

FEDERAL RESERVE SYSTEM

GMAC LLC

IB Finance Holding Company, LLC
Detroit, Michigan

Order Approving Formation of Bank Holding Companies
and Notice to Engage in Certain Nonbanking Activities

GMAC LLC and IB Finance Holding Company, LLC (“IBFHC”) (collectively, “GMAC” or “Applicants”) have requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to become bank holding companies on conversion of GMAC Bank, Midvale, Utah, to a commercial bank.² GMAC Bank currently operates as an industrial loan company and is exempt from the definition of “bank” under the BHC Act.³ GMAC has also requested the Board’s approval pursuant to sections 4(c)(8) and 4(j) of the BHC Act⁴ to retain its nonbanking subsidiaries that engage in certain activities that are permissible for bank holding companies under the Board’s Regulation Y, including certain credit extension, loan servicing, leasing, and related activities.⁵

¹ 12 U.S.C. § 1842.

² GMAC Bank is a direct subsidiary of IBFHC and an indirect subsidiary of GMAC LLC.

³ 12 U.S.C. § 1841(c)(2)(H).

⁴ 12 U.S.C. §§ 1843(c)(8) and (j).

⁵ 12 CFR 225.28(b)(1)-(3).

GMAC has also provided notice to retain its foreign subsidiaries under section 4(c)(13) of the BHC Act.⁶

Section 3(b)(1) of the BHC Act requires that the Board provide notice of an application under section 3 to the appropriate federal or state supervisory authority for the banks to be acquired and provide the supervisor with a period of time (normally 30 days) within which to submit views and recommendations on the proposal.⁷ The BHC Act also authorizes the Board to reduce or eliminate these notice periods under certain circumstances.⁸

In light of the unusual and exigent circumstances affecting the financial markets, and all other facts and circumstances, the Board has determined that emergency conditions exist that justify expeditious action on this proposal in accordance with the provisions of the BHC Act and the Board's regulations.⁹ The Board has provided notice to the primary federal and state supervisors of GMAC Bank, the Federal Deposit Insurance Corporation ("FDIC") and the Commissioner of the Utah Department of Financial Institutions ("UDFI"), and to the Department of Justice ("DOJ"). Those agencies have indicated that they have no objection to approval of the proposal. For the same reasons, and in light of the fact that this transaction involves the conversion of an existing subsidiary of Applicants from one form of a depository institution to another and the retention of

⁶ 12 U.S.C. § 1843(c)(13).

⁷ 12 U.S.C. § 1842(b)(1); 12 CFR 225.15(b).

⁸ 12 U.S.C. § 1842(b)(1).

⁹ 12 U.S.C. § 1842(b)(1); 12 CFR 225.16(b)(3), 225.16(g)(2), and 262.3(l).

Applicants' existing nonbanking subsidiaries, the Board has also waived public notice of this proposal.¹⁰

GMAC, with total consolidated assets of approximately \$211.3 billion, engages in automotive financing, commercial financing, mortgage financing, insurance, and other activities both in the United States and abroad.¹¹ GMAC Bank has total consolidated assets of approximately \$33 billion and controls deposits of approximately \$17 billion. GMAC Bank engages primarily in lending and other financing activities and taking deposits of the type that are permissible for an industrial loan company under the exception in section 2(c)(2)(H) of the BHC Act.

Factors Governing Board Review of the Proposed Bank Holding Companies

The BHC Act sets forth the factors the Board must consider when reviewing the formation of a bank holding company or the acquisition of a bank. 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 proposal; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act ("CRA")¹² of the insured depository institutions involved in the transaction; and the availability of information needed to

¹⁰ 12 CFR 225.16(b)(3), 225.16(g)(2), and 262.3(l).

¹¹ Asset and deposit data for GMAC and GMAC Bank are as of September 30, 2008.

¹² 12 U.S.C. § 2901 et seq.

determine and enforce compliance with the BHC Act and other applicable federal banking laws.¹³

In addition, this application presents a number of unique issues. In particular, GMAC has a long historical relationship with General Motors Corporation (“GM”). Since founding GMAC, GM has held a significant ownership position in GMAC, and GMAC has been the primary source of financing to customers and dealerships seeking to purchase or lease GM vehicles. GMAC proposes to continue to provide funding to customers and dealerships to enable them to acquire and lease vehicles from GM, though as noted below, GMAC proposes to diversify its activities and has modified in significant ways its agreement with GM to provide customer and dealership financing. Although GM owns a significant portion of GMAC, a group of entities controlled by or affiliated with a private investment firm, Cerberus Capital Management, L.P. (“Cerberus”), currently owns a majority of the shares of GMAC. Neither GM nor Cerberus is able to comply with the nonbanking activities restrictions in the BHC Act. Consequently, neither may retain a controlling interest in GMAC, within the meaning of the BHC Act, if this application is approved.

