

PUBLIC SUBMISSION

As of: 8/25/22, 4:05 PM
Received: August 19, 2022
Status: Posted
Posted: August 23, 2022
Tracking No. 170-we47-mr3o
Comments Due: August 23, 2022
Submission Type: Web

Docket: OCC-2022-0010
Merger Application - TD Bank, National Association and First Horizon Bank (2022-LB-Combination-326132)

Comment On: OCC-2022-0010-0001
Merger Application - TD Bank NA - First Horizon Bank (2022-LB-Combination-326132)

Document: OCC-2022-0010-0314
Comment on FR Doc # N/A

Submitter Information

Email: info@creativeinvest.com
Organization: Creative Investment Research

General Comment

Please see the attached revised, corrected comment. Delete all earlier comments submitted prior to this one.

Attachments

TD Bank First Horiz Aug 2022rev

August 19, 2022

Comment Concerning TD Bank Merger Application

TD Bank, National Association, Wilmington, Delaware to acquire by merger First Horizon Bank, Memphis, Tennessee	OCC Control No.: 2022-LB-Combination- 326132	Docket #: OCC-2022- 0010
---	--	--------------------------------

We understand that:

TD Bank, National Association, Wilmington, Delaware (“TDBNA” or the “Applicant”) has submitted an application “to the Office of the Comptroller of the Currency (the “OCC”) pursuant to Section 18(c)(2)(A) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c)(2)(A) (the ‘Bank Merger Act’), the OCC’s implementing regulations thereunder, 12 C.F.R. § 5.33, as well as 12 U.S.C. § 215a-1 and 12 U.S.C. § 1831u, for the OCC’s prior approval of the merger (the ‘Bank Merger’) of First Horizon Bank, Memphis, Tennessee (“First Horizon Bank” or the “Target Institution”) with and into TDBNA, with TDBNA surviving the Bank Merger as a national bank (TDBNA following the Bank Merger, the ‘Resulting Institution’), and the retention by TDBNA of the main office and branches of First Horizon Bank at consummation of the Bank Merger as branches of TDBNA pursuant to 12 U.S.C. § 36(d).”

The Federal Reserve Board and Ethical Issues

According to the New York Times, “Robert S. Kaplan traded millions of dollars’ worth of oil and gas stocks and other individual company shares last year while he was head of the Federal Reserve Bank of Dallas.. His colleague, Eric S. Rosengren, bought and sold securities tied to real estate — which are sensitive to Fed policy — in 2020 while running the Federal Reserve Bank of Boston.”¹

These issues raise questions concerning the holdings of OCC, FDIC or Federal Reserve Board (FRB) policymakers and staff. We request OCC make public information concerning any and all holdings in TD Bank, National Association, Wilmington, Delaware and/or First Horizon Bank, Memphis, Tennessee by any OCC, FDIC or FRB policymakers or staff.

¹ *Fed Unveils Stricter Trading Rules Amid Fallout From Ethics Scandal*. Jeanna Smialek, Oct. 21, 2021. The New York Times. Online at: <https://www.nytimes.com/2021/10/21/business/federal-reserve-trading-ethics.html>

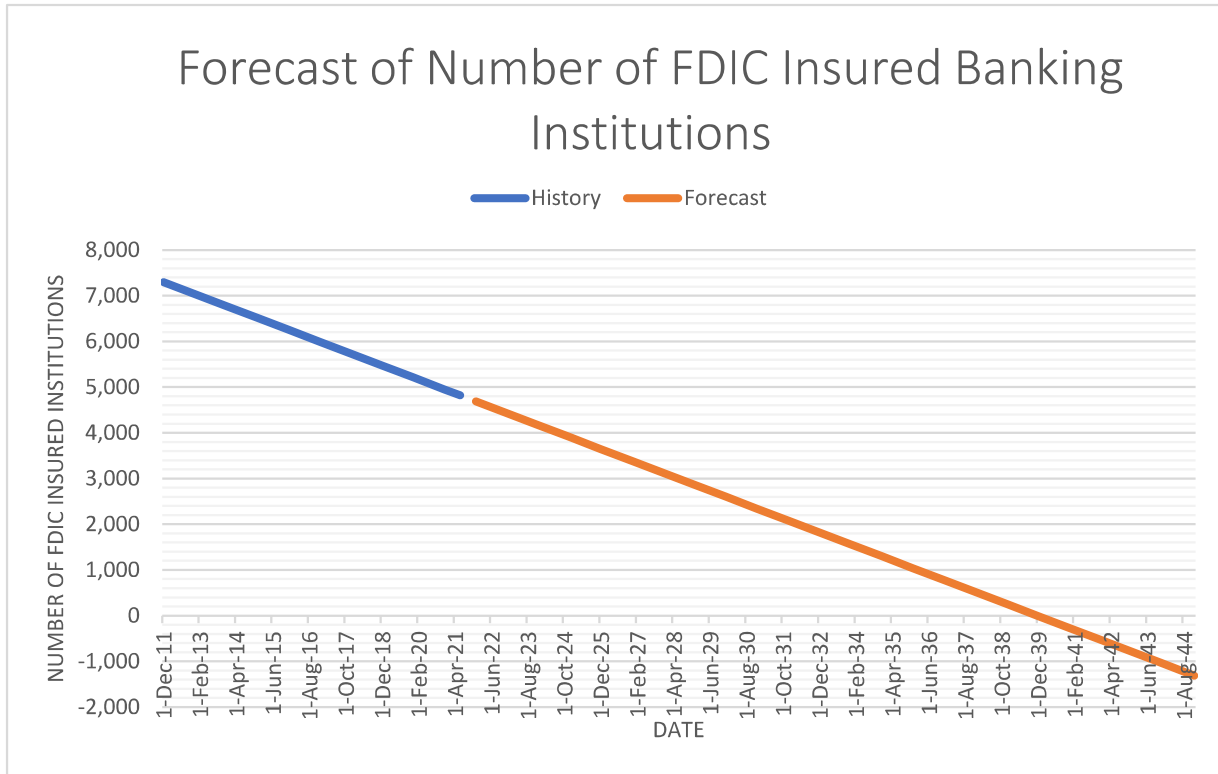
Copyright, ©, 2022, William Michael Cunningham and Creative Investment Research. All rights reserved.

info@creativeinvest.com

Given these facts, we question the ability of the OCC, FDIC and/or Federal Reserve Board, without an independent, empowered and objective ethics advisor, to fairly and ethically² evaluate the public interest regarding proposed transactions.³

Industry Concentration Issues

These ethical failings have real implications for the industry and for the public. The OCC, FDIC and/or Federal Reserve Board may have abdicated its responsibility to consider the public interest, if that

