

FEDERAL RESERVE SYSTEM

The Bank of New York Mellon Corporation
New York, New York

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

The Bank of New York Mellon Corporation (“BNYMellon”) has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to become a bank holding company by merging with The Bank of New York Company, Inc. (“BONY”), New York, New York, and Mellon Financial Corporation (“Mellon”), Pittsburgh, Pennsylvania, and thereby acquiring The Bank of New York (“BONY Lead Bank”), New York, New York, Mellon Bank, N.A. (“Mellon Lead Bank”), Pittsburgh, Pennsylvania, and the other subsidiary banks of BONY and Mellon.² BNYMellon is a newly organized corporation formed to facilitate BONY’s acquisition of Mellon. BNYMellon also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of

¹ 12 U.S.C. § 1842. In addition, BONY and Mellon each has requested the Board’s approval to hold and exercise options to purchase up to 19.9 percent of each other’s common stock on the occurrence of certain events. Both options would expire on consummation of the merger of Mellon and BONY into BNYMellon.

² BONY Lead Bank and Mellon Lead Bank are the largest subsidiary banks of their parent holding companies, as measured by both assets and deposits. BONY operates one other subsidiary bank, The Bank of New York (Delaware), Newark, Delaware. Mellon’s other subsidiary banks are: Mellon United National Bank, Miami, Florida; Mellon 1st Business Bank, National Association, Los Angeles, California; and Mellon Trust of New England, National Association, Boston, Massachusetts.

Regulation Y.³ BNYMellon also proposes to acquire BNY International Financing Corporation, New York, New York, and Mellon Overseas Investment Corporation, Greenville, Delaware, both Edge Act corporations organized under section 25 of the Federal Reserve Act.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (72 Federal Register 12,800, 13,108, and 16,788 (2007)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

BONY, with total consolidated assets of approximately \$99.9 billion, is the 18th largest depository organization in the United States, controlling deposits of approximately \$30.1 billion.⁵ BONY's subsidiary banks operate main offices or branches in Connecticut, Delaware, New Jersey, and New York, and BONY

³ See 12 U.S.C. § 1843(k) & (l); 12 CFR 225.82. BNYMellon has certified that the subsidiary depository institutions of BONY and Mellon are well capitalized and well managed, and BNYMellon has provided all the information required under Regulation Y. Based on all the facts of record, the Board has determined that the election to become a financial holding company will become effective on consummation of the proposal, if on that date all subsidiary depository institutions of BONY and Mellon remain well capitalized and well managed, and if each subsidiary insured depository institution of BONY and Mellon has received a rating of at least "satisfactory" at its most recent performance evaluation under the Community Reinvestment Act ("CRA"). 12 U.S.C. § 2901 et seq. BNYMellon proposes to acquire the nonbanking subsidiaries of BONY and Mellon in accordance with section 4(k) of the BHC Act, 12 U.S.C. § 1843(k).

⁴ 12 U.S.C. § 601 et seq. As this acquisition is being made as part of a proposal requiring approval under section 3 of the BHC Act, separate approval under the Federal Reserve Act is not required. 12 CFR § 211.5(e)(iii).

⁵ Nationwide asset data are as of March 31, 2007. Nationwide deposit and ranking data are as of March 31, 2007, and reflect merger activity through that date. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

engages in numerous nonbanking activities that are permissible under the BHC Act.

Mellon, with total consolidated assets of approximately \$40.5 billion, is the 33rd largest depository organization in the United States, controlling deposits of approximately \$22.1 billion. Mellon's subsidiary banks operate main offices or branches in seven states,⁶ and Mellon engages in numerous nonbanking activities that are permissible under the BHC Act.

On consummation of the proposal, BNYMellon would become the 12th largest depository organization in the United States, with total consolidated assets of approximately \$154 billion. BNYMellon would control deposits of approximately \$52.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of BONY is New York.⁷ Mellon is located in California, Delaware, Florida, Maryland, Massachusetts, New Jersey, and Pennsylvania.⁸

⁶ Mellon's subsidiary banks operate main offices and branches in California, Delaware, Florida, Maryland, Massachusetts, New Jersey, and Pennsylvania.

⁷ A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

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

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

Competitive Considerations

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

BONY and Mellon have subsidiary depository institutions that compete directly in four banking markets: Los Angeles, California; Miami-Fort Lauderdale Area, Florida; Wilmington, in Delaware and Maryland; and Boston in Massachusetts and New Hampshire. The Board has reviewed

⁹ 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)(A)-(B). BNYMellon is adequately capitalized and adequately managed, as defined by applicable law. All of Mellon's subsidiary banks have been in existence and operated for the minimum period of time required by applicable state laws. On consummation of the proposal, BNYMellon would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. The proposal also would comply with relevant state deposit caps, each of which is 30 percent. See Fla. Stat. § 658.2953(7)(b); Md. Code Ann., Fin. Inst. § 5-1013; Mass. Gen. Laws ch. 167, § 39; and N.J. Stat. Ann. § 17.9A-148(E). The other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

¹⁰ 12 U.S.C. § 1842(c)(1).

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 BONY and Mellon,¹¹ the concentration levels of market deposits and the increase in those 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.

In delineating the relevant product market in which to assess the competitive effects of a bank acquisition or merger, the Supreme Court has determined that “commercial banking” is the appropriate line of commerce because the cluster of banking products and services provided by commercial

¹¹ Deposit and market share data are as of June 30, 2006, adjusted to reflect mergers and acquisitions through March 31, 2007, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 Federal Reserve Bulletin 386, 387 (1989); *National City Corporation*, 70 Federal Reserve Bulletin 743, 744 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 Federal Reserve Bulletin 52, 55 (1991).

¹² Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

banks is unique relative to other types of financial institutions.¹³ To measure the “cluster of products and services,” the Court has used bank deposits to measure the concentration and market shares in the relevant banking markets.

Based on deposit data, consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in each of the four banking markets.¹⁴ On consummation of the proposal, the Los Angeles and Miami-Fort Lauderdale Area markets would remain unconcentrated, and the Boston market would remain moderately concentrated, as measured by the HHI. Although the Wilmington market would remain highly concentrated, the increase in concentration would be minimal. Numerous depository institution competitors would remain in each of the four markets.

Although the subsidiary banks of BONY accept deposits, neither BONY nor Mellon engages in retail banking to a significant degree to support their banking operations,¹⁵ which makes the amount of deposits a less-reliable measure of the competitive effects of the merger in this case. Significant business lines of the subsidiary banks of BONY and Mellon include custody services; clearing, corporate trust, and depository receipts services; securities lending;

¹³ See United States v. Phillipsburg National Bank, 399 U.S. 350, 359 (1970); United States v. Philadelphia National Bank, 374 U.S. 321, 356 (1963).

¹⁴ These banking markets, and the effect of the proposal on the concentration of banking resources in the markets based on deposit data, are described in the appendix.

¹⁵ In October 2006, BONY Lead Bank sold its retail banking business, including 338 branches, and its regional middle market business, to JPMorgan Chase & Co., New York, New York. In December 2001, Mellon Lead Bank sold its consumer, small business, and regional banking businesses, including most of its branches, to Citizens Financial Group, Inc., Providence, Rhode Island. BONY Lead Bank and Mellon Lead Bank each currently maintains a small network of branches to serve private banking and private wealth-management clients.

transfer agent services; fund administration and accounting services; and foreign exchange (collectively “securities services”).¹⁶ Accordingly, in analyzing the competitive effects, the Board has taken the additional step of considering measures of securities services that more closely reflect the effect of the proposal on competition.

Securities services are provided on a national basis, and most customers for these services are large corporations, institutions, and other financially sophisticated entities. An appropriate measure of these services is domestic assets under custody. BONY is the third largest provider of securities services, with a market share of approximately 18.2 percent, and Mellon is the fifth largest provider of these services, with a market share of approximately 6.7 percent.¹⁷ Together, BONY and Mellon would be the largest provider of these services, with a market share of 24.9 percent. This measure of the competitive effects of the proposal indicates that the overlapping market, as measured by the HHI, would remain moderately concentrated, with the HHI increasing 246 points from 1542 to 1788. After consummation, 21 other participants would remain in the market.

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction would not likely have a significantly adverse effect on competition

¹⁶ BONY and Mellon also provide the following types of services through their subsidiary banks: asset management, private wealth management and private banking, and cash and treasury management.