In reviewing the factors under the BHC Act, including the issues noted above, the Board has considered all the facts and circumstances. This review has included the record regarding the financial and managerial resources of GMAC and GMAC Bank, their future prospects, and the effects of this proposal on the

¹³ In cases involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits in the nation and relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act. Because the proposed transaction does not involve an interstate bank acquisition by a bank holding company, the provisions of section 3(d) of the BHC Act do not apply in this case.

convenience and needs of the communities served by these entities. Among other things, the Board has considered the business plans of GMAC's management to diversify the activities of GMAC and its plans for GMAC Bank; the successful efforts of management of GMAC to raise capital; the experience of senior management of GMAC in other organizations that are regulated as bank holding companies; the steps taken by the management of GMAC and GMAC Bank to address concerns raised by the bank's supervisors and to prepare to operate within the framework established by the BHC Act; and the public benefits that would accrue from approval of this proposal, including those resulting from the operation of GMAC as a regulated entity. The Board has also considered the steps taken by the Department of the Treasury to provide assistance to GM and thereby help ensure the viability of a major business partner of GMAC and GMAC Bank. In addition, the Board has had extensive consultations with the FDIC, the primary federal supervisor of GMAC Bank, and has consulted with the UDFI, the chartering authority and state supervisor for GMAC Bank.

The Board has also carefully considered the plans and commitments made by GM and Cerberus promptly to conform their respective ownership interests in GMAC to the requirements of the BHC Act. To address concerns that GM could control GMAC and GMAC Bank for purposes of the BHC Act, GM has committed to the Board that before consummation of the proposal, GM will reduce its ownership interest in GMAC to less than 10 percent of the voting and total equity interest of GMAC. GM's remaining equity interest in GMAC will be transferred to a trust that has a trustee acceptable to the Board and the Department of the Treasury, who will be entirely independent of GM and have sole discretion

to vote and dispose of the GMAC equity interests.¹⁴ The trustee must dispose of the equity interests held in the trust within three years of the trust's creation. In addition, GM has made commitments to the Board that are similar to those the Board previously has relied on to ensure that a company could not exercise a controlling influence over a bank or bank holding company.¹⁵ Until the trust fully divests the shares, the limitations of sections 23A and 23B of the Federal Reserve Act will apply to GM and GMAC Bank as if they were affiliates.¹⁶ GMAC has committed to amend its existing agreements with GM to remove any restrictions on GMAC's ability to engage in transactions with unrelated third parties and to ensure that GMAC has complete discretion to set the terms of its financing arrangements.

To ensure that Cerberus's holdings in GMAC are consistent with the Board's precedent on noncontrolling investments in banks and bank holding companies, each Cerberus fund that holds interests in GMAC will distribute its equity interests in the company to its respective investors. As a result of this distribution, the aggregate direct and indirect investments controlled by Cerberus and its related parties would not exceed 14.9 percent of the voting shares or 33 percent of the total equity of GMAC LLC. The investors that receive shares in the distribution from the Cerberus funds are each sophisticated investors and are independent of Cerberus and independent of each other. No investor would, after

¹⁴ The trust agreement and trustee must be acceptable to the Board.

¹⁵ In rare and unusual situations when warranted by the public interest, the Board previously has used the device of a trust as an interim measure to facilitate the sales of shares to conform with the requirements of the BHC Act. See Board Letter to Stuart M. Plevin, Esq. dated June 26, 2000.

¹⁶ 12 U.S.C. §§ 371c and 371c-1.

this distribution, own, hold, or control 5 percent or more of the voting shares or 7.5 percent of the total equity of GMAC LLC. As a result of this distribution, the aggregate direct and indirect investments controlled by Cerberus and its related parties would not exceed 14.9 percent of the voting shares or 33 percent of the total equity of GMAC LLC. Cerberus has made a number of commitments previously found by the Board to be helpful in limiting the ability of an investor to exercise a controlling interest over a banking organization. In addition, Cerberus employees and consultants would cease providing services to, or otherwise functioning as dual employees of, GMAC, and neither Cerberus nor any affiliated entity will have any advisory relationships with GMAC or any investor regarding the vote or sale of shares or the management or policies of GMAC or GMAC Bank.¹⁷

Based on the entire record, and for the reasons explained more fully below, the Board has determined that the proposal meets the requirements of the BHC Act and, consequently, has approved the proposal.

Financial, Managerial, and Other 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.¹⁸ The Board also reviews the financial and managerial resources of the organization involved in the proposal under section 4 of the BHC Act. The Board has carefully considered

¹⁷ A commenter opposed approval of the application because, in the commenter's view, approval would breach the separation between banking and commerce in the BHC Act. As discussed above, GM and Cerberus have restructured their respective ownership interests to be consistent with the BHC Act limitations on banking and commerce and with the Board's policies and precedent on noncontrolling investments in banks and bank holding companies.

¹⁸ 12 U.S.C. § 1842(c)(2) and (3).

these factors in light of all the facts of record, including supervisory and examination information received from the relevant federal and state supervisors of the organizations involved in the proposal and other available financial information, including information provided by Applicants. In addition, the Board has consulted with the primary federal and state supervisors of GMAC Bank.

In analyzing financial factors, the Board consistently has considered capital adequacy to be an especially important aspect. The Board has considered GMAC's successful efforts to raise additional capital and that, as a result, GMAC will be well capitalized on completion of the proposal, as well as commitments GMAC has made to maintain its capital at a high level for a specified time period. In addition, GMAC Bank is currently well capitalized under applicable federal guidelines. GMAC Bank also would be well capitalized on a pro forma basis on consummation of the proposal. The Board has consulted with the FDIC, the primary federal supervisor of GMAC Bank, about the adequacy of the bank's capital for its current and pro forma operations and the future prospects of GMAC Bank in light of its business plans. Moreover, as noted above, the Board has considered that the Department of the Treasury has taken a number of steps including providing credit to GM, which for some time will continue to be a major business partner of GMAC, in order to help stabilize GM and improve its viability.

In addition, the Board has considered carefully the managerial resources of Applicants in light of all the facts of record, including confidential supervisory and examination information and information provided by the Applicants. The Board has considered the supervisory experience of the relevant federal and state supervisory agencies with Applicants and GMAC Bank and their records of compliance with applicable banking law and anti-money laundering laws. The Board also has considered the experience of management of GMAC,

both at GMAC and more broadly in managing a regulated entity subject to the requirements applicable to bank holding companies. The Board has consulted the FDIC regarding its views on management processes and risk-management systems at both GMAC and GMAC Bank. In addition, the Board has carefully considered information from GMAC about the organization's business strategy, as well as its business plans for the holding company and bank, and the actions it is taking and proposing to take to strengthen the organization's risk-management infrastructure and to diversify its customer base and sources of income. The Board also has consulted with the FDIC about these plans and actions to strengthen GMAC and GMAC Bank's risk-management infrastructure and diversify its business operations.

The Board also has considered carefully the future prospects of GMAC and GMAC Bank, including their business plans, in light of all the facts and circumstances, and the actions they already have taken and plan to take to strengthen their financial condition and management systems and to diversify their business operations. As noted, the Board also has considered the actions taken by the Department of the Treasury to provide financial assistance to stabilize GM, which would benefit GMAC and GMAC Bank while they remain an important provider of financing for vehicles manufactured by GM.

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

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. 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 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.¹⁹

The proposal involves the conversion of an existing, wholly owned industrial loan company subsidiary of Applicants into a bank with no resulting change in the ownership of GMAC Bank. Applicants do not propose to acquire any additional depository institution as part of this proposal. Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in any relevant banking market and that the competitive factors are consistent with approval of the proposal.

Convenience and Needs and CRA Performance 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 depository institutions under the CRA.²⁰

The Board has carefully considered the convenience and needs factor and the CRA performance records of GMAC Bank in light of all the facts of record. As provided in the CRA, the Board evaluates the record of performance of

¹⁹ 12 U.S.C. § 1842(c)(1).

²⁰ 12 U.S.C. § 2903; 12 U.S.C. § 1842(c)(2).

an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.²¹

GMAC Bank received an “outstanding” rating under the CRA at its most recent performance evaluation by the FDIC, as of February 27, 2006 (the “FDIC Examination”). Consistent with the CRA regulations adopted by the federal banking agencies, GMAC Bank was evaluated under the community development test as a limited purpose institution.²² Applicants have represented that the conversion of GMAC Bank to a bank for purposes of the BHC Act will enhance the ability of the bank to meet the convenience and needs of its communities by permitting the bank to offer a wider array of deposit products and strengthening the bank’s ability to continue to serve as a significant source of automobile financing, including for vehicles from companies other than GM.

