling approximately $3 billion, in the five states where its branches overlap with SouthTrust Bank's branches.[48] These loans financed more than 18,800 affordable housing units. Also included was a $5 million loan (as part of a $25.5 million syndication) to a fund that finances the purchase of farm materials by Virginia farmers with annual revenues of $500,000 or less.[49]

Wachovia's recent community development investments have included direct investments in community development funds, tax credit investments, and investments made by Wachovia's SBIC. As of December 31, 2003, Wachovia held $2.1 billion of community development investments in the five-state overlap area. Wachovia's recent investments in the area have included $30 million in bridge loans to, and a $3 million equity investment in, a Virginia housing fund that lends to and invests in low-income residential rental properties; a $10 million commitment to a fund supporting economic development in Winston-Salem; and $6 million in tax credit investments to an apartment complex for low-income elderly tenants in Macon, Georgia.

Since the FUNB Evaluation and the Old Wachovia Bank Evaluation, Wachovia has continued to sponsor a range of educational programs for prospective homebuyers, small business owners, and nonprofit and community organizations. Among its newer CRA-related services is a pilot program, begun in 2002 in conjunction with state and local authorities and Fannie Mae, that permits federal Section 8 housing assistance vouchers to be used for mortgage payments in 11 of Wachovia Bank's markets.

D. CRA Performance of SouthTrust

As noted above, SouthTrust Bank received a "satisfactory" rating from the Reserve Bank in the SouthTrust Bank

47. One commenter alleged, based on HMDA data and Wachovia's lending relationships with unaffiliated MSBs, that Wachovia was not adequately addressing the convenience and needs of Delaware communities.

48. These states are Florida, Georgia, North Carolina, South Carolina, and Virginia.

49. One commenter alleged that Wachovia and SouthTrust have not provided a sufficient amount of credit to African-American farmers and business owners in their respective markets and have not provided sufficient outreach and support to African-American farmers and community organizations. Wachovia noted that it had in fact provided financial support and technical assistance to many community organizations, including the commenter. The commenter also objected to Wachovia's lack of participation in U.S. Department of Agriculture lending programs. The Board notes that the CRA does not require banks to provide specific kinds of credit products or programs.

Evaluation.[50] The bank was rated "high satisfactory" for performance under the lending test. Examiners found that the bank's lending showed excellent responsiveness to the credit needs of its assessment area and a good record of both HMDA-related lending to borrowers of differing income levels and lending to small businesses.[51] SouthTrust Bank originated or purchased more than 91,100 HMDA-reportable loans in its assessment area during the evaluation period, totaling $11.6 billion, and also made approximately 26,700 small business loans totaling $3.8 billion. The bank made $210.9 million of community development loans during the evaluation period, which examiners considered to be a relatively high level of lending. Examiners also favorably noted SouthTrust Bank's use of flexible lending practices, including the offering of flexible mortgage programs of various state housing finance agencies.

In the SouthTrust Bank Evaluation, the bank received an "outstanding" performance rating under the investment test. Examiners found that it had achieved an excellent level of qualified community development investments and grants and was often in a leadership position in making investments and grants not usually provided by private investors. SouthTrust Bank made a total of $239 million in qualified community development investments in its assessment areas during the evaluation period, which included investments in various state and local housing agency bonds, LIHTCs, mortgage-backed securities, and community development financial institutions. Examiners characterized these investments as demonstrating excellent responsiveness to community credit and development needs. SouthTrust Bank also made approximately $387,000 in charitable contributions to community development organizations during the evaluation period.

SouthTrust Bank received a "high satisfactory" rating for performance under the service test. The bank's delivery systems, including branches and automated teller machines ("ATMs") were considered to be accessible to essentially all portions of the bank's assessment areas.

E. HMDA Data and Fair Lending Records

The Board also has carefully considered the lending records of Wachovia and SouthTrust in light of comments on the HMDA data reported by their subsidiaries.[52] Based on 2002 and 2003 HMDA data, several commenters alleged that Wachovia Bank, Wachovia Bank-DE, Wachovia Mortgage,[53] and SouthTrust Bank disproportionately excluded or denied African-American and Hispanic applicants for home mortgage loans in various MSAs in several states. These commenters asserted that Wachovia's and SouthTrust Bank's denial rates for minority applicants were higher than the rates for nonminority applicants, and that Wachovia's denial disparity ratios compared unfavorably with those ratios for the aggregate of all lenders ("aggregate lenders") in certain MSAs.[54]

The 2003 data indicate that Wachovia's denial disparity ratios[55] for African-American and Hispanic applicants for HMDA-reportable loans overall were slightly less favorable than or exceeded those ratios for the aggregate lenders in all markets reviewed. Wachovia's percentages of total HMDA-reportable loans to African-American and Hispanic borrowers generally were slightly less favorable than or exceeded the total percentages for the aggregate lenders in most of the areas reviewed. Moreover, Wachovia's percentage of total HMDA-reportable loans to borrowers in minority census tracts generally was comparable with or exceeded the total percentages for the aggregate lenders in the areas reviewed.[56]

The 2003 data indicate that SouthTrust's denial disparity ratios for African-American and Hispanic applicants for HMDA-reportable loans generally were comparable with those ratios for the aggregate lenders in a number of the areas reviewed, although in several states and MSAs SouthTrust's ratios were less favorable than those of the aggregate lenders. The data also indicate that in the majority of these areas SouthTrust's percentage of originations to African-American applicants was below the percentage for the aggregate lenders, while its percentage of originations to Hispanic applicants was either slightly less favorable or more favorable than the aggregate lenders' percentage in approximately half of the markets. However, SouthTrust originated HMDA-reportable loans to African-American and Hispanic borrowers at rates comparable with or exceeding those of the aggregate lenders in most of the states and MSAs reviewed.

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups in certain local areas, the HMDA data generally do not indicate that Wachovia or SouthTrust is excluding any racial group or geographic area on a prohibited basis. The Board nevertheless is concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound

50. The evaluation period was from January 1, 2001, through December 31, 2002.

51. In this context, small businesses are those with gross annual revenues of $1 million or less.

52. The Board analyzed 2002 and 2003 HMDA data for Wachovia Bank; Wachovia Bank-DE; First Union Mortgage Corporation; SouthTrust Bank; SouthTrust Mortgage Corporation, Birmingham, Alabama ("SouthTrust Mortgage"); and Founders National Bank-Skillman, Dallas, Texas, which was merged into SouthTrust Bank in 2003. The Board has reviewed HMDA-reportable originations in each of the states served by the banks, the assessment area of the MSA in which each bank's headquarters is located, as well as in their respective assessment areas in MSAs identified by the commenters.

53. The data for Wachovia Bank and Wachovia Bank-DE included Wachovia Mortgage's reported loans in the markets reviewed. Wachovia Mortgage is a subsidiary of Wachovia Bank.

54. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular area.

55. The denial disparity ratio equals the denial rate for a particular racial category (e.g., African-American) divided by the denial rate for whites.

56. For purposes of this HMDA analysis, a minority census tract means a census tract with a minority population of 80 percent or more.

lending, but also equal access to credit by creditworthy applicants regardless of their race. The Board recognizes, however, that HMDA data alone provide an incomplete measure of an institution's lending in its community because these data cover only a few categories of housing-related lending. HMDA data, moreover, provide only limited information about the covered loans.[57] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has not assisted adequately in meeting its community's credit needs or has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully in light of other information. This includes examination reports that provide an on-site evaluation of compliance by the subsidiary depository institutions of Wachovia and SouthTrust with fair lending laws.

Importantly, examiners noted no fair lending issues or concerns in the performance evaluations of the depository institutions controlled by Wachovia or SouthTrust. The record also indicates that Wachovia has taken steps to ensure compliance with fair lending laws. Wachovia has instituted corporate-wide policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Wachovia's compliance program incorporates logistic regression testing, policy and procedure review, mystery shopping, and employee training. Its internal fair lending analysis covers the lending process from a review of marketing initiatives through servicing and collection practices. Customer-contact employees receive fair lending training through internal communications, policy manuals, and interactive computer-based training. Wachovia also maintains a Corporate Fair Lending Steering Committee, which is chaired by Wachovia's Chief Risk Officer, and includes the heads of all major business units, as well as the heads of the Credit Risk, Legal, Internal Audit, Compliance, and Community Development units. Wachovia has indicated that its fair lending program would be adopted by the combined organization following the proposed merger.