¹⁷ These market shares are calculated as if State Street Corporation (“State Street”) has consummated its proposed acquisition of Investors Financial Services Corp. (“IFS”), both of Boston, Massachusetts. State Street has filed an application with the Board for approval to acquire IFS and that application is pending. State Street and IFS are also significant providers of securities services.

in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination and other supervisory information received from the federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, information provided by BONY, 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 information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at

consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the proposal under the financial factors. BONY, Mellon, and their subsidiary banks currently are well capitalized, and BNYMellon and each bank that it would control would be well capitalized on consummation of the proposal. Based on its review of the record, the Board finds that BNYMellon has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share exchange.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. In addition, the Board has considered BNYMellon's plans for implementing the proposal, including the proposed management after consummation. In considering the managerial resources, the Board has reviewed the examination records of BONY and Mellon and their subsidiary banks, including assessments of their management, risk-management systems, and operations. Moreover, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money laundering ("AML") laws. Banking organizations operating in the United States are required to implement and operate effective AML programs. Accordingly, the Board has considered the existing AML programs at BONY's and Mellon's subsidiary banks, including recent enhancements at BONY Lead Bank.¹⁸ The Board expects that BNYMellon

¹⁸ BONY Lead Bank entered into written agreements in February 2000 ("2000 Written Agreement") and April 2006 ("2006 Written Agreement"), with the Federal Reserve Bank of New York and the New York State Banking Department to address deficiencies in the bank's compliance with federal and state AML statutes and regulations. The written agreements included requirements that the bank develop and implement plans to strengthen

will take all necessary steps to ensure that sufficient resources, training, and managerial efforts are dedicated to maintaining a fully effective compliance risk-management system to ensure compliance with AML statutes and regulations throughout its organization.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.¹⁹

independent testing of its AML program, enhance training of its personnel in suspicious-transaction identification and reporting, and improve its enhanced due-diligence program. The Board has reviewed carefully the progress made by the bank in implementing the 2006 Written Agreement's requirements and more broadly in enhancing its AML compliance.

In May 2007, a suit was filed against BONY Lead Bank by the Russian Federal Customs Service in a Russian court for damages allegedly resulting from money transfers that BONY Lead Bank had made to and from Russia from 1996 to 1999. These transactions were also considered in connection with the execution of the 2000 Written Agreement and were investigated by the U.S. Department of Justice, which entered into a Non-Prosecution Agreement with BONY Lead Bank on November 8, 2005. The Board will continue to monitor the suit by the Russian authorities and notes that neither Board action on this proposal nor any supervisory action by the Board under the BHC Act would interfere with the ability of a foreign court to resolve any litigation pertaining to this matter.

¹⁹ A commenter expressed concern about BONY's relationships with unaffiliated third parties engaged in subprime lending. BONY has represented that it provides corporate trust and custody services relating to some issuances backed by subprime loans or involving issuers who originate or securitize subprime loans. BONY also indicated that it provides commercial credit to some originators of subprime mortgages. In addition, BONY noted that it acts as a swap counterparty in connection with some subprime loan securitization transactions and that its proprietary treasury portfolio, and some funds for which BONY acts as investment manager, include securities that may be partially backed by subprime assets. BONY has represented that it does not play any role in the lending practices or credit review processes of its customers who engage in subprime lending. The Board expects all banking organizations to conduct their operations in a safe and

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and 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 insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²¹

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of the subsidiary banks of BONY and Mellon, data reported by BONY under the Home Mortgage Disclosure Act (“HMDA”),²² other information provided by BONY and Mellon, confidential supervisory information, and public comments received on the proposal. Two commenters expressed concerns about BONY’s record of serving the credit and investment needs of LMI communities in its assessment areas.²³

sound manner with adequate systems to manage operational, compliance, and reputational risk.

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

²¹ 12 U.S.C. § 2903.

²² 12 U.S.C. § 2801 et seq.

²³ The commenters also requested that BONY implement a number of CRA-related recommendations set forth in their comment letters. The Board has consistently found that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into

One commenter alleged, based on HMDA data, that BONY engaged in disparate treatment of minority individuals in home mortgage lending.

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 insured depository institutions of BONY and Mellon. 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.²⁴

BONY Lead Bank received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of New York, as of May 16, 2005 ("2005 Evaluation").²⁵ BONY's other subsidiary bank, The Bank of New York (Delaware), received a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of November 21, 2005. Mellon Lead Bank received an "outstanding" rating at

commitments or agreements with any organization. See Bank of America Corporation, 93 Federal Reserve Bulletin C52, n. 27 (2007). Instead, the Board focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the credit needs of its CRA assessment areas at the time the Board reviews a proposal under the convenience and needs factor.

²⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 66 Federal Register 36,620 at 36,640 (2001).

²⁵ Two commenters expressed concern over the "low satisfactory" ratings BONY Lead Bank received under the lending and service tests for its assessment area in the New York metropolitan area. The bank received an "outstanding" rating under the investment test for the assessment area, and examiners concluded that the bank's record of CRA performance during the review period, when viewed as a whole, merited a rating of "satisfactory."

its most recent CRA performance evaluation by the Office of the Comptroller of the Currency (“OCC”), as of May 15, 2005. Each of Mellon’s other subsidiary banks received an “outstanding” or “satisfactory” rating at its most recent CRA performance evaluation.²⁶ The existing CRA programs of BONY’s and Mellon’s subsidiary banks will continue after consummation of the proposal.²⁷

BONY Lead Bank and Mellon Lead Bank have been designated as wholesale banks for purposes of evaluating their CRA performances.²⁸ Insured depository institutions designated as wholesale institutions are evaluated under the community development test, and examiners may consider the institution’s community development investments, loans, and services nationwide rather than only in the institution’s assessment areas.²⁹ BONY Lead Bank received its wholesale bank designation after the 2005 Evaluation, while Mellon Lead Bank was evaluated as a wholesale bank in its 2005 evaluation.

²⁶ Mellon 1st Business Bank, National Association received a “satisfactory” rating from the FDIC, as of February 11, 2003, when the bank was a state-chartered nonmember bank doing business as Mellon 1st Business Bank. Mellon United National Bank received an “outstanding” rating at its most recent CRA evaluation by the OCC, as of December 31, 2003; and Boston Safe Deposit and Trust Company, the predecessor of Mellon Trust of New England, National Association, received an “outstanding” rating at its last CRA evaluation by the Federal Reserve Bank of Boston, as of September 30, 2002.

²⁷ BNYMellon has indicated that in the longer term, the CRA program of the merged organization will combine the best elements of the CRA programs of BONY and Mellon.

²⁸ See 12 CFR 228.25; 12 CFR 25.25.

²⁹ Two commenters questioned how, as a designated wholesale bank, BONY Lead Bank will serve the credit needs of the communities in which it operates.

CRA Performance of BONY Lead Bank. As noted, BONY Lead Bank received an overall “satisfactory” rating in the 2005 Evaluation.³⁰ Under the lending test, examiners concluded that the bank demonstrated adequate responsiveness to the retail credit needs of its two rating areas, given the bank’s capacity to meet the areas’ credit needs and overall market conditions.³¹ They described the distribution of HMDA-reportable loans among borrowers of different income levels as good and reported that the bank’s geographic distribution of loans to small businesses was adequate.³²

In the interim between the 2005 Evaluation and the sale of its retail banking business in October 2006, BONY Lead Bank remained an active mortgage lender in its assessment areas. In 2005, BONY Lead Bank made more than \$1.7 billion of HMDA-reportable loans in its assessment areas. The bank’s percentages of home purchase loans and refinance loans originated in LMI geographies in the Bronx, Brooklyn, and Manhattan all exceeded the percentages for the aggregate of lenders in 2005.³³

³⁰ Full-scope evaluations were conducted in BONY Lead Bank’s assessment areas in the New York multistate metropolitan area (CT-NJ-NY) (“New York metropolitan assessment area”) and in the nonmetropolitan portions of New York State.

³¹ Examiners noted that housing prices in the bank’s assessment areas were disproportionately high in comparison with income levels, which made homeownership very difficult for LMI borrowers, particularly for low-income borrowers.

³² In this context, small businesses are businesses with gross annual revenues of \$1 million or less.