The Board has engaged in extensive consultation with the FDIC about GMAC Bank’s CRA and consumer compliance performance since its last evaluation. In addition, the Board has received information from GMAC Bank about the actions it will take with respect to its consumer lending activities on conversion of the industrial loan company to a bank and has consulted with the FDIC about these proposed actions.

Based on a review of the entire record, and for the reasons discussed above, the Board has concluded that considerations relating to convenience and

²¹ The Interagency Questions and Answers Regarding Community Reinvestment provide that a CRA examination is an important and often controlling factor in the consideration of an institution’s CRA record. See 64 Federal Register 23,641 (1999).

²² See, e.g., 12 CFR 228.21(a)(2).

needs considerations and the CRA performance record of GMAC Bank are consistent with approval of the proposal.

Nonbanking Activities

As noted, GMAC also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to engage in certain credit extension and servicing, leasing, and related activities that are permissible for a bank holding company directly and through its nonbanking subsidiaries.²³ GMAC has committed to conduct these activities in accordance with the limitations set forth in Regulation Y and the Board's orders governing these activities.

To approve this notice, the Board must also determine that the performance of the proposed activities by GMAC "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."²⁴ As part of its evaluation of these factors, the Board has considered the financial and managerial resources of GMAC and its subsidiaries and the effect of the proposed transaction on their resources. For the reasons noted above, and based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the notice.

In addition, the Board must consider the competitive effects of a proposal to engage in nonbanking activities under the public benefits factor of section 4(j) of the BHC Act. The proposal involves the retention of GMAC's existing nonbanking subsidiaries, and GMAC would not acquire any additional

²³ 12 CFR 225.28(b)(1)-(3).

²⁴ See 12 U.S.C. § 1843(j)(2)(A).

nonbanking subsidiaries as part of this proposal. Accordingly, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition in any relevant market.

GMAC is one of the nation's largest automotive finance companies. The proposal would benefit the public by strengthening GMAC's ability to fund the purchases of vehicles manufactured by GM and other companies and by helping to normalize the credit markets for such purchases.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, based on all the facts of record, the Board has determined that the balance of the public benefits factor under section 4(j)(2) of the BHC Act is consistent with approval.

GMAC engages in a small amount of activities that may not conform to the requirements of the BHC Act. Section 4 of the BHC Act by its terms also provides any company that becomes a bank holding company two years within which to conform its existing nonbanking investments and activities to the section's requirements, with the possibility of three one-year extensions.²⁵ GMAC must conform to the BHC Act any impermissible nonfinancial activities and investments that they currently conduct or hold, directly or indirectly, within the time requirements of the act.

GMAC also has provided notice of its proposal to retain its foreign subsidiaries under section 4(c)(13) of the BHC Act. Based on the record, the Board has no objection to the retention of such subsidiaries.

²⁵ See 12 U.S.C. § 1843(a)(2).

Conclusion

Based on the foregoing, the Board has determined that the application under section 3 and the notices under section 4 of the BHC Act should be, and hereby are, approved.²⁶ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that the Board is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Applicants and GMAC's shareholders with the conditions imposed in this order and all the commitments they made to the Board in connection with the application and notices. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),²⁷ and to the Board's authority to require such modification or termination of the activities of a bank holding company or

²⁶ A 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. The Board's regulations provide for a hearing under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). 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. The request 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.

²⁷ 12 CFR 225.7 and 225.25(c).

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. 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 does not involve the acquisition, merger, or consolidation of a bank. On this basis and after consultation with the DOJ, the Board has determined that the post-consummation period in section 11 of the BHC Act does not apply to the consummation of the conversion of GMAC Bank.²⁸ Accordingly, the transaction may be consummated immediately but 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 Richmond, acting pursuant to delegated authority.

By order of the Board of Governors,²⁹ effective December 24, 2008.

(signed)

Jennifer J. Johnson
Secretary of the Board

²⁸ 12 U.S.C. § 1849(b)(1).

²⁹ Voting for this action: Chairman Bernanke, Vice Chairman Kohn, and Governors Warsh, and Kroszner. Voting against this action: Governor Duke.