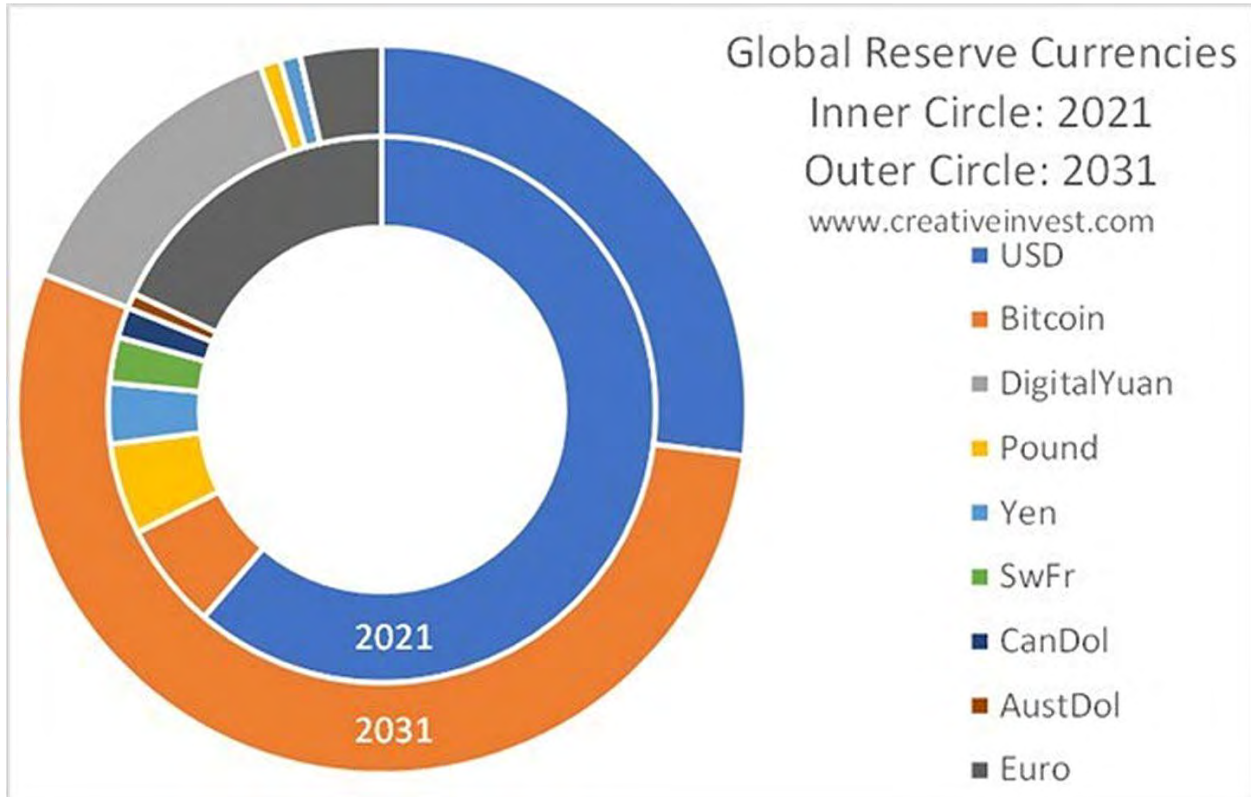


interest includes maintaining a competitive industry. Our forecast indicates that by 12/31/2039, if current trends continue in a linear manner, the number of FDIC insured institutions will be approximately 1-2. Note that, with growing competition from fintech firms and alternatives, like bitcoin, this may imply the wholesale exit of banking institutions from both the FDIC and Federal Reserve systems. This would not be in the public interest.

² The Eight Commitments of Ethical Culture from the Philadelphia Ethical Society. Online at: <https://www.impactinvesting.online/2021/09/the-eight-commitments-of-ethical.html>

³ As we noted in *Regulators, Legislators and Marketplace Ethics*, recent history suggests an increasing number of policymakers and regulators may be abusing their position for personal gain. (See: <https://www.linkedin.com/pulse/regulatory-participants-legislators-marketplace/>)

We predicted such an eventuality in our research report, *Blockchain, Cryptocurrency and the Future of Monetary Policy* (See: <https://www.prlog.org/12785779-blockchain-cryptocurrency-and-the-future-of-monetary-policy.html>)



Environmental Issues

We continue to note that the OCC, FDIC and/or Federal Reserve Board have no mechanism currently to consider environmental issues when evaluating applications. We note that the year 2020 was determined by NASA to be one of the warmest on record⁴. The lack of environmental standards is another reason we do not favor this merger.

Recent legislation introduced in the House “would force the Federal Reserve to break up banks if they do not reduce the carbon emissions they finance, in line with the Paris climate accord. The bill, called the Fossil Free Finance Act, orders the Fed to take unprecedented steps meant to steer financial support away from oil, gas, coal and companies by unraveling banks who refuse to comply. The measure also covers financing the destruction of natural forests.” See:

<https://pressley.house.gov/sites/pressley.house.gov/files/Fossil%20Free%20Finance%20Act%20Bill%20Text.pdf>

⁴ Jan 14, 2021. RELEASE 21-005. 2020 Tied for Warmest Year on Record, NASA Analysis Shows.

<https://www.nasa.gov/press-release/2020-tied-for-warmest-year-on-record-nasa-analysis-shows>

Copyright, ©, 2022, William Michael Cunningham and Creative Investment Research. All rights reserved.

info@creativeinvest.com

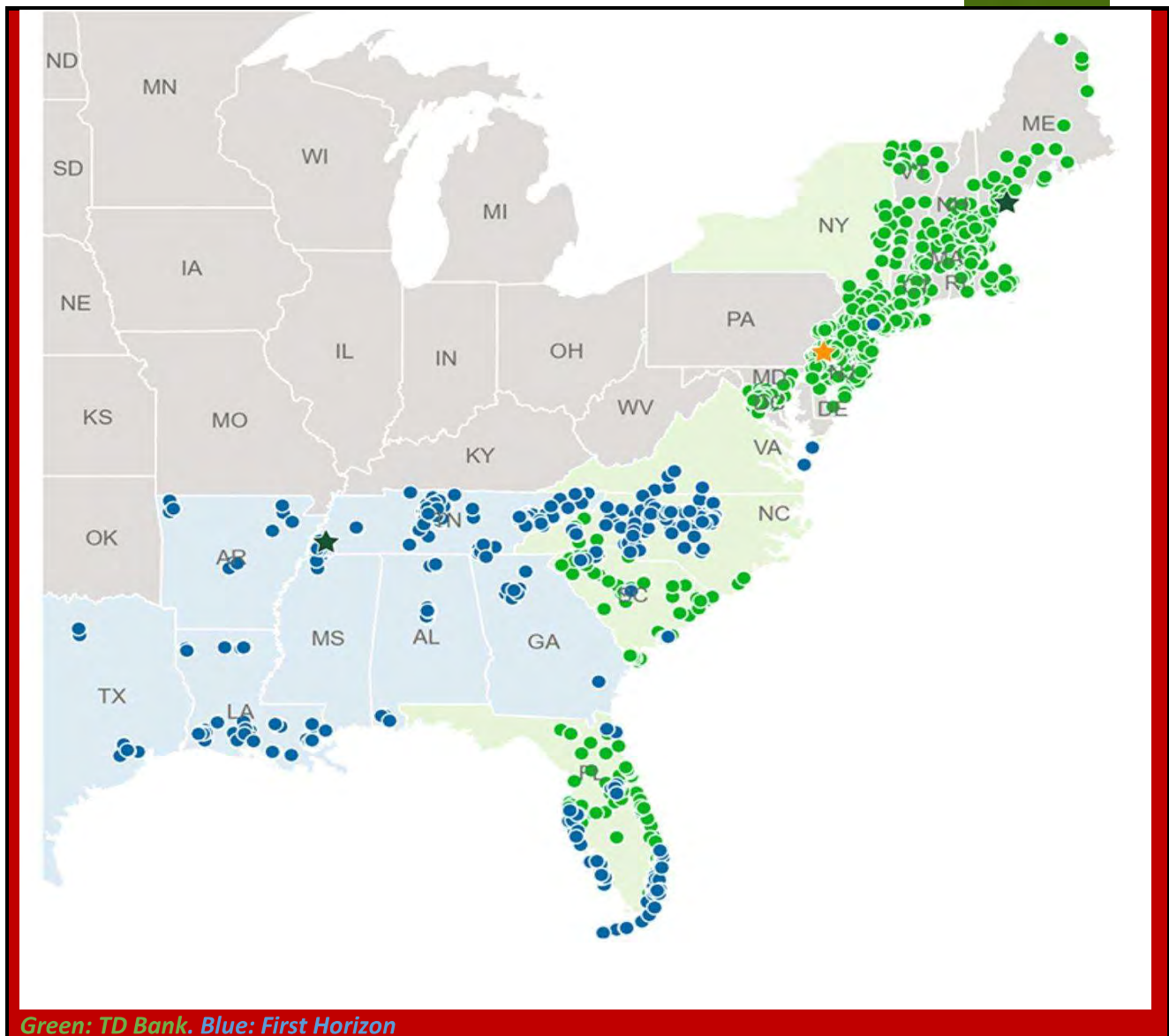
Analysis of the Ocean Rescue Alliance: https://www.linkedin.com/posts/ocean-rescue-alliance_blue-economy-x-ocean-rescue-alliance-activity-6834163126926233600-iC7n

Summary: We do not favor this merger

Incompetence, discrimination and exclusionary practices based on race are prevalent in investment and finance, including at US regulatory bodies. While we believe that, in general, Canadian entities operate at a higher ethical level, TD Bank appears to be the exception to that tendency. Therefore, we do not favor this merger.








By law, the agencies are required to evaluate:


Factor	Comment	Evaluation
<i>The convenience and needs of the communities to be served by the combined organization;</i>	According to <i>Fair Finance Watch</i> (http://www.innercitypress.com/cra2clitmustesttdhorizonffw072722.html), “Nationwide in 2020, TD Bank denied almost as many applications from African Americans (833) as it made in mortgage loans to African Americans (853). It was far more generous with white borrowers: 23,469 loans made, with only 9009 denials.” Obviously, the needs of all sectors of the community are not being served in a fair or non-discriminatory manner.	Negative
<i>The insured depository institutions’ performance under the Community Reinvestment Act (CRA);</i>	CRA “performance” is irrelevant since the evaluation process is overly positively biased to benefit the banking industry.	Neutral
<i>Competition in the relevant markets;</i>	<p>This merger may decrease competition in fast growing states.</p> <p>The merger potentially cuts off development in fast growing southern states. Also, the African American proportion of the population is very high in the states TD Bank seeks to expand into (see map below). In fact, the African American population in these states is the highest in the United States. This is the “Black Belt”.</p> <p>Given TD Bank’s discriminatory behavior, this geographic factor does not bode well for non-white borrowers in these areas.</p> <p>The merger should be rejected based on this fact.</p>	Negative