³³ The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that reported HMDA data in a market.

In the 2005 Evaluation, examiners commended BONY Lead Bank's community lending performance.³⁴ During the evaluation period, the bank made community development loans totaling \$724 million, which supported affordable housing construction, economic revitalization projects, and community development groups, including those serving persons with disabilities. Examiners reported that 64 percent of the community development lending by dollar volume helped develop affordable housing, which examiners described as a significant need in the bank's assessment areas.

BONY Lead Bank has continued its community development lending since the 2005 Evaluation. BONY represented that the bank extended more than 80 community development loans totaling \$612 million in its assessment areas in 2005 and 2006.

In the 2005 Evaluation, BONY Lead Bank received an "outstanding" rating under the investment test. The bank's new qualifying community development investments during the evaluation period totaled \$176 million and were primarily in the form of affordable housing initiatives. BONY Lead Bank also donated \$3 million during the evaluation period to community development organizations engaged in affordable housing development, social services, and neighborhood revitalization efforts in its New York metropolitan assessment area.³⁵

³⁴ One commenter asserted that BONY should provide community development loans with principal amounts of less than \$5 million. Although the Board has recognized that banks can help serve the banking needs of communities by making certain products or services available, the CRA does not require an institution to provide any specific type of product to consumers.

³⁵ A commenter criticized the level of BONY Lead Bank's charitable contributions. The CRA does not require an institution to make any specific investment in, or contribution to, community groups.

BONY Lead Bank represented that it made almost \$174 million in qualified community development investments during 2005 and 2006. These included investments totaling more than \$170 million in projects to create affordable housing through the low-income housing tax credit program. In addition, the bank made more than \$3 million in community development grants during 2005 and 2006 to a range of groups involved in affordable housing and community and economic development in the bank's assessment areas.

In the 2005 evaluation, BONY Lead Bank received a "low satisfactory" rating for the service test. Examiners noted that the bank's retail delivery systems were reasonably accessible to geographies and individuals of different income levels and reported that the bank provided an adequate level of community development services.³⁶ Examiners reported that bank employees conducted seminars on first-time home buying, provided financial education to LMI individuals, and served on the boards of community organizations that address the credit needs of LMI areas and individuals.

CRA Performance of Mellon Lead Bank. As noted, Mellon Lead Bank received an overall "outstanding" rating in its May 2005 evaluation. Mellon Lead Bank provides investment management, private banking, and fiduciary services to high-net-worth individuals and institutions and is designated as a wholesale bank for purposes of evaluating its CRA performance.

With respect to community development lending, examiners commended Mellon Lead Bank's responsiveness to the credit needs of its

³⁶ As noted, BONY Lead Bank sold its retail banking business, including most of its branches, in October 2006 and has been designated a wholesale bank for purposes of the CRA. Accordingly, any future CRA evaluations of the bank will not include a review of its delivery of retail banking services but will consider the extent and level of innovation of the bank's community development services.

assessment areas. Examiners noted that during the evaluation period, Mellon Lead Bank made more than \$200 million in qualified community development investments. They indicated that the majority of Mellon Lead Bank's community development investments were mortgage-backed securities and collateralized mortgage obligations secured by properties in its combined assessment areas.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of BONY in light of public comment received on the proposal. A commenter alleged, based on 2006 HMDA data, that BONY made higher-cost loans more frequently to African American and Hispanic borrowers than to nonminority borrowers.³⁷ Since selling its retail banking business in October 2006, BONY no longer originates retail mortgage loans except in limited instances when requested to do so by its private banking clients. The Board has focused its analysis on the 2005 HMDA data reported by BONY and its subsidiary banks.³⁸

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not BONY is excluding or imposing higher costs on any group on a prohibited

³⁷ Beginning January 1, 2004, the HMDA data required to be reported by lenders were expanded to include pricing information for loans on which the annual percentage rate (APR) exceeds the yield for U.S. Treasury securities of comparable maturity by 3 percentage points or more for first-lien mortgages and by 5 percentage points or more for second-lien mortgages. 12 CFR 203.4.

³⁸ The Board reviewed the 2005 HMDA data for BONY Lead Bank for 2005 in its assessment areas. The Board notes that 2006 HMDA data are preliminary and that final data will not be available for analysis until fall 2007.

basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.³⁹ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by BONY and its subsidiaries. The Board also has consulted with the Federal Reserve Bank of New York about the fair-lending compliance record of BONY Lead Bank.

The record, including confidential supervisory information, indicates that BONY has taken steps to ensure compliance with fair lending and other consumer protection laws. BONY has a fair-lending compliance program that includes a second-review process, and periodic self-assessments involving

³⁹ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

statistical and regression analyses to identify any indicator of disparate treatment or disparate impact. In addition, BONY has a process for resolving fair lending complaints and requires employees to complete fair-lending training sessions. BNYMellon has represented that BONY's current fair-lending compliance program will remain in place after consummation of the proposal.⁴⁰

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

C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by BNYMellon, comments received on the proposal, and confidential supervisory information.⁴¹ BNYMellon has represented that the proposal would provide customers of both organizations with increased credit availability and expanded access to products and services. Based on a review of the entire record and for the reasons discussed above, the Board has concluded that considerations

⁴⁰ BNYMellon has represented that in the longer term, the fair-lending compliance program of the merged organization would combine the best elements of the fair-lending compliance programs of BONY and Mellon.

⁴¹ One commenter expressed concern about possible job losses resulting from this proposal. The effect of a proposed acquisition on employment in a community is not among the limited factors the Board is authorized to consider under the BHC Act, and the convenience and needs factor has been interpreted consistently by the federal banking agencies, the courts, and the Congress to relate to the effect of a proposal on the availability and quality of banking services in the community. See, e.g., Wells Fargo & Company, 82 Federal Reserve Bulletin 445, 457 (1996).

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.⁴² In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by BNYMellon with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the 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.

⁴² One 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 written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e), 262.3(i)(2), 262.25(d). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public 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.

The proposed transaction 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 New York, acting pursuant to delegated authority.

By order of the Board of Governors,⁴³ effective June 14, 2007.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

⁴³ Voting for this action: Chairman Bernanke and Governors Warsh, Kroszner, and Mishkin. Absent and not voting: Vice Chairman Kohn.

Appendix

BONY/Mellon Banking Markets Consistent with Board Precedent and DOJ Guidelines						
<p>Data are as of June 30, 2006, and are adjusted to reflect mergers and acquisitions through March 31, 2007. All deposit amounts are in thousands of dollars. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.</p>						
Wilmington Banking Market in Delaware and Maryland						
<p>Wilmington – Includes New Castle County, Delaware, and Cecil County, Maryland.</p>						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>BONY Pre-Consummation</i>	23	80,836	.08	1949	0	36
<i>Mellon</i>	25	35,649	.03			
<i>BNYMellon Post-Consummation</i>	21	116,485	.11			
Los Angeles Banking Market in California						
<p>Los Angeles – Includes the Los Angeles Ranally Metro Area and the towns of Acton in Los Angeles County and Rosamond in Kern County.</p>						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>BONY Pre-Consummation</i>	159	721	0	799	0	174
<i>Mellon</i>	20	2,602,448	0.98			
<i>BNYMellon Post-Consummation</i>	20	2,603,169	0.98			

Boston Banking Market in Massachusetts and New Hampshire						
Boston – Includes the Boston MA-NH Ranally Metro Area and the towns of Athol, Hubbardston, Orange, Petersham, Phillipston, Royalston, and Warwick in Massachusetts; and the towns of Antrim, Bennington, Deering, Dublin, Fitzwilliam, Francestown, Greenfield, Hancock, Jaffrey, Lyndeborough, Peterborough, Rindge, Sharon, and Temple in New Hampshire.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>BONY Pre-Consummation</i>	163	10	0	1123	0	167
<i>Mellon</i>	4	8,353,381	6.45			
<i>BNYMellon Post-Consummation</i>	4	8,353,391	6.45			
Miami-Fort Lauderdale Area Banking Market in Florida						
Miami-Fort Lauderdale – Includes Broward and Dade Counties.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>BONY Pre-Consummation</i>	99	4	0	984	0	103
<i>Mellon</i>	14	1,371,208	1.37			
<i>BNYMellon Post-Consummation</i>	14	1,371,212	1.37			