The record also indicates that SouthTrust has policies and procedures intended to ensure compliance with fair lending laws. For example, SouthTrust uses a centralized underwriting process for all consumer and mortgage loans, which largely eliminates the ability of individual loan officers to give disparate treatment to similarly situated credit applicants. Both SouthTrust Bank and SouthTrust Mortgage review declined applications for HMDA-reportable loans twice to ensure that the applicant has received the proper consideration before declining the loan. SouthTrust's compliance program also includes statistical testing of HMDA data for SouthTrust Bank and SouthTrust Mortgage; review of compliance procedures and controls, as well as transaction testing, by SouthTrust's internal audit department; and training.

The Board also has considered the HMDA data in light of the programs described above and the overall performance records of Wachovia's and SouthTrust's subsidiary banks under the CRA. These established efforts demonstrate that the banks are active in helping to meet the credit needs of their entire communities.

F. Branch Closures

Two commenters expressed concern about the effect of branch closings that might result from this proposal. Wachovia has stated that it plans to close or consolidate 130 to 150 branches as a result of this proposal, but that these actions would not leave any markets without service. Wachovia has represented that it will not close any branches in LMI census tracts in markets affected by the proposed merger before the end of the first quarter of 2006.

The Board has reviewed Wachovia's branch closing policy. The policy requires Wachovia to consider possible alternatives to branch closings, including adjusting hours, services, and facilities, and to examine methods of minimizing adverse effects on the community affected by the potential closure. The policy requires that, before a final decision is made to close a branch, management must conduct an impact study to assess the likely effects of any closure. If the branch under review is in an LMI area, the impact study must include concerns and ideas from the local community and an assessment of the closure's potential impact on customers and other possible ways the community's credit needs will be met.

As noted, the most recent CRA performance evaluations of Wachovia and SouthTrust's insured depository institutions have each concluded that the institutions' records of opening and closing branches has not adversely affected the level of services available in LMI areas. The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings.[58] Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch. In addition, the Board notes that the Board and the OCC, as the appropriate federal supervisors of SouthTrust Bank and Wachovia's subsidiary banks, respectively, will continue to review the banks' branch closing records in the course of conducting CRA performance evaluations.

57. 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. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

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

G. Other Matters

As part of the proposed merger, Wachovia has announced a $75 billion, five-year community development plan for the states affected by the merger, including Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Many commenters mentioned the plan, with most praising it as indicative of Wachovia's commitment to the communities it serves. Two commenters, however, expressed concerns about the community development plan, arguing that the size of the plan is too small relative to the size of the proposed merger. Another commenter alleged that Wachovia has not abided by the terms of a community development pledge made in connection with a prior merger.

As the Board previously has explained, in order to approve a proposal to acquire an insured depository institution, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future action.[59] Moreover, the Board has consistently stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. The Board views the enforceability of pledges, initiatives, and agreements with third parties as matters outside the scope of the CRA.[60]

In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas when the Board reviews the proposal under the convenience and needs factor. In reviewing future applications by Wachovia under this factor, the Board similarly will review Wachovia's actual CRA performance record at that time and the programs it has in place to meet the credit needs of its communities at the time of such review.

H. Conclusion on Convenience and Needs Considerations

The Board recognizes that this proposal represents a significant expansion of Wachovia and its scope of operations. Accordingly, an important component of the Board's review is the effects of the proposal on the convenience and needs of all the communities served by Wachovia and SouthTrust.

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Wachovia, public comments on the proposal, and confidential supervisory information. As discussed in this order, the record demonstrates that the subsidiary depository institutions of Wachovia and SouthTrust have strong records of meeting the credit needs of their communities. The Board expects the resulting organization to continue to help serve the banking and credit needs of all its communities, including LMI neighborhoods. The Board notes that the proposal would expand the availability of banking products and services to customers of Wachovia and SouthTrust, for example by making Wachovia's broader range of affordable mortgage products available to SouthTrust customers. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations related to the convenience and needs factor, including the CRA performance records of the relevant depository institutions, are consistent with approval.

Foreign Activities

As noted above, Wachovia also proposes to acquire SouthTrust International, Inc., the agreement corporation subsidiary of SouthTrust of Alabama. The Board has concluded that all the factors required to be considered under section 25 of the Federal Reserve Act and section 211.5 of Regulation K are consistent with approval.[61]

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[62] 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 Wachovia with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this transaction, these conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

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

60. *See, e.g.*, Bank of America Order at 233; Citigroup Inc., 88 *Federal Reserve Bulletin* 485, 488 n.18 (2002).

61. 12 CFR 211.5.

62. Several commenters requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully the commenters' requests in light of all the facts of record. In the Board's view, the commenters had ample opportunity to submit their views and submitted written comments that the Board has carefully considered in acting on the proposal. The commenters' requests fail to demonstrate why written comments do not present their evidence adequately and fail to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

The merger with SouthTrust and the acquisition of SouthTrust Bank may not be consummated before the fifteenth 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 Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective October 15, 2004.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Olson, Bernanke, and Kohn. Absent and not voting: Governor Bies.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix A

Banking Markets Where Wachovia's and SouthTrust's Subsidiary Depository Institutions Compete Directly

Florida

Brevard

Brevard County.

Daytona Beach

Flagler County; the towns of Allandale, Daytona Beach, Daytona Beach Shores, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ormond-by-the-Sea, Pierson, Port Orange, and South Daytona in Volusia County; and the town of Astor in Lake County.

Fort Myers

Lee County, excluding Gasparilla Island (the town of Boca Grande), and including the town of Immokalee in Collier County.

Fort Pierce

Martin County, excluding the towns of Indiantown and Hobe Sound, and St. Lucie County.

Fort Walton Beach

Okaloosa and Walton Counties and the town of Ponce de Leon in Holmes County.

Gainesville

Alachua, Gilchrist, and Levy Counties.

Highlands

Highlands County.

Indian River

Indian River County.

Jacksonville (Florida and Georgia)

Baker, Clay, Duval, and Nassau Counties; the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, and Switzerland in St. Johns County; and the city of Folkston in Charlton County, Georgia.

Miami–Fort Lauderdale

Broward and Dade Counties.

Naples

Collier County, excluding the town of Immokalee.

North Lake/Sumter

Lake County, excluding the towns of Astor, Clermont, and Groveland, and Sumter County.

Ocala

Marion County and the town of Citrus Springs in Citrus County.

Orlando

Orange, Osceola, and Seminole Counties; the western half of Volusia County; and the towns of Clermont and Groveland in Lake County.

Pensacola

Escambia and Santa Rosa Counties.

Polk

Polk County.

Punta Gorda

The portion of Charlotte County that is east of the harbor or east of the Myakka River, and the portion of Sarasota County that is both east of the Myakka River and south of Interstate 75 (currently, the towns of Northport and Port Charlotte).

St. Augustine

St. Johns County, excluding the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, and Switzerland.

Sarasota

Manatee and Sarasota Counties, excluding that portion of Sarasota County that is both east of the Myakka River and south of Interstate 75 (currently the towns of Northport and Port Charlotte); the peninsular portion of Charlotte County west of the Myakka River (currently the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West, and Placido); and Gasparilla Island (the town of Boca Grande) in Lee County.

Tallahassee

Leon County and the towns of Quincy and Havana in the eastern half of Gadsden County.

Tampa Bay

Hernando, Hillsborough, Pinellas, and Pasco Counties.

West Palm Beach

The portion of Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County.

Georgia

Athens

Barrow County, excluding the towns of Auburn and Winder, and Clarke, Jackson, Madison, Oconee, and Oglethorpe Counties.

Atlanta

Bartow County; the towns of Auburn and Winder in Barrow County; Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton Counties; Hall County, excluding the town of Clermont; and the town of Luthersville in Meriwether County.

Augusta (Georgia and South Carolina)

Columbia, McDuffie, and Richmond Counties in Georgia, and Aiken and Edgefield Counties in South Carolina.

Columbus (Georgia and Alabama)

Chattahoochee, Harris, and Muscogee Counties in Georgia; the towns of Junction City, Geneva, and Box Springs in Talbot County; and Russell County and the portion of Lee County, both in Alabama, that is within 12 road miles of Phoenix City, Alabama, or Columbus, Georgia.

Dalton

Murray and Whitfield Counties.

North Carolina

Charlotte–Rock Hill (North Carolina and South Carolina)

The Charlotte–Rock Hill Ranally Metropolitan Area ("RMA") and the non-RMA portion of Cabarrus County in North Carolina.

Greensboro–High Point

The Greensboro–Highpoint RMA and the non-RMA portions of Davidson and Randolph Counties, excluding the Winston-Salem RMA portion of Davidson County.

Raleigh

The Raleigh RMA; the non-RMA portions of Franklin, Johnston, and Wake Counties; and Harnett County, excluding the Fayetteville RMA portion.

Rutherford

Rutherford County.

Salisbury

The Salisbury RMA and the non-RMA portion of Rowan County, excluding the Charlotte–Rock Hill RMA portion of Rowan County.

Shelby

Cleveland County, excluding the Charlotte-Rock Hill RMA portion.

Transylvania

Transylvania County.

South Carolina

Charleston

The Charleston RMA and the non-RMA portions of Berkeley and Charleston Counties.

Columbia

The Columbia RMA and the non-RMA portions of Fairfield, Lexington, and Richland Counties.

Greenville

The Greenville RMA and the non-RMA portions of Greenville and Pickens Counties.

Spartanburg

The RMA and non-RMA portions of Spartanburg County, excluding the Greenville RMA portion of Spartanburg County.

Virginia

Newport News–Hampton

The Newport News–Hampton RMA; the non-RMA portion of James City County; Mathews County; and the independent cities of Hampton, Newport News, Poquoson, and Williamsburg.

Norfolk–Portsmouth (Virginia and North Carolina)

The Norfolk–Portsmouth RMA; the independent cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach; and Currituck County in North Carolina.

Richmond

The Richmond RMA; the non-RMA portions of Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, Powhatan, and Prince George Counties; the independent cities of Colonial Heights, Hopewell, Petersburg, and Richmond; Amelia, Charles City, King and Queen, King William, and New Kent Counties; and the town of Mineral in Louisa County.

Appendix B

Market Data for Certain Banking Markets without Divestitures

I. Unconcentrated Banking Markets

Florida

Fort Walton Beach

Wachovia operates the 18th largest depository institution in the market, controlling deposits of approximately $28.4 million, which represent 1 percent of market deposits. SouthTrust operates the 11th largest depository institution in the market, controlling deposits of approximately $104.4 million, which represent 3.7 percent of market deposits. On consummation of the proposal, Wachovia would operate the eighth largest depository institution in the market, controlling deposits of approximately $132.8 million, which represent 4.7 percent of market deposits. Twenty-one depository institutions would remain in the market. The HHI would increase 8 points to 810.

Miami–Fort Lauderdale

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately $11.8 billion, which represent 15.5 percent of market deposits. SouthTrust operates the tenth largest depository institution in the market, controlling deposits of approximately $1.7 billion, which represent 2.2 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the second largest depository institution in the market, controlling deposits of approximately $13.5 billion, which represent 17.7 percent of market deposits. Ninety-six depository institutions would remain in the banking market. The HHI would increase 68 points to 988.

Georgia

Athens

Wachovia operates the eighth largest depository institution in the market, controlling deposits of approximately $119 million, which represent 4.3 percent of market deposits. SouthTrust operates the 13th largest depository institution in the market, controlling deposits of approximately $79.9 million, which represent 2.9 percent of market deposits. On consummation of the proposal, Wachovia would operate the sixth largest depository institution in the market, controlling deposits of approximately $198.9 million, which represent 7.2 percent of market deposits. Nineteen depository institutions would remain in the banking market. The HHI would increase 24 points to 943.

II. Moderately Concentrated Banking Markets

Florida

Brevard

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $1.32 billion, which represent 26.5 percent of market deposits. SouthTrust operates the 18th largest depository institution in the market, controlling deposits of approximately $26.6 million, which represent less than 1 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $1.35 billion, which represent 27 percent of market deposits. Nineteen depository institutions would remain in the banking market. The HHI would increase 29 points to 1568.

Fort Myers

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately $1.04 billion, which represent 14.2 percent of market deposits. SouthTrust operates the fifth largest depository institution in the market, controlling deposits of approximately $460 million, which represent 6.3 percent of market deposits. On consummation of the proposal, Wachovia would operate the second largest depository institution in the market, controlling deposits of approximately $1.5 billion, which represent 20.5 percent of market deposits. Twenty-seven depository institutions would remain in the banking market. The HHI would increase 178 points to 1268.

Fort Pierce

Wachovia operates the fourth largest depository institution in the market, controlling deposits of approximately $577.5 million, which represent 13.6 percent of market deposits. SouthTrust operates the 14th largest depository institution in the market, controlling deposits of approximately $51.2 million, which represent 1.2 percent of market deposits. On consummation of the proposal, Wachovia would operate the third largest depository institution in the market, controlling deposits of approximately $628.7 million, which represent 14.8 percent of market deposits.

Sixteen depository institutions would remain in the banking market. The HHI would increase 33 points to 1292.

Gainesville

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $507 million, which represent 20.5 percent of market deposits. SouthTrust operates the tenth largest depository institution in the market, controlling deposits of approximately $95.8 million, which represent 3.9 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $602.8 million, which represent 24.4 percent of market deposits. Fourteen depository institutions would remain in the banking market. The HHI would increase 159 points to 1242.

Highlands

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately $200.2 million, which represent 16.7 percent of market deposits. SouthTrust operates the seventh largest depository institution in the market, controlling deposits of approximately $49.1 million, which represent 4.1 percent of market deposits. On consummation of the proposal, Wachovia would operate the second largest depository institution in the market, controlling deposits of approximately $249.3 million, which represent 20.8 percent of market deposits. Ten depository institutions would remain in the banking market. The HHI would increase 137 points to 1737.

Indian River

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $632.2 million, which represent 25.2 percent of market deposits. SouthTrust operates the ninth largest depository institution in the market, controlling deposits of approximately $113.4 million, which represent 4.5 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $745.6 million, which represent 29.7 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase 228 points to 1461.

Naples

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately $990.9 million, which represent 15 percent of market deposits. SouthTrust operates the 14th largest depository institution in the market, controlling deposits of approximately $107 million, which represent 1.6 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the second largest depository institution in the market, controlling deposits of approximately $1.1 billion, which represent 16.6 percent of market deposits. Thirty-two depository institutions would remain in the banking market. The HHI would increase 48 points to 1073.

North Lake/Sumter

Wachovia operates the fourth largest depository institution in the market, controlling deposits of approximately $293.1 million, which represent 10.3 percent of market deposits. SouthTrust operates the tenth largest depository institution in the market, controlling deposits of approximately $91.2 million, which represent 3.2 percent of market deposits. On consummation of the proposal, Wachovia would operate the third largest depository institution in the market, controlling deposits of approximately $384.3 million, which represent 13.5 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase 66 points to 1375.

Ocala

Wachovia operates the fourth largest depository institution in the market, controlling deposits of approximately $284.6 million, which represent 9.2 percent of market deposits. SouthTrust operates the fifth largest depository institution in the market, controlling deposits of approximately $273.7 million, which represent 8.8 percent of market deposits. On consummation of the proposal, Wachovia would operate the second largest depository institution in the market, controlling deposits of approximately $558.3 million, which represent 18 percent of market deposits. Twenty-one depository institutions would remain in the banking market. The HHI would increase 161 points to 1425.

Pensacola

Wachovia operates the sixth largest depository institution in the market, controlling deposits of approximately $277.6 million, which represent 7.3 percent of market deposits. SouthTrust operates the 12th largest depository institution in the market, controlling deposits of approximately $82 million, which represent 2.2 percent of market deposits. On consummation of the proposal, Wachovia would operate the fifth largest depository institution in the market, controlling deposits of approximately $359.6 million, which represent 9.5 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase 31 points to 1070.

Sarasota

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately $1.1 billion, which represent 9.1 percent of market deposits. SouthTrust operates the fourth largest depository institution in the market, controlling deposits of approximately $1 billion, which represent 8.4 percent of market deposits. On consummation of the proposal, Wachovia would operate the second largest depository institution in the market, controlling deposits of approximately $2.1 billion, which represent 17.5 percent of market deposits. Thirty-nine depository institutions would remain in the banking market. The HHI would increase 153 points to 1310.

Tallahassee

Wachovia operates the fourth largest depository institution in the market, controlling deposits of approximately $379.4 million, which represent 11.2 percent of market deposits. SouthTrust operates the 11th largest depository institution in the market, controlling deposits of approximately $89.6 million, which represent 2.6 percent of market deposits. On consummation of the proposal, Wachovia would operate the third largest depository institution in the market, controlling deposits of approximately $469 million, which represent 13.8 percent of market deposits. Thirteen depository institutions would remain in the banking market. The HHI would increase 59 points to 1380.

Tampa Bay

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately $4.8 billion, which represent 14 percent of market deposits. SouthTrust operates the fourth largest depository institution in the market, controlling deposits of approximately $2.8 billion, which represent 8.2 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the second largest depository institution in the market, controlling deposits of approximately $7.6 billion, which represent 22.2 percent of market deposits. Fifty-four depository institutions would remain in the banking market. The HHI would increase 230 points to 1493.

West Palm Beach

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $5.8 billion, which represent 26.7 percent of market deposits. SouthTrust operates the seventh largest depository institution in the market, controlling deposits of approximately $713.6 million, which represent 3.3 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $6.5 billion, which represent 30 percent of market deposits. Fifty-four depository institutions would remain in the banking market. The HHI would increase 175 points to 1529.

Georgia

Atlanta

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $16.6 billion, which represent 23.8 percent of market deposits. SouthTrust operates the fourth largest depository institution in the market, controlling deposits of approximately $4.6 billion, which represent 6.5 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $21.2 billion, which represent 30.3 percent of market deposits. One hundred and one depository institutions would remain in the banking market. The HHI would increase 309 points to 1715.

Dalton

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $358.8 million, which represent 22 percent of market deposits. SouthTrust operates the 12th largest depository institution in the market, controlling deposits of approximately $19.7 million, which represent 1.2 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $378.5 million, which represent 23.2 percent of market deposits. Twelve depository institutions would remain in the banking market. The HHI would increase 53 points to 1443.

North Carolina

Greensboro–High Point

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $2.5 billion, which represent 26.7 percent of market deposits. SouthTrust operates the 18th largest depository institution in the market, controlling deposits of approximately $51.1 million, which represent less than 1 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $2.6 billion, which represent 27.3 percent of market deposits. Twenty-six depository institutions would remain in the banking market. The HHI would increase 29 points to 1366.

Raleigh

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $2.95 billion, which represent 26.4 percent of market deposits. SouthTrust operates the 13th largest depository institution in the market, controlling deposits of approximately $171.2 million, which represent 1.5 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $3.1 billion, which represent 27.9 percent of market deposits. Twenty-two depository institutions would remain in the banking market. The HHI would increase 81 points to 1457.

South Carolina

Charleston

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $1.2 billion, which represent 24.6 percent of market deposits. SouthTrust operates the eighth largest depository institution in the market, controlling deposits of approximately $217.7 million, which represent 4.5 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $1.4 billion, which represent 29.1 percent of market deposits. Eighteen depository institutions would remain in the banking market. The HHI would increase 220 points to 1564.

Columbia

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $2.1 billion, which represent 28.4 percent of market deposits. SouthTrust operates the eighth largest depository institution in the market, controlling deposits of approximately $95.5 million, which represent 1.3 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $2.2 billion, which represent 29.7 percent of market deposits. Seventeen depository institutions would remain in the banking market. The HHI would increase 73 points to 1724.

Greenville

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $1.6 billion, which represent 21.2 percent of market deposits. SouthTrust operates the 16th largest depository institution in the market, controlling deposits of approximately $68.3 million, which represent less than 1 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $1.7 billion, which represent 22.1 percent of market deposits. Twenty-seven depository institutions would remain in the banking market. The HHI would increase 38 points to 1256.

Spartanburg

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately $388.5 million, which represent 15.7 percent of market deposits. SouthTrust operates the 15th largest depository institution in the market, controlling deposits of approximately $9.2 million, which represent less than 1 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the third largest depository institution in the market, controlling deposits of approximately $397.7 million, which represent 16 percent of market deposits. Fourteen depository institutions would remain in the banking market. The HHI would increase 12 points to 1150.

Virginia

Newport News–Hampton

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately $672.1 million, which represent 17.5 percent of market deposits. SouthTrust operates the eighth largest depository institution in the market, controlling deposits of approximately $107.2 million, which represent 2.8 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the second largest depository institution in the market, controlling deposits of approximately $779.3 million, which represent 20.3 percent of market deposits. Sixteen depository institutions would remain in the banking market. The HHI would increase 98 points to 1504.

Norfolk–Portsmouth (Virginia and North Carolina)

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately $2 billion, which represent 20 percent of market deposits. SouthTrust operates the fifth largest depository institution in the market, controlling deposits of approximately $757.1 million, which represent 7.5 percent of market deposits. On consummation of the proposal, Wachovia would operate the largest depository institution in the market, controlling deposits of approximately $2.8 billion, which represent 27.5 percent of market deposits. Twenty-one depository institutions would remain in the banking market. The HHI would increase 299 points to 1624.

III. Highly Concentrated Banking Markets

Florida

St. Augustine

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately $149.4 million, which represent 15.4 percent of market deposits. SouthTrust operates the seventh largest depository institution in the market, controlling deposits of approximately $36.8 million, which represent 3.8 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the third largest depository institution in the market, controlling deposits of approximately $186.2 million, which represent 19.2 percent of market deposits. Twelve depository institutions would remain in the banking market. The HHI would increase 117 points to 2000.

Georgia

Columbus (Georgia and Alabama)

Wachovia operates the fourth largest depository institution in the market, controlling deposits of approximately $288.1 million, which represent 9.3 percent of market deposits. SouthTrust operates the third largest depository institution in the market, controlling deposits of approximately $328.1 million, which represent 10.6 percent of market deposits. On consummation of the proposal, Wachovia would operate the second largest depository institution in the market, controlling deposits of approximately $616.2 million, which represent 19.9 percent of market deposits. Ten depository institutions would remain in the banking market. The HHI would increase 198 points to 3252.

North Carolina

Rutherford

Wachovia operates the second largest depository institution in the market, controlling deposits of approximately $122.9 million, which represent 19.2 percent of market deposits. SouthTrust operates the seventh largest depository institution in the market, controlling deposits of approximately $31.3 million, which represent 4.9 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the second largest depository institution in the market, controlling deposits of approximately $154.2 million, which represent 24.1 percent of market deposits. Seven depository institutions would remain in the banking market. The HHI would increase 189 points to 2153.

Salisbury

Wachovia operates the third largest depository institution in the market, controlling deposits of approximately $182.5 million, which represent 21 percent of market deposits. SouthTrust operates the ninth largest depository institution in the market, controlling deposits of approximately $15.2 million, which represent 1.7 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the third largest depository institution in the market, controlling deposits of approximately $197.7 million, which represent 22.7 percent of market deposits. Ten depository institutions would remain in the banking market. The HHI would increase 70 points to 2221.

Shelby

Wachovia operates the sixth largest depository institution in the market, controlling deposits of approximately $32.4 million, which represent 4.1 percent of market deposits. SouthTrust operates the eighth largest depository institution in the market, controlling deposits of approximately $11.7 million, which represent 1.5 percent of market deposits. On consummation of the proposal, Wachovia would operate the fifth largest depository institution in the market, controlling deposits of approximately $44.1 million, which represent 5.6 percent of market deposits. Eight depository institutions would remain in the banking market. The HHI would increase 112 points to 2772.

Virginia

Richmond

Wachovia operates the largest depository institution in the market, controlling deposits of approximately $5.2 billion, which represent 27 percent of market deposits. SouthTrust operates the seventh largest depository institution in the market, controlling deposits of approximately $307.8 million, which represent 1.6 percent of market deposits. On consummation of the proposal, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $5.5 billion, which represent 28.6 percent of market deposits. Twenty-seven depository institutions would remain in the banking market. The HHI would increase 87 points to 2031.

Appendix C

Market Data for Certain Banking Markets with Divestitures

Orlando, Florida

Wachovia operates the third largest depository organization in the market, controlling deposits of $2.7 billion, which represent approximately 13.5 percent of market deposits. SouthTrust is the fifth largest depository organization in the market, controlling deposits of approximately $795.6 million, which represent approximately 3.9 percent of market deposits. Wachovia proposes to divest one SouthTrust branch in the De Land RMA portion of the banking market to either an out-of-market depository organization or an in-market depository organization that has less than 2 percent of total deposits in the market. This branch had deposits of approximately $63.9 million as of June 30, 2003. After the proposed divestiture and on consummation of the merger, Wachovia would continue to operate the third largest depository organization in the market, controlling deposits of approximately $3.4 billion, which represent approximately 17.1 percent of market deposits. The HHI would increase by 96 points to 1555. At least 44 depository institutions would remain in the market.

Augusta (Georgia and South Carolina)

Wachovia operates the largest depository organization in the market, controlling deposits of $1.2 billion, which represent approximately 26.1 percent of market deposits. SouthTrust is the sixth largest depository organization in the market, controlling deposits of approximately $389.3 million, which represent approximately 8.5 percent of market deposits. Wachovia proposes to divest three SouthTrust branches in the Augusta RMA portion of the banking market to an out-of-market depository organization. These branches had deposits of approximately $127 million as of June 30, 2003. Wachovia has committed to divest not less than $105 million in deposit liabilities. After the proposed divestitures and on consummation of the merger, Wachovia would continue to operate the largest depository institution in the market, controlling deposits of approximately $1.5 billion, which represent approximately 32.3 percent of market deposits. The HHI would increase by not more than 361 points and would not exceed 1764. At least 13 depository institutions would remain in the market.

Orders Issued Under Sections 3 and 4 of the Bank Holding Company Act

Park National Corporation
Newark, Ohio

Order Approving the Acquisition of a Savings Association and Control of a Bank

Park National Corporation ("Park"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y[1] to merge with First Federal Bancorp, Inc. ("First Federal") and thereby acquire its wholly owned federal savings bank, First Federal Savings Bank of Eastern Ohio ("FFSB"), both in Zanesville, Ohio. Park also has requested the Board's approval under section 3 of the BHC Act to control Century National Bank, Zanesville, Ohio, after FFSB converts to a national bank and merges with one of Park's existing bank subsidiaries.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (69 *Federal Register* 55,632 and 60,152 (2004)). 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 sections 3 and 4 of the BHC Act.

Park, with total consolidated assets of $5.1 billion, is the 11th largest depository organization in Ohio, controlling deposits of $3.5 billion.[3] First Federal, with total consolidated assets of $258.4 million, is the 75th largest depository organization in Ohio, controlling deposits of $183.6 million. On consummation of the proposal and after accounting for the divestiture discussed in this order, Park would remain the 11th largest depository organization in Ohio, controlling deposits of $3.7 billion, which represent approximately 1.9 percent of the total deposits in insured depository institutions in the state.

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.[4] The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act. Park has committed to conform all the activities of FFSB to those permissible under section 4(c)(8) and Regulation Y.

Section 4(j)(2)(A) of the BHC Act requires the Board to determine that Park's acquisition of First Federal "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."[5] As part of its evaluation of a proposal 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 proposed transaction. In acting on notices to acquire a savings association, the Board also reviews the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[6]

Competitive Considerations

As part of its review under section 3 of the BHC Act and its consideration of the public interest factors under section 4 of the BHC Act, the Board has considered carefully the competitive effects of the proposal in light of all the facts of record.[7] Park and First Federal compete directly in the Coshocton and Muskingum, Ohio banking markets.[8] The Board has reviewed carefully the competitive effects of the proposal in these banking markets in light of all the facts of record, including the number of competitors that would remain in the market, the relative share of total deposits in depository institutions in the market ("market

1. 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.
2. 12 U.S.C. § 1842(c)(3). Park proposes to acquire FFSB through a series of transactions. After Park's merger with First Federal, FFSB will convert to a national bank ("New National Bank"), and Park's wholly owned subsidiary, Century National Bank, will merge into New National Bank, with New National Bank as the surviving institution to be known as Century National Bank. Park has filed an application with the Office of the Comptroller of the Currency ("OCC") for approval of the proposed conversion and merger transactions.
3. Asset and deposit data are as of June 30, 2004, and reflect merger and acquisition activity through October 29, 2004. In this context, depository institutions include commercial banks, savings banks, and savings associations.
4. 12 CFR 225.28(b)(4)(ii).
5. 12 U.S.C. § 1843(j)(2)(A).
6. 12 U.S.C. § 2901 et seq.
7. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).
8. The Muskingum, Ohio banking market recently has been renamed the Zanesville, Ohio banking market.

deposits") that Park would control,[9] the concentration level of market deposits and the increase in this level as measured by the Herfindahl–Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[10] and other characteristics of the markets.

Although the Coshocton market[11] would remain highly concentrated after consummation of the proposal, the increase in the post-merger HHI would be consistent with the DOJ Guidelines and Board precedent.[12] Five competitors would remain in the banking market.

In the Muskingum banking market, Park is the second largest depository organization, controlling $259.7 million of deposits, which represents approximately 21.4 percent of market deposits.[13] First Federal is the sixth largest depository organization in the market, controlling approximately $79.8 million in deposits, which represents approximately 6.6 percent of market deposits. To mitigate the potentially adverse competitive effects of the proposal in the Muskingum banking market, Park has committed to divest one branch in the market with at least $12.98 million in deposits to an out-of-market depository organization.[14] On consummation of the proposal and after accounting for the proposed divestiture, Park would remain the second largest depository organization in the market, controlling approximately $406.3 million of deposits, which represents approximately 31.4 percent of market deposits. The HHI would increase by not more than 237 points and would not exceed 2816.

A number of factors indicate that the proposal is not likely to have a significantly adverse effect on competition in the Muskingum banking market. After the proposed divestiture to an out-of-market depository organization, eight depository institutions would remain in the market. Moreover, the largest bank competitor would control more than 40 percent of market deposits and operate a large number of branches. Four additional bank competitors including Park would control more than 5 percent of market deposits. One bank entered the market de novo in 2000, and the Muskingum market has economic characteristics that suggest it is moderately attractive for new entry. Per capita income in 2002 and deposit growth between 2000 and 2003 exceeded the averages for nonmetropolitan counties in the state.

The Department of Justice has reviewed the proposal and advised the Board that consummation is not likely to have a significantly adverse effect on competition in the Muskingum banking market. The other federal banking agencies also have been afforded an opportunity to comment on the proposal and have not objected.

Based on these and all other facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in the Coshocton and Muskingum banking markets or any other relevant banking market and that competitive considerations are consistent with approval.

Financial and Managerial Resources and Future Prospects

In reviewing the proposal under sections 3 and 4 of the BHC Act, the Board has carefully considered the financial and managerial resources and future prospects of Park and First Federal and their respective subsidiaries. The Board also has reviewed the effect the transaction would have on those resources in light of all the facts of record. The Board's review of these factors has considered, among other things, confidential reports of examination and other supervisory information received from the primary federal supervisors of the organizations involved, as well as publicly reported and other financial information provided by Park and First Federal. In addition, the Board has consulted with the relevant supervisory agencies, including the Office of Thrift Supervision ("OTS").

9. Market share data are based on calculations in which the deposits of thrift institutions are included at 50 percent before consummation. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group,* 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation,* 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the calculation of market share on a 50 percent weighted basis. Because FFSB's deposits are being acquired by a commercial banking organization, they are included at 100 percent in the calculation of Park's post-consummation share of market deposits. *See Norwest Corporation,* 78 *Federal Reserve Bulletin* 452 (1992); *First Banks, Inc.,* 76 *Federal Reserve Bulletin* 669 (1990).

10. Under these guidelines, 49 *Federal Register* 26,823 (1984), a market is considered 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 by more than 200 points. The Department of Justice has stated that the higher than normal thresholds for an increase in the HHI when screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

11. The Coshocton banking market is defined as Coshocton County, Ohio.

12. Park operates the fifth largest depository institution in the market, controlling deposits of approximately $20.8 million, which represent 6 percent of market deposits. First Federal operates the sixth largest depository institution in the market, controlling deposits of $7.4 million, which represent 2.1 percent of market deposits. On consummation of the proposal, Park would remain the fifth largest depository institution in the market, controlling deposits of $35.5 million, which represent 10 percent of market deposits. The HHI would decrease by 34 points to 2291.

13. The Muskingum banking market is defined as Muskingum County and Harrison Township in Perry County, all in Ohio.

14. Park has committed that, before consummating the proposed merger, it will execute an agreement for the proposed divestiture in the Muskingum market, consistent with this order, with a purchaser determined by the Board to be competitively suitable. Park also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, Park has committed that, if it is unsuccessful in completing the proposed divestiture within such time period, it will transfer the unsold branch to an independent trustee that will be instructed to sell such branch 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 to the Board. *See BankAmerica Corporation,* 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation,* 77 *Federal Reserve Bulletin* 484 (1991).

Park and its subsidiary insured depository institutions are well capitalized and would remain so on consummation of the proposal. The merger would be effected by a cash purchase of First Federal's shares and outstanding stock options. Park has represented that it will fund the merger through the liquidation of a portion of its investment portfolio and would not incur debt to consummate the proposal.

The Board also has considered the managerial resources of Park, First Federal, and FFSB, particularly in light of the supervisory experience of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking laws. The Board has reviewed assessments by the relevant banking supervisory agencies of the organizations' management and of the risk-management systems of Park and of the operations of First Federal and FFSB. The Board also has considered Park's plans to integrate FFSB into its organization.

Based on all the facts of record, the Board concludes that the financial and managerial resources of the organizations involved in the proposal are consistent with approval under sections 3 and 4 of the BHC Act.

Convenience and Needs Considerations

In acting on proposals under section 3 of the BHC Act, the Board is also 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 CRA.[15] In addition, the Board 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 an insured savings association. The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank expansionary proposals.

All of Park's depository institutions, including Century National Bank, received either an "outstanding" or a "satisfactory" rating at their most recent CRA performance evaluations.[16] FFSB received a "satisfactory" rating at its most recent CRA performance evaluation by the OTS, as of February 2003. Based on all the facts of record, the Board concludes that the CRA performance records of the institutions involved are consistent with approval of this proposal.

15. *See, e.g., Citigroup Inc.,* 88 *Federal Reserve Bulletin* 485 (2002); *Banc One Corporation,* 83 *Federal Reserve Bulletin* 602 (1997).

16. Century National Bank received a "satisfactory" rating by the OCC, as of April 20, 2002.

Other Considerations

As part of its evaluation of the public interest factors under section 4 of the BHC Act, the Board also has carefully reviewed the public benefits and possible adverse effects of the proposed transaction. The record indicates that consummation of the proposal would allow Park to broaden and enhance the services provided to FFSB's current customers, including expanded trust management services and a larger network of ATM facilities, and would provide longer branch operating hours and more days of service for the customers. Based on all the facts of record, the Board has determined that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects under the standard of review set forth in section 4(j)(2) of the BHC Act.

Conclusion

Based on the foregoing and having reviewed all the facts of record, the Board has determined that the application 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 that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Park with all the representations and commitments made to the Board in connection with this order and the receipt of all other regulatory approvals. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) (12 CFR 225.7 and 225.25(c)), 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.

Park may not consummate the banking acquisition in the proposal before the fifteenth calendar day after the effective date of this order, and no part of this proposal shall be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 7, 2004.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Olson, Bernanke, and Kohn. Absent and not voting: Governor Bies.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

ORDERS ISSUED UNDER FEDERAL RESERVE ACT

RBC Centura
Bank Rocky Mount, North Carolina

Order Approving Establishment of a Branch

RBC Centura Bank ("Bank"), a state member bank, has given notice under section 9 of the Federal Reserve Act ("Act")[1] of its intent to establish a branch at 4221 W. Boy Scout Boulevard, Suite 190, Tampa, Florida.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's Rules of Procedure.[2] The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors specified in the Act.

Bank is the 25th largest depository organization in Florida, controlling approximately $1.2 billion in deposits, which represents less than 1 percent of total deposits of insured depository institutions in the state.[3] Bank and its direct parent company, RBC Centura Banks, Inc., also in Rocky Mount, are wholly owned subsidiaries of Royal Bank of Canada, Montreal, Canada. Bank operates branches in North Carolina, South Carolina, Virginia, Florida, and Georgia.

Considerations Under the Federal Reserve Act

Section 9(4) of the Act[4] requires the Board, when acting on a branch application, to consider the financial condition of the applying bank, the general character of its management, and whether its corporate powers are consistent with the purposes of the Act.[5] The Board has carefully reviewed these factors in light of all the facts of record. As part of its consideration, the Board has reviewed reports of examination and other supervisory information. Based on all the facts of record, the Board has concluded that the statutory factors are consistent with approval of the notice.[6]

Convenience and Needs Considerations

In acting on a notice to establish a branch, the Board also is required to take into account the convenience and needs of the community to be served, including the bank's record under the Community Reinvestment Act ("CRA").[7] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal supervisory authority to assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating branch applications. The Board has carefully considered the effect of the proposal on the convenience and needs of the communities served by Bank in light of all the facts of record, including a public comment received on the proposal.

A. CRA Performance Evaluation

As provided in the CRA, the Board has evaluated Bank's performance in light of evaluations by the appropriate federal supervisor of its CRA performance record. 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.[8] Bank received an overall "satisfactory" rating at its most recent CRA examination by the Federal Reserve Bank of Richmond, as of March 29, 2004, with ratings of "high satisfactory" under the lending, investment, and service tests.

B. Services and Branch Closing

The Board received a comment opposing the proposal. The commenter expressed dissatisfaction with Bank's level of service and alleged anticompetitive practices in the Rocky Mount area and asserted that Bank imposes unreasonably high service charges.[9] Specifically, the commenter con-

1. 12 U.S.C. § 321 et seq.
2. 12 CFR 262.3(b).
3. Statewide and market deposit data and ranking data are as of June 30, 2003, and are updated to reflect subsequent merger activity as of October 22, 2004. Insured depository institutions include all insured banks, savings banks, and savings associations.
4. 12 U.S.C. § 322.
5. Section 208.6 of the Board's Regulation H, which implements Section 9(4) of the Act, provides that the factors given special consideration by the Board in acting on branch applications include the following:
   (1) the financial history and condition of the applying bank and the general character of its management;
   (2) the adequacy of the bank's capital and its future earnings prospects;
   (3) the convenience and needs of the community to be served by the branch; and
   (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act. 12 CFR 208.6(b).
6. Section 9 of the Act, 12 U.S.C. § 321, which applies the interstate branching provisions of the National Bank Act, 12 U.S.C. § 36(e), provides that a state member bank may not establish a branch in any state other than a bank's home state, except under certain specified conditions, including when a bank has already established a branch in that state. Bank has previously established branches in Florida. *See, e.g., Royal Bank of Canada/RBC Centura Banks, Inc.*, 89 *Federal Reserve Bulletin* 139 (2003).
7. 12 U.S.C. § 2901 et seq.; 12 CFR 208.6(b).
8. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).
9. Commenter contended that after the merger of its predecessor banks to form Bank, Bank imposed additional fees and account charges and reduced its level of service. Commenter also asserted that Bank should not be allowed to expand into other markets until it reduced its service charges. Bank represented that the fees charged in connection with its banking services are reasonable and compare favorably with service fees charged by other banks. Bank also has offered to have a personal banker review the commenter's accounts to determine if other types of accounts would better serve his banking needs. Although the Board previously has recognized that banks help to serve the banking needs of their communities by making basic banking services available at a nominal or no charge, the CRA does

tended that Bank had closed a banking office in Rocky Mount and subsequently refused to sell the closed location to a bank competitor in an effort to monopolize the local market. This branch closing allegedly resulted in inconvenience to customers for banking services.

Bank represented that as a result of the merger of its predecessor banks in 1990, Bank consolidated two branches in a shopping center in the Edgecombe County portion of the Rocky Mount, North Carolina banking market ("Rocky Mount Market")[10] into one location from which it continues to provide banking services and has retained the other location in the shopping center as a mail center and storage facility. Bank also indicated it is unaware of the attempted purchase alleged by the commenter.[11] Bank noted that it is the only bank that operates a branch in Edgecombe County.[12] Based on a review of these and other facts of record, the Board finds no evidence to support commenter's contention that Bank has engaged in anticompetitive behavior in the Rocky Mount area.

Commenter also expressed dissatisfaction with Bank's level of service in the Rocky Mount area. As noted previously, Bank received an overall "satisfactory" rating in its most recent CRA evaluation, with a "high satisfactory" under the service test overall and separately in North Carolina. Examiners considered Bank's performance in its Rocky Mount assessment area under the service test to be excellent.[13]

Examiners noted that Bank's branch locations and business hours were convenient and met the needs of the Rocky Mount assessment area and that its distribution of branches within the area was good. Examiners also noted that Bank provided customers with 24-hour access to their accounts through ATMs and bank-by-computer service. In addition, examiners found the bank to be a leader in facilitating community development service projects within the Rocky Mount assessment area.

Examiners also concluded that Bank's branch closings, both overall and in North Carolina, had not adversely affected LMI neighborhoods. Examiners reported that Bank maintained a written branch closure policy that conforms with regulatory requirements.[14]

Based on a review of these and other facts of record, the Board finds that commenter's allegations concerning Bank's level of service and convenience of branches in the Rocky Mount area do not warrant denial of the proposal.

C. Conclusion on Convenience and Needs Considerations

The Board has considered carefully the entire record as it relates to convenience and needs considerations, including the comment received, information provided by Bank, Bank's most recent CRA performance examination, and confidential supervisory information. The Board notes that the establishment of a new branch in Tampa would expand the availability of products and services to banking customers. Based on all the facts of record, the Board concludes that convenience and needs considerations, including Bank's record of performance under the CRA, are consistent with approval of the proposal.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the notice should be, and hereby is, approved. The Board's approval is specifically conditioned on Bank's compliance with all commitments made to the Board in connection with the proposal. The commitments and conditions relied on by the Board are deemed to be conditions imposed in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

Approval of this notice is subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Federal Reserve Bank of Richmond, acting under authority delegated by the Board.

By order of the Board of Governors, effective November 23, 2004.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, Bernanke, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

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not require that banks limit the fees charged for services. *See Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 226 n.50 (2004).

10. The Rocky Mount Market includes Edgecombe, Nash, and Wilson Counties in North Carolina. Bank is the largest depository institution in the market, controlling $628.4 million in deposits, which represents 29.5 percent of market deposits in insured depository institutions. The banking market is considered attractive for entry. Since 2000, three depository institutions have entered the Rocky Mount Market de novo, and three institutions have entered the market by acquisition. Twelve commercial banks and two thrifts compete in the market.

11. Bank noted that it leases the location identified by the commenter and that inquiries about its purchase might have been made directly to the landlord or landlord's representatives without the bank's knowledge.

12. In addition to the Oakwood Shopping Center branch, Bank operates a branch in Harambee Square, also in Edgecombe County.

13. Bank's Rocky Mount assessment area includes Edgecombe and Nash Counties.

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

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176. BANK MERGER ACTIVITY IN THE UNITED STATES, 1994–2003, by Steven J. Pilloff. May 2004. 23 pp.

Anticipated Schedule of Release Dates for Periodic Statistical Releases of the Board of Governors of the Federal Reserve System

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Release number and title	Annual mail rate	Annual fax rate	Approximate release days[1]	Period or date to which data refer	Corresponding *Bulletin* or *Statistical Supplement* table numbers[2]
Weekly Releases					
H.2. Actions of the Board: Applications and Reports Received	$55.00	n.a.	Friday	Week ending previous Saturday	. . .
H.3. Aggregate Reserves of Depository Institutions and the Monetary Base[3]	$20.00	n.a.	Thursday	Week ending previous Wednesday	1.20
H.4.1. Factors Affecting Reserve Balances of Depository Institutions and Condition Statement of Federal Reserve Banks[3]	$20.00	n.a.	Thursday	Week ending previous Wednesday	1.11, 1.18
H.6. Money Stock Measures[3]	$35.00	n.a.	Thursday	Week ending Monday of previous week	1.21
H.8. Assets and Liabilities of Commercial Banks in the United States[3]	$30.00	n.a.	Friday	Week ending previous Wednesday	1.26A–F
H.10. Foreign Exchange Rates[3]	$20.00	$20.00	Monday	Week ending previous Friday	3.28
H.15. Selected Interest Rates[3]	$20.00	$20.00	Monday	Week ending previous Friday	1.35
Monthly Releases					
G.5. Foreign Exchange Rates[3]	$ 5.00	$ 5.00	First of month	Previous month	3.28
G.17. Industrial Production and Capacity Utilization[3]	$15.00	n.a.	Midmonth	Previous month	2.12, 2.13
G.19. Consumer Credit[3]	$ 5.00	$ 5.00	Fifth working day of month	Second month previous	1.55, 1.56
G.20. Finance Companies[3]	$ 5.00	n.a.	End of month	Second month previous	1.51, 1.52

Release number and title		Annual mail rate	Annual fax rate	Approximate release days[1]	Period or date to which data refer	Corresponding *Bulletin* or *Statistical Supplement* table numbers[2]
Quarterly Releases						
E.2.	Survey of Terms of Business Lending[3]	$ 5.00	n.a.	Midmonth of March, June, September, and December	February, May, August, and November	4.23
E.11.	Geographical Distribution of Assets and Liabilities of Major Foreign Branches of U.S. Banks	$ 5.00	n.a.	15th of March, June, September, and December	Previous quarter	. . .
E.16.	Country Exposure Lending Survey[3]	$ 5.00	n.a.	January, April, July, and October	Previous quarter	. . .
Z.1.	Flow of Funds Accounts of the United States: Flows and Outstandings[3]	$25.00	n.a.	Second week of March, June, September, and December	Previous quarter	1.57, 1.58, 1.59, 1.60

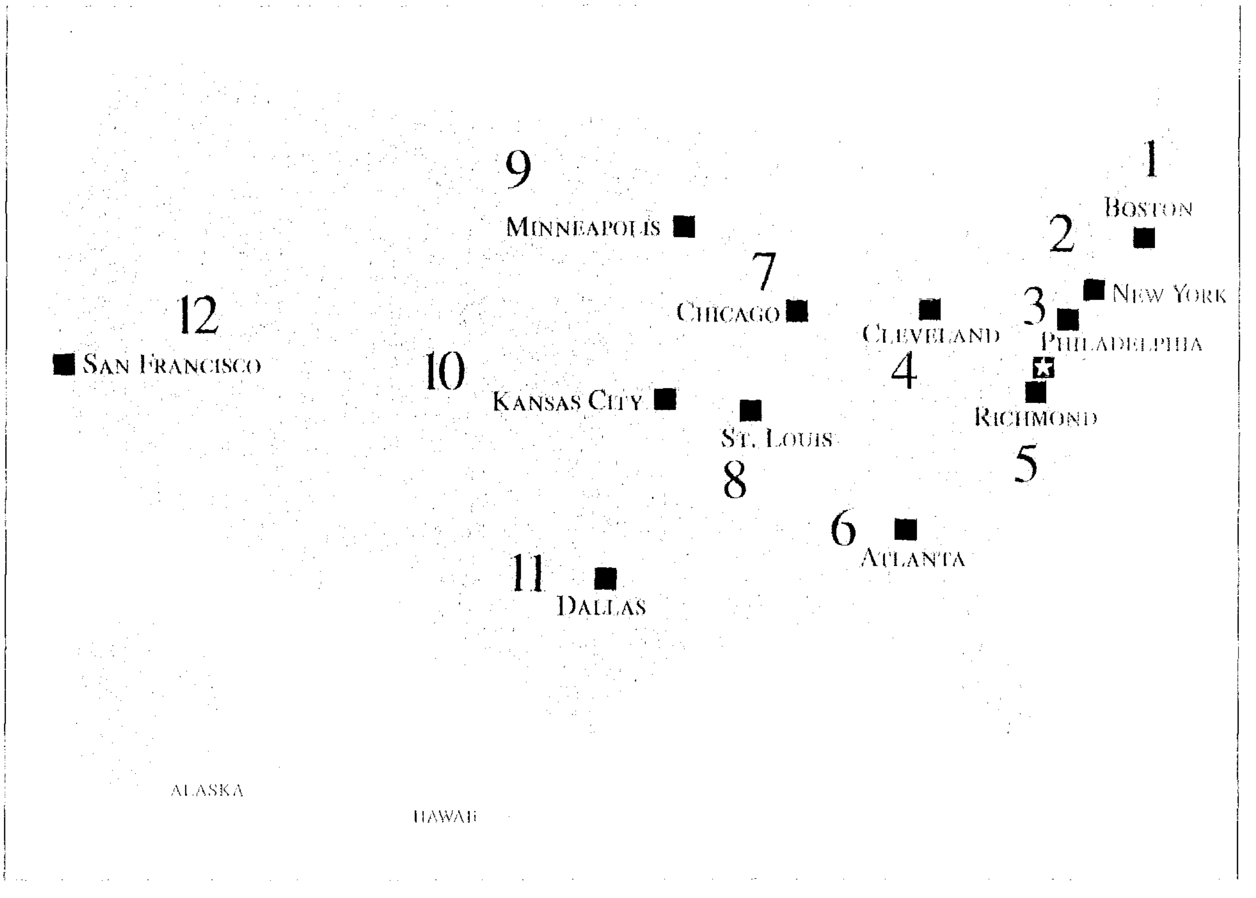
1. Please note that for some releases, there is normally a certain variability in the release date because of reporting or processing procedures. Moreover, for all series unusual circumstances may, from time to time, result in a release date being later than anticipated.

2. Beginning with the Winter 2004 issue (vol. 90, no. 1) of the *Bulletin*, the corresponding table for the statistical release no longer appears in the *Bulletin*. Statistical tables are now published in the *Statistical Supplement to the Federal Reserve Bulletin*; the table numbers, however, remain the same.

3. These releases are also available on the Board's web site, www.federalreserve.gov/releases.

n.a. Not available.

Maps of the Federal Reserve System



Legend

Both pages

■ Federal Reserve Bank city

⊡ Board of Governors of the Federal Reserve System, Washington, D.C.

Facing page

• Federal Reserve Branch city

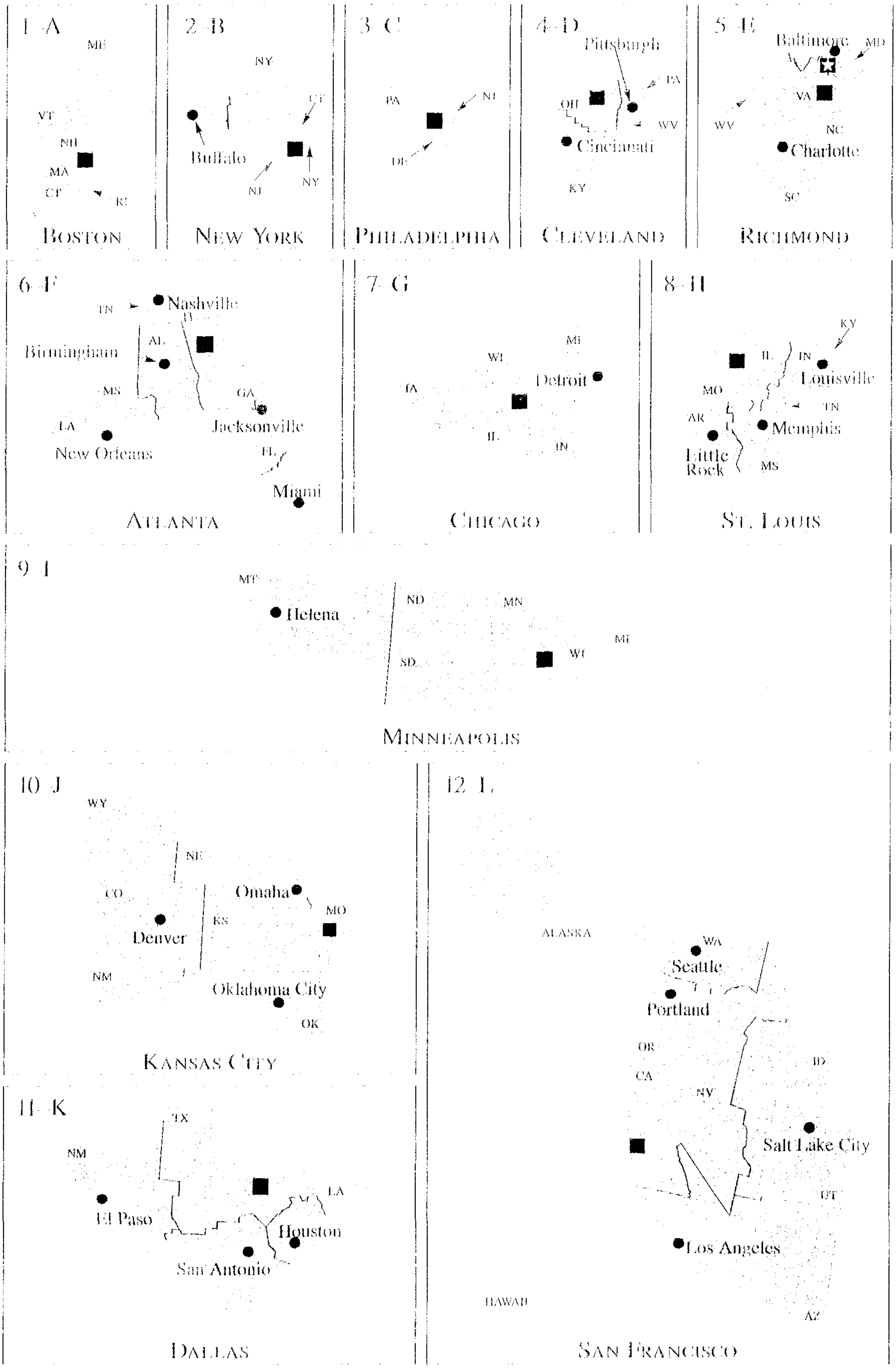
— Branch boundary

Note

The Federal Reserve officially identifies Districts by number and Reserve Bank city (shown on both pages) and by letter (shown on the facing page).

In the 12th District, the Seattle Branch serves Alaska, and the San Francisco Bank serves Hawaii.

The System serves commonwealths and territories as follows: the New York Bank serves the Commonwealth of Puerto Rico and the U.S. Virgin Islands; the San Francisco Bank serves American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. The Board of Governors revised the branch boundaries of the System most recently in February 1996.


1 A
ME
VT
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CT
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BOSTON
2 B
NY
Buffalo
CT
NJ
NY
NEW YORK
3 C
PA
NJ
DE
PHILADELPHIA
4 D
Pittsburgh
PA
OH
WV
Cincinnati
KY
CLEVELAND
5 E
Baltimore
MD
VA
WV
NC
Charlotte
SC
RICHMOND
6 F
TN
Nashville
AL
Birmingham
MS
GA
LA
New Orleans
Jacksonville
FL
Miami
ATLANTA
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MI
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Detroit
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CHICAGO
8 H
KY
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Louisville
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TN
AR
Memphis
Little Rock
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Denver
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Oklahoma City
OK
KANSAS CITY
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El Paso
Houston
San Antonio
DALLAS
12 L
ALASKA
WA
Seattle
Portland
OR
ID
CA
NV
Salt Lake City
UT
Los Angeles
HAWAII
AZ
SAN FRANCISCO

Federal Reserve Banks, Branches, and Offices

FEDERAL RESERVE BANK branch, or *facility*	Zip	Chairman Deputy Chairman	President First Vice President	Vice President in charge of branch
BOSTON*	02106	Samuel O. Thier Blenda J. Wilson	Cathy E. Minehan Paul M. Connolly	
NEW YORK*	10045	John E. Sexton Jerry I. Speyer	Timothy F. Geithner Christine M. Cumming	
Buffalo	14240	Marguerite D. Hambleton		Barbara L. Walter[1]
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CLEVELAND*	44101	Robert W. Mahoney Charles E. Bunch	Sandra Pianalto Robert Christy Moore	
Cincinnati	45201	James M. Anderson		Barbara B. Henshaw
Pittsburgh	15230	Roy W. Haley		Robert B. Schaub
RICHMOND*	23219	Wesley S. Williams, Jr. Thomas J. Mackell, Jr.	Jeffrey M. Lacker Walter A. Varvel	
Baltimore	21203	William C. Handorf		David Beck[3]
Charlotte	28230	Michael A. Almond		Jeffrey S. Kane[1]
ATLANTA	30303	David M. Ratcliffe V. Larkin Martin	Jack Guynn Patrick K. Barron	James M. McKee[1]
Birmingham	35242	James H. Sanford		Lee C. Jones
Jacksonville	32231	Fassil Gabremariam		Christopher L. Oakley
Miami	33152	Edwin A. Jones, Jr.		Juan Del Busto
Nashville	37203	Beth Dortch Franklin		Melvyn K. Purcell[1]
New Orleans	70161	Earl L. Shipp		Robert J. Musso[1]
CHICAGO*	60690	W. James Farrell Miles D. White	Michael H. Moskow Gordon R. G. Werkema	
Detroit	48231	Edsel B. Ford II		Glenn Hansen[1]
ST. LOUIS	63166	Walter L. Metcalfe, Jr. Gayle P. W. Jackson	William Poole W. LeGrande Rives	
Little Rock	72203	Stephen M. Erixon		Robert A. Hopkins[4]
Louisville	40232	Norman E. Pfau, Jr.		Thomas A. Boone[4]
Memphis	38101	Russell Gwatney		Martha Perine Beard[4]
MINNEAPOLIS	55480	Linda Hall Whitman Frank L. Sims	Gary H. Stern James M. Lyon	
Helena	59601	Lawrence R. Simkins		Samuel H. Gane
KANSAS CITY	64198	Richard H. Bard Robert A. Funk	Thomas M. Hoenig Richard K. Rasdall	
Denver	80217	Thomas Williams		Pamela L. Weinstein
Oklahoma City	73125	Tyree O. Minner		Dwayne E. Boggs
Omaha	68102	James A. Timmerman		Steven D. Evans
DALLAS	75201	Ray L. Hunt Patricia M. Patterson	Vacancy Helen E. Holcomb	
El Paso	79999	To be announced		Robert W. Gilmer[3]
Houston	77252	To be announced		Robert Smith III[1]
San Antonio	78295	To be announced		James L. Stull[1]
SAN FRANCISCO	94120	George M. Scalise Sheila D. Harris	Janet L. Yellen John F. Moore	
Los Angeles	90051	James L. Sanford		Mark L. Mullinix[2]
Portland	97208	James H. Rudd		Richard B. Hornsby
Salt Lake City	84125	H. Roger Boyer		Andrea P. Wolcott
Seattle	98124	Mic R. Dinsmore		Mark Gould

*Additional offices of these Banks are located at Windsor Locks, Connecticut 06096; East Rutherford, New Jersey 07016; Utica at Oriskany, New York 13424; Columbus, Ohio 43216; Columbia, South Carolina 29210; Charleston, West Virginia 25311; Des Moines, Iowa 50306; Indianapolis, Indiana 46204; Milwaukee, Wisconsin 53202; and Peoria, Illinois 61607.

1. Senior vice president
2. Executive vice president
3. Acting
4. Sr. Branch Executive