Factor	Comment	Evaluation
<i>The effects of the proposal on the stability of the U.S. banking or financial system;</i>	The merger will decrease the stability of the US banking and finance system by fostering discriminatory lending behavior and lowering ethical standards of behavior.	Negative
<i>The financial and managerial resources and future prospects of the companies and banks involved in the proposal;</i>	The future prospects of the companies and banks involved in the proposal are neutral.	Neutral
<i>The effectiveness of the companies and banks in combatting money laundering activities.</i>	The US dollar is the most utilized tool for money laundering. Control in this area lies with the US Treasury and legislative bodies.	Neutral

We support our comments by reference to the following experience:


-  We developed the first targeted mortgage-backed security investment CRA securitization, an MBS pool backed by loans from minority financial institutions. We designed and created the investment in 1992. See: <https://www.creativeinvest.com/wglelca.pdf> and First CRA Targeted Mortgage-Backed Security (MBS). <https://www.creativeinvest.com/mbsarticle.html>
-  In 1992, in a letter to the Federal Reserve, we suggested the creation of an Investment Test as part of the Community Reinvestment Act (CRA) as a way to evaluate community development performance, another suggestion that was ignored until non-Black persons and firms could profit.
-  In 1993, at the First Annual Greenlining Institute Conference on Community Development, we suggested the creation of government backed venture capital funds to take first risk position in the provision of equity capital to small, minority businesses on Georgia Avenue in NW Washington, DC. This morphed into the New Markets Tax Credit program, a real estate focused "community development" program that has fueled gentrification.
-  On November 3, 1994, in a speech titled "The Role of Minority Banks in Meeting the Credit Needs in the Marketplace" delivered at the Federal Reserve Bank of Kansas City Seminar on: Credit and the Disadvantaged, we suggested the Fed purchase mortgage-backed securities issued by Black owned banks as a way to address housing inequality while enhancing the impact of monetary policy, a suggestion the Fed ignored until majority-owned banks could profit.
-  Mr. Cunningham's presentation at the Texas Association of African American Chambers of Commerce resulted in successful crowdfunding legislation for the State of Texas. <https://www.creativeinvest.com/TexasEconomicForecastCrowdfundingBill.pdf>
-  See: Social Performance Indicators for Banks, 2002. <https://www.creativeinvest.com/SocialPerformanceIndicatorsfortheFinanceIndustry.pdf>
-  "Environmental Issues and Stock Returns" quantifies the impact environmental issues have on company stock prices. <https://www.eventbrite.com/e/how-environmental-issues-impact-stockreturns-tickets-2029288657>


 We stated, on February 5, 2015, in testimony to the Norwegian Ministry of Finance (<http://www.creativeinvest.com/NorwayTestimonyFeb52015.pdf>) and on April 22, 2015 in testimony to the Government of the United Kingdom (<https://www.creativeinvest.com/UKConsultationonChangestoInvestmentRegulationsApril222015.pdf>):


"As the market value of environmental, social and governance factors continues to grow, companies and investment managers will engage in fraudulent practices related to these factors. These practices will range from simple falsification of environmental, social and governance records to more sophisticated, but no less fraudulent methods related to environmental, social and governance ratings."

On September 22, 2015 automaker Volkswagen admitted that defeat devices used to cheat emissions testing were installed in 11 million vehicles worldwide.

