



INTERMEDIATE SMALL BANK

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

PUBLIC DISCLOSURE

December 21, 2010

COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

Modern Bank, NA
Charter Number: 16629

667 Madison Avenue
New York, New York 10022

Office of the Comptroller of the Currency

343 Thornall Street
Edison, NJ 08837

NOTE: This document is an evaluation of this institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods consistent with safe and sound operation of the institution. This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion, or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

INSTITUTION'S CRA RATING: This institution is rated Satisfactory

The Lending Test is rated: Satisfactory.

The Community Development Test is rated: Satisfactory.

The major factors supporting the institution's rating include:

- The quarterly average net loan-to-deposit ratio for Modern Bank, N.A. (Modern) is reasonable given the bank's performance context;
- The bank originated a majority of its loans within the bank's assessment area (AA);
- The distribution of loans reflects reasonable penetration among businesses of different sizes;
- The bank's level of community development (CD) activities demonstrates adequate responsiveness to the community development needs in the AA given the bank's capacity and CD opportunities within the AA.

Scope of Examination

Modern's Community Reinvestment Act (CRA) performance was evaluated under the Intermediate Small Bank examination procedures, which include a lending test and a CD test. The lending test evaluates the bank's record of meeting the credit needs of its AA through its lending activities. The lending test considers the bank's primary loan products based on originations during the evaluation period of January 1, 2008 to September 30, 2010. Modern's primary loan products are commercial real estate loans and consumer loans, which is in line with the bank's business strategy during the evaluation period. To arrive at our conclusions for the lending test, we analyzed and sampled bank provided information, which was deemed reliable. The CD test evaluates the bank's responsiveness to CD needs in its AA through CD loans, investments, and services. The assessment period for Modern's CD activities is August 25, 2007 to December 20, 2010. CD loans, investments, and services submitted by bank management were verified to ensure they met the regulatory definition of community development.

Description of Institution

Modern is a \$629 million wholly owned bank headquartered in New York City, NY. The bank, along with an affiliate, Modern Asset Management, is owned by, and part of, a multi-tiered holding company structure. Modern, formerly known as Excel Bank, was purchased by a group of investors, and renamed, in December 2005. Upon the change in control, Modern was restructured taking on a private bank business model focused on servicing high net worth individuals. As part of the restructuring, most of Excel's loan portfolio was sold or liquidated during the first several months of 2006.

The bank's primary market is high net worth individuals, their related business interests, and other commercial businesses, including commercial real estate. The bank offers traditional bank products, such as demand, NOW, savings, money market, time deposit, and retirement savings accounts, loan products on a secured basis, and related deposit and loan services. In addition, the bank offers custody account services. Modern also offers investment advisory services through its affiliate, Modern Asset Management.

As of September 30, 2010, Modern reported total assets of \$629 million. The loan portfolio and investment portfolio comprise 50% and 48% of total assets, respectively, with non earning assets accounting for the remaining 2%. The loan portfolio is comprised of 1-4 family real estate loans (35%), commercial real estate loans (35%), commercial and industrial loans (15%) and loans to individuals (15%). Net Tier One Capital is \$51 million.

The most recent CRA examination of the bank was conducted by the OCC on August 24, 2007. At that evaluation, the bank was evaluated under a Wholesale Bank designation and received a rating of "Outstanding." On June 15, 2007 the Wholesale Bank designation expired and Modern reverted to a Small Intermediate Bank designation for CRA purposes. Accordingly, this is the bank's first evaluation under a Small Intermediate Bank designation since the Wholesale Bank designation expired.

Over this evaluation period, the bank's ability to help meet the credit needs of the community has been impacted by the bank's overall financial condition, which has also led to a regulatory action entered into between the bank and our office that had restrictions on bank activities.

Description of Assessment Area(S)

Modern has identified New York County, NY as its AA. New York County (NYC) is located within the New York – White Plains – Wayne, NY-NJ Metropolitan Statistical Area (MSA) #35644. The AA meets legal requirements and does not arbitrarily exclude low- or moderate-income geographies. According to 2000 US Census data, the AA total population is 1.5 million people. Within the AA there are approximately 799 thousand housing units of which 93% are occupied. The AA housing is predominantly rental housing at 74%, 19% owner occupied housing, and 7% vacant. Multifamily units (five or more families) represent 96% of all housing units in the AA. The weighted average median housing value in the AA is \$345,099, making home ownership difficult for most people with a low- or moderate-income. In addition, a high portion of the AA's households (17%) have incomes below the poverty level. The updated median family income for 2009 is \$64,800.