 We outlined an approach to these questions in Comments on the Environmental, Social and Governance Reporting Guide. Government of Hong Kong. September 18, 2015.
<https://www.creativeinvest.com/HongKongESGReporting.pdf>


 We tied ESG to the competitive position of the U.S. capital markets. As we noted on Oct. 5, 2006, foreshadowing the rise of cryptocurrencies: "competitive advantage with respect to capital access is available to any country with significant economic potential and a modest telecommunications infrastructure." <https://www.sec.gov/comments/4-526/4526-1.pdf>


 On January 15, 2010, during a discussion on Race, Class and the Environmental Movement, we explored solutions for health/wealth disparities, the structure/metrics of injustice, and ideas for advancing equity. See: <https://www.prlog.org/10490189-race-class-and-the-environmentalmovement.html> and <https://drive.google.com/file/d/1LUCWzdGTyh92SqiUXjsiZ-ugM4eFGab/view?%20usp=sharing>

 Anti-Predatory Lending Investment Vehicle: Proposed Solution to the "Mortgage" Crisis.
<https://www.creativeinvest.com/antipredatory.html>




 First Socially Responsible Investing Portfolio Devoted to Diversity Launched, 2006.
<https://www.creativeinvest.com/FirstInvestingPortfolioDevotedtoDiversity.pdf>

We also reference⁵ the following:

 Ninth Circuit Rules in Favor of Wells Fargo, Against African Americans
<https://www.prlog.org/12887315-ninth-circuit-rules-in-favor-of-wells-fargo-against-african-americans.html>

 Firm Helps facilitate \$1.7 Billion for Black Lives Matter
<https://www.american.edu/news/20200825-washington-semester-program.cfm>

⁵ We do not seek, nor will we accept, any funding or assistance concerning our work and innovations. This document is not submitted to subject the bank to "CRA blackmail" by protesting bank merger applications. Copyright, ©, 2022, William Michael Cunningham and Creative Investment Research. All rights reserved.
info@creativeinvest.com

-  We have developed an investment vehicle that deals with homelessness and another that deals with HIV/AIDS. <https://www.impactinvesting.online/2018/11/william-michael-cunningham-on-impact.html>
-  Corporate Donations to Black Lives Matter total \$67 Billion. Cash Disbursed So Far Estimated to be \$652 million. <https://www.prlog.org/12874879-corporate-donations-to-black-lives-matter-total-67-billion.html>
-  Through our impact investing vehicle, the Maternal Mortality Reparation Facility for Black Women, we can help repair the mortality gap currently damaging black and brown women, and, by extension, the communities they belong to. <https://www.prlog.org/12876083-maternal-mortality-reparation-facility-for-black-women.html>

Sincerely,

/William Michael Cunningham/

William Michael Cunningham

See: 1.) Appendix (below) and 2.) Letter dated Monday, April 15, 1996 to Mr. William Wiles, Federal Reserve Board, 20th & Constitution Ave., N.W., Washington, DC 20551 (JPMFRB2AWORD.pdf attached via email).

Appendix. See: <https://www.creativeinvest.com/JPMorgan1996PressRelease.pdf>

PRESSRELEASE

Creative Investment Research, Inc. • 1321 Rittenhouse Street, NW • Washington, DC 20011-1105 • 202-722-5000 • Fax: 202-785-4682

For Immediate Release

Date: May 16, 1996

Contact: William Michael Cunningham

Phone: 202-722-5000

Fax: 202-785-4682

Morgan Guaranty Trust Merger Protest

Washington, D.C.—Creative Investment Research released today the text of a statement filed with the Federal Reserve Board protesting the approval of a merger application submitted by Morgan Guaranty Trust. The Federal Reserve Board approved the merger on April 29, 1996. The Fed, in a press release, stated:

“Morgan Guaranty Trust Company of New York, New York, New York (‘Morgan Guaranty’), a state member bank, has applied under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) (the ‘Bank Merger Act’) to merge with J.P. Morgan Delaware, Wilmington, Delaware (‘Morgan Delaware’), with Morgan Guaranty surviving the merger.

...Based on the foregoing and all the facts of record, the Board has determined that these applications should be and hereby are, approved.”

We have requested the Board review this merger. We focus on the Board staff review of the CRA activity of Morgan Guaranty Trust Company of New York. This review does not discuss the banks' securities activities. We feel the review was quite limited in scope. The Board has the authority and ability to review other information it deems relevant. The applicant's parent, J.P. Morgan & Co. Inc., received Board approval under section 4(c)(8) of the Bank Holding Company Act and section 25.21(a) of the Board's Regulation Y 12 C.F.R. 225.21(a), to engage, through wholly owned subsidiaries, in underwriting and dealing in, on a limited basis, certain securities that member banks, prior to the approval of that