The New York City economy is the largest regional economy in the United States. The city continues to be a financial leader of the world and a premier location for leading global financial services companies. As a banking center, New York City is headquarters for five of the six largest United States banks. Major banks operating in the area includes JP Morgan Chase, Bank of America, Citibank, and HSBC. As of June 30, 2010, Modern ranked 92nd out of 240 institutions in deposit market share at 0.06%. JP Morgan Chase, Bank of America, and Citibank ranked as the top three in market share with 31.54%, 9.35%, and 7.45%, respectively.

New York is also home to the Federal Reserve Bank of New York, the New York Stock Exchange, the American Stock Exchange, NASDAQ and Commodities Exchange. Other important sectors include media, entertainment, telecommunications, tourism, publishing, and garment production.

Leading into the evaluation period, New York City was experiencing robust economic growth, with Wall Street salaries having a multiplier effect throughout New York and surrounding areas. However, during the evaluation period the economy has taken a downturn as the financial crisis led to economic contraction and job loss. As of October 2010, the unemployment rate in New York City according to the New York Department of Labor is 9.2%. The top five employers in the AA are New York Presbyterian Healthcare Systems, Citigroup, JP Morgan Chase, Verizon Communications and Federated Department Stores.

In determining the performance context, we contacted a non-profit organization that helps developers finance and build affordable multi-family housing. According to our contact, affordable housing continues to be a great need within the bank's AA. While New York City is economically and demographically diverse, the cost of housing remains high making it difficult for those with low- to moderate-income to attain affordable housing. Commercial lending to fund various revitalization projects; financing the development of commercial, industrial and residential units; lines of credit for non-profits; and loans or grants to small businesses are also amongst the primary needs of the community. Small business training, financial literacy, subsidies for affordable housing, and foreclosure prevention assistance are also in need.

Conclusions with Respect to Performance Tests

LENDING TEST

The bank's performance under the lending test is rated "Satisfactory". Modern's quarterly average net loan-to-deposit ratio is reasonable and the bank originated a majority of its loans within the bank's AA. The distribution of loans reflects reasonable penetration among businesses of different sizes. However, the geographic distribution of loans reflects poor dispersion among geographies of different incomes.

Loan-to-Deposit Ratio

Modern's loan-to-deposit ratio is reasonable. The bank's loan-to-deposit ratio averaged 49.85% over the 13 quarters since the prior CRA examination. During this period, the ratio ranged from a quarterly low of 27.94% at September 30, 2007 to a quarterly high of 64.66% at December 31, 2009. The average loan-to-deposit ratio of the bank's peers over the 13 quarters is 86.16%, ranging from 79.69% to 91.09%. Mitigating the bank's performance relative to peer is a steadily increasing trend over the evaluation period. The quarterly low was at the start of the evaluation period, following the sale of assets after the change in control from Excel Bank, and has increased notably since.

Lending in Assessment Area

Modern originated a majority of its loans inside the AA and meets the standard of satisfactory performance. Modern originated 60% of its loans by number inside the AA, which carries greater weight than performance by dollar value which a majority was originated outside the AA.

Table 1 – Lending in the New York County AA (dollar amounts in thousands)										
Loan Type	Number of Loans					Dollars of Loans				
	Inside AA		Outside AA		Total	Inside AA		Outside AA		Total
	#	%	#	%		\$	%	\$	%	
Commercial Real Estate Loans	15	55.56%	12	44.44%	27	60,668	47.57%	66,870	52.43%	127,538
Consumer Loans	13	65.00%	7	35.00%	20	33,824	38.65%	53,685	61.35%	87,509
Combined	28	59.57%	19	40.43%	47	94,492	43.94%	120,555	56.06%	215,047

Source: Loan Sample 2008-2010

Lending to Borrowers of Different Incomes and to Businesses of Different Sizes

Overall, Modern’s record of lending to businesses of different sizes and borrowers of different incomes reflects reasonable penetration and meets the standard of satisfactory performance. More weight was placed on performance to businesses of different sizes given this was the bank’s primary lending activity by number and dollar within the evaluation period.

Lending to Businesses of Different Sizes

Modern’s distribution of loans to businesses reflects reasonable penetration among businesses of different sizes. During the evaluation period, the bank originated 53% of loans by number and 58% of loans by dollar to small businesses. Such performance is lower than the demographic data, which indicates 70% of businesses in the AA are small businesses.

Table 2A - Borrower Distribution of Loans to Businesses in the New York County AA				
Business Revenues (or Sales)	≤\$1,000,000	>\$1,000,000	Unavailable/ Unknown	Total
% of AA Businesses	69.52%	6.95%	23.53	100%
% of Bank Loans in AA by #	53.33%	46.67%	0.00	100%
% of Bank Loans in AA by \$	58.24%	41.76	0.00	100%

Source: Loan Sample 2008-2010; and 2000 U.S. Census data

Lending to Borrowers of Different Income Levels

The distribution of loans to consumers reflects poor performance among borrowers of different income levels. The bank did not make any loans to low- or moderate-income households. Such performance is lower than the demographic data within the AA.

Table 2B - Borrower Distribution of Consumer Loans in New York County AA								
Borrower Income Level	Low		Moderate		Middle		Upper	
	% of AA Households	% of Number of Loans	% of AA Households	% of Number of Loans	% of AA Households	% of Number of Loans	% of AA Households	% of Number of Loans
Consumer Loans	6.48%	0%	8.14%	0%	7.17%	0%	76.44%	100%

Source: Loan Sample 2008-2010; and 2000 U.S. Census data

Geographic Distribution of Loans

Overall, Modern’s geographic distribution of loans reflects poor dispersion throughout census tracts of different income levels.

Business Loans

Modern’s geographic distribution of business loans reflects poor dispersion among census tracts of different income levels. The bank made no business loans in low- or moderate-income geographies, which is significantly lower than the AA demographic of businesses in these geographies.

Table 3A - Geographic Distribution of Loans to Business in New York County AA								
Census Tract Income Level	Low		Moderate		Middle		Upper	
Loan type	% of AA Businesses	% of Number of Loans	% of AA Businesses	% of Number of Loans	% of AA Businesses	% of Number of Loans	% of AA Businesses	% of Number of Loans
Business	20.27%	0%	19.93%	0%	8.11%	13.33%	48.65%	86.67%

Source: Loan Sample 2008-2010; and 2000 U.S. Census data

Consumer Loans

Modern’s geographic distribution of consumer loans reflects poor dispersion among census tracts of different income levels. The bank made no consumers loans to households in low- or moderate-income geographies, which is lower than the AA demographic of 28% for low-income and 30% for moderate-income households in these geographies.

Table 3B - Geographic Distribution of Consumer Loans in New York County AA								
Census Tract Income Level	Low		Moderate		Middle		Upper	
	% of AA Households	% of Number of Loans	% of AA Households	% of Number of Loans	% of AA Households	% of Number of Loans	% of AA Households	% of Number of Loans
Consumer Loans	28.20%	0	30.20%	0	8.70%	0	32.87%	100%

Source: Loan Sample 2008-2010; and 2000 U.S. Census data

Responses to Complaints

Modern did not receive any complaints about its performance in helping to meet the credit needs in the bank’s AA during this evaluation period.

COMMUNITY DEVELOPMENT TEST

Modern’s level of responsiveness to community development (CD) needs through CD loans, qualified investments, and services originated and offered in the bank’s AA meet the standard of adequate responsiveness.

Number and Amount of Community Development Loans

Community Development Loans

The amount of CD loans originated is adequate. Modern originated three qualifying CD loans during the evaluation period totaling \$5.4 million, which represents 11% of Tier 1 Capital as of September 30, 2010. Proceeds went to a non-profit organization that specializes in the financing of affordable housing and community development projects in New York, New Jersey, and Connecticut. The organization stabilizes and strengthens low- and mixed-income communities by providing a consistent flow of capital, supports local investors in communities that lack sources of credit; and assists communities where conventional financing is not readily available.

Number and Amount of Qualified Investments

The level of qualified investments is adequate. The dollar amount of qualified investments made by Modern totals \$6 million dollars, which represents 13% of Tier 1 Capital. A total of two qualified investments amounting to \$3 million dollars were made during the evaluation period. The investments consist of mortgage backed security pools that provide assistance for housing to low- and moderate-income individuals in the New York City area. All of the underlying mortgages were originated within the AA and directly address the communities' need for

affordable housing development and affordable mortgage financing.

Extent to Which the Bank Provides Community Development Services

The level of community development services that directly benefits low- to moderate-income families in the bank's AA is adequate. Bank officers and personnel have provided guidance to several organizations that work to enhance the quality of life for children and families in low- or moderate-income neighborhoods, as well as providing their financial expertise to several organizations that help the broader New York-New Jersey regional area.

Responsiveness to Community Development Needs

The bank's level of CD loans, qualified investments, and services reflect adequate responsiveness to CD needs of the AA.

Fair Lending or Other Illegal Credit Practices Review

We found no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs.