



# WHOLESALE BANK

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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

## PUBLIC DISCLOSURE

August 24, 2007

## COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION

### MODERN BANK, N.A.

Charter Number: 16629

667 Madison Avenue  
New York, NY 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.

## Table of Contents

<b>Overall CRA Rating</b>	<b>1</b>
<b>Scope of the Examination</b>	<b>2</b>
<b>Description of Institution</b>	<b>2</b>
<b>Description of Assessment Area</b>	<b>3</b>
<b>Conclusions About Performance</b>	<b>5</b>
<b>Fair Lending Review</b>	<b>8</b>
<b>Definitions and Common Abbreviations</b>	<b>9</b>

## INSTITUTION'S CRA RATING:

**This institution is rated Outstanding.**

The conclusions for the three rating criteria are:

- Modern Bank demonstrates a **high** level of community development services and qualified investment activity, particularly investments that are not routinely provided by private investors. Bank officers and other personnel have provided services that were responsive to identified community needs.
- The bank demonstrates **occasional** use of innovative or complex qualified investments.
- The bank demonstrates **excellent** responsiveness to credit and community development needs in its assessment area.

## Scope of the Examination

In evaluating the bank's performance under the CRA, we reviewed community development activities from January 1, 2005 through August 24, 2007. We reviewed the level and nature of qualified investments, community development lending, and community development services. This is the bank's first CRA examination under the Modern Bank name.

For this review, Modern Bank presented for consideration loans, investments, and services that have community development as their primary purpose. Modern Bank did not present any activities conducted by its affiliates for consideration in this evaluation.

The bank has adequately addressed the needs of its assessment area and, therefore, community development activities outside of the assessment area were considered in evaluating its performance.

## Description of Institution

Modern Bank, N.A. (MB) is a \$315 Million intrastate community bank headquartered in New York City, NY. The bank, formerly known as Excel Bank, was purchased by a group of investors and renamed in December 2005. MB was restructured in December 2005 as a small private bank focused solely on private banking and servicing high net worth individuals. The bank's Board of Directors and senior management team was replaced. In addition, most of Excel's loan portfolio was sold or liquidated during the first several months of 2006.

The bank offers a wide variety of deposit accounts and customized credit and collateral structures to address the unique needs of each client. They also provide customized asset management services through its affiliate, Modern Asset Management.

On June 1, 2001, the Office of the Comptroller of the Currency (OCC) approved the designation of Excel Bank as a Wholesale Bank for evaluation under the Community Reinvestment Act (CRA). A financial institution so designated is evaluated pursuant to the community development test, which assesses a bank's record of meeting assessment area credit needs through community development lending, qualified investments, or community development services, as applicable. Prior to receiving that designation, Excel Bank was examined as a Small Bank under the CRA. The most recent CRA examination of the bank was conducted by the OCC on December 1, 1998. At that evaluation, the bank received a rating of "Satisfactory."

On June 15, 2007 the Wholesale Bank designation expired and the bank reverted back to a Small Bank for CRA purposes. However, because the bank was designated as such during the majority of the evaluation period, MB is being evaluated as a Wholesale Bank.

As of June 30, 2007, the bank had total assets of \$315 million (MM). Assets consist of \$3MM in cash and due from banks, \$55MM in Fed Funds Sold and \$10MM in other assets. The loan portfolio is just over \$46MM, and is roughly split between fixed and floating-rate credits. Products include 1-4 Family Real Estate, Commercial and Industrial, and personal loans to the private banking clients. The investment portfolio is large relative to the bank's size at \$201MM and currently accounts for most of the bank's income and cash flow. Floating rate

Collateralized Mortgage Obligations (CMO) consist of 36% of the entire investment portfolio. The remaining securities consist of fixed Agencies (21%), fixed CMOs (30%), and Mortgage backed securities (13%), which are also fixed.

Total deposits were \$277.6MM at June 30, 2007. There is \$88.8MM in money market deposit accounts (MMDA)s, \$119MM in certificates of deposit (CD's), \$31.2MM in NOW accounts, \$20.6MM in savings, and \$11.6MM in non-interest bearing accounts. Deposits in the Certificate of Deposit Account Registry Service (CDARS) totaled \$6.4MM. A large portion of the deposit base consists of international accounts. Specifically, the Venezuelan customer base accounts for \$139MM in deposits.

The bank recorded an after-tax net loss through June 30, 2007 of \$(3,634) thousand, based on net interest income of \$3.47MM, non-interest income of \$288 thousand, and non-interest expenses of \$(7,046) thousand.

MB is not subject to any financial, legal, or regulatory restrictions that could obstruct its ability to help meet the credit needs of its assessment area.

**Table 1: Financial Information (000s)**

	<b>Year-end 2005</b>	<b>Year-end 2006</b>	<b>Most Recent Quarter-end 06/30/2007</b>	<b>Average for Evaluation Period</b>
<b>Tier 1 Capital</b>	\$20,742	\$27,366	\$26,851	\$24,986
<b>Total Income</b>	\$8,687	\$10,470	\$15,192 (**)	\$9,038
<b>Net Operating Income</b>	-\$5,801	-\$6,493	-\$3,163	-\$5,152
<b>Total Assets</b>	\$208,536	\$245,531	\$314,944	\$256,337

Source: Consolidated Report of Condition and Income and bank reported data. \*\*Annualized data reported.

## Description of Assessment Area

MB has identified New York County, NY as the bank's only Assessment Area (AA). New York County (NYC) is located within the New York – White Plains – Wayne, NY-NJ Metropolitan Statistical Area (MSA) #35644. According to 2000 US Census data, the AA consists of 296 census tracts with a total population of 1.5 million people.

Within the AA there are approximately 798 thousand housing units of which 93% are occupied. The AA housing is predominantly rental housing with 74% of housing units being renter occupied housing compared to 19% owner occupied housing. Multifamily units (five or more families) represent 96% of the housing units. The median housing value in the AA is \$345,099, making home ownership difficult for most people with a low- or moderate-income. A high portion of the AA's households (17%) have incomes below the poverty level. The updated median family income for 2007 of the AA is \$59,500. The AA meets the regulatory guidelines and does not arbitrarily exclude low or moderate-income areas. Refer to table 2 below for the income characteristics of the census tracts.

**Table 2: Assessment Area Description**

	Number	Low	Moderate	Middle	Upper
<b>Tracts</b>	296	21%	20%	8%	49%
<b>Families</b>	306,220	21%*	26%*	6%*	46%*
<b>Businesses</b>	249,633	6%**	8%**	7%**	77%**

Source: Demographic Data – 2000 U.S. Census, Dun & Bradstreet Data. \*Represents families by income level. \*\*Represents businesses by income level of census tract. *Do not add to 100% due to rounding.*

New York City is a leading financial, business and trade center. It is the most culturally diverse, densely populated and wealthiest (in terms of personal income) city in the world. Manhattan is the economic hub of the MSA with traditionally strong finance, insurance, and real estate sectors. The financial district is the home of the New York and American Stock Exchanges, NASDAQ and Commodities Exchange, and the Federal Reserve Bank of New York.

The NY-White Plains-Wayne MSA economy is the most stable in the Northeast. The unemployment rate of 4.6% in the AA remains at a historic low and the local financial services industry continues to flourish despite consolidation among the stock exchanges and layoffs at Citigroup.

NYC’s economy is primarily service-based with over 42% of businesses in the AA in the service industry. Retail trade is the next largest industry with over 14%, and Finance, Insurance and Real Estate account for approximately 12% of businesses. The top five employers in the AA are New York-Presbyterian Healthcare Systems, Citigroup, JP Morgan Chase, Verizon Communications, and Federated Department Stores.

The banking environment within the AA is very competitive. There are 95 banking institutions in New York County. Competition from community banks and branches of regional, national, and multinational financial institutions is intense. According to the FDIC’s most recent Market Share Report dated June 30, 2006, market leaders in the AA are JP Morgan Chase (38.96%), Citibank (23.65%), and HSBC (8.26%). MB is ranked 50<sup>th</sup> out of 95 banks, with an approximate 0.04% market share.

During the examination, we reviewed OCC community contact information on-file and we contacted a local community development agency. This contact specializes in economic development and providing support and services to the local community. Our sources identified affordable housing and investment in low income neighborhoods as primary needs of the AA.

The bank demonstrates a high level of community development services and qualified investment activity, particularly investments that are not routinely provided by private investors. Bank officers and other personnel have provided services that were responsive to identified community needs. However, the bank did not originate any community development loans during the evaluation period.

## Conclusions About Performance

### Summary

MB's performance for the evaluation period is outstanding. During the evaluation period, MB made a high-level of qualified investments and engaged in a high level of CD Services that benefit the AA and broader regional area. The bank has limited customer activity in relation to its size, and its employees specialize in banking operations that meet the needs of its narrow customer focus. While MB does not have any CD loans on its books, the bank actively seeks community development opportunities that benefit low- and moderate-income individuals (LMI) in the AA. A majority of the bank's community development (CD) activities were within the bank's AA. In summary, the bank's performance is outstanding given its relatively short history and the competitive environment in which it operates.

- MB's total level of qualified investments made during the evaluation period approximates \$3.4 million or 14% of the bank's average Tier 1 Capital. This excellent level is within the capacity of the bank in light of the needs and opportunities of the AA.
- The use of innovative or complex investments is occasional. MB actively demonstrated creativity through the arrangement of an art show for which proceeds were donated to a community development organization. This event generated approximately \$103 thousand and benefited low- and moderate-income individuals in the AA.
- MB's responsiveness to the community development needs of its AA is excellent. All of the bank's qualified investments were made within the AA. The vast majority of the bank's qualified investments were mortgage backed securities (MBS). The underlying mortgages of the MBS were made to low- and moderate-income individuals within the AA. The remaining investments also provided direct benefit to the AA. Bank officers are actively involved in providing CD services in the AA and in the broader regional area. The bank's investments and services reflect excellent responsiveness to the identified needs in the community.

### Qualified Investments

As noted in Table 3, qualified investments approximated \$3.4 million. All of the qualified investments were originated during the evaluation period as there were no outstanding investments from the prior period. All investments directly benefited the bank's AA. A majority of the bank's qualified investments were in mortgage backed securities. Three qualified investments benefited the assessment area within the evaluation period. The investments are FNMA issued mortgage backed security (MBS) pools that totaled \$3.2 million. These investments assist in providing housing to low- and moderate-income individuals. All of the underlying mortgages were originated within the AA and directly respond to the communities' need for affordable housing development and/or affordable mortgage financing.

A noteworthy fundraising event was held by MB which demonstrates the bank’s use of innovative techniques in meeting the needs of the AA. The bank held an art exhibit in order to raise funds for the Harlem Children’s Zone (HCZ). Through the sale of numerous works of art and direct donations, the bank raised approximately \$103 thousand for HCZ. HCZ is a non-profit, community based organization that works to enhance the quality of life for children and families in some of New York City’s most devastated neighborhoods. Through various initiatives, HCZ provides support and services such as employment, education, and affordable housing.

No binding commitments to purchase additional securities or investments were noted.

**Table 3: Qualified Investment Activity (000s)**

	<b>Benefits AA</b>
<b>Originated Investments</b>	\$3,432
<b>Originated Grants</b>	0
<b>Prior-Period Investments that Remain Outstanding</b>	0
<b>Total Qualified Investments</b>	\$3,432

**Table 4: Qualified Investment Percentages**

	<b>Benefit AA (%)</b>
<b>Total Investments/Average Tier 1 Capital</b>	14%
<b>Total Investments/Average Total Income</b>	38%

**Community Development Lending**

The bank does not have any qualified community development loans at this time. However, during the evaluation period the bank joined the Community Preservation Corporation (CPC). CPC is a non-profit organization specializing in the financing of affordable housing and community development projects in New York, New Jersey, and Connecticut. To date, CPC has constructed or rehabilitated over 100,000 dwellings for low- and moderate-income families. MB has made a commitment of \$900 thousand to CPC. In order to join this consortium of banks, MB was required to make a \$10 thousand capital contribution, which was considered a qualified investment and included in table 3.

**Community Development Services**

Modern has an adequate level of community development services. Bank officers offer their financial expertise to a number of community-based organizations through membership on

their boards of directors and direct participation in community development services. Community development services that directly benefit the AA include the following:

- A bank officer regularly donates, volunteers, and provides guidance to a group that provides services to low- and moderate-income children. The group is a non-profit organization that works to enhance the quality of life for children and families in NYC's most economically devastated neighborhoods.
- A bank officer is the Vice President of the Executive Committee of the Alumni Association of a local private school and is the elected Co-Chairman of the school's Annual Fund. The fund is raised each year from alumni, and a portion of the funds are directly applied to financial aid to pay tuition costs for children of low- and moderate-income families that are unable to afford tuition.
- A bank officer is a Director and Treasurer for a local Savings Foundation. The foundation supports charitable organizations and programs designed to further community development, increase accessibility to those community services, provide access to affordable housing, and contribute to projects that enhance the quality of life in the communities served by the foundation.

A number of bank officers offer their financial expertise to organizations dedicated to improving a broader regional area that includes the bank's AA. These services benefit the MSA and include the following:

- Director of an Interfaith Nutrition Network
- Vice President of a Coalition Against Child Abuse and Neglect
- Board member of the Epilepsy Foundation
- Chairman of a fund that provides grants for social and economic development in New Jersey

During the evaluation period bank officers reported that they have discussed, met with, or attended programs sponsored by the following groups to ascertain the needs of the community: The Primary Care Development Corporation, Main Street Resources, The New York Bankers Association Senior Housing Crime Prevention Foundation, The Housing Partnership Development Corporation, and the OCC's Community Affairs Officer.

## **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.

## Definitions and Common Abbreviations

The following terms and abbreviations are used throughout this performance evaluation. The definitions are intended to provide the reader with a general understanding of the terms, not a strict legal definition.

**Affiliate:** Any company that controls, is controlled by, or is under common control with another company. A company is under common control with another company if both companies are directly or indirectly controlled by the same company. A bank subsidiary is controlled by the bank and is, therefore, an affiliate.

**Assessment Area (AA):** A geographic area that consists generally of one or more MSAs (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

**Benefit to Assessment Area:** A qualified Community Development activity benefits the assessment area if (i) the activity benefits areas within the assessment area, or (ii) the activity has the potential to benefit the assessment area and is located in the broader statewide or regional area that includes the bank's assessment area. If a bank has adequately addressed the needs of its assessment area, then the OCC also considers activities submitted by the bank that benefit areas outside of its assessment area.

**Census Tract (CT):** Small, locally defined statistical areas within metropolitan statistical areas. These areas are determined by the United States Census Bureau in an attempt to group homogenous populations. A CT has defined boundaries per 10-year census and an average population of 4,000.

**Community Development (CD):** Affordable housing for low- or moderate-income individuals; community services targeted to low- or moderate-income individuals; activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of \$1 million or less; or activities that revitalize or stabilize low- or moderate-income geographies.

Effective September 1, 2005, the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have adopted the following additional language as part of the revitalize or stabilize definition of community development. Activities that revitalize or stabilize-

- (i) Low- or moderate-income geographies;
- (ii) Designated disaster areas; or
- (iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, based on-
  - a. Rates of poverty, unemployment, and population loss; or
  - b. Population size, density, and dispersion. Activities that revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

**Community Reinvestment Act (CRA):** The statute that requires the OCC to evaluate a bank's record of meeting the credit needs of its local community, consistent with the safe and sound operation of the bank, and to take this record into account when evaluating certain corporate applications filed by the bank.

**Geography:** A census tract delineated by the United States Bureau of the Census in the most recent decennial census.

**Median Family Income (MFI):** The median income determined by the United States Census Bureau every 10 years and used to determine the income level category of geographies. Also, it is the median income determined by the Department of Housing and Urban Development annually that is used to determine the income level category of families. For any given geography, the median is the point at which half of the families have income above it and half below it. (See the four categories of median income below.)

- **Low-Income** – An income level that is less than 50% of the MFI.
- **Moderate-Income** – An income level that is at least 50% and less than 80% of the MFI.
- **Middle-Income** – An income level that is at least 80% and less than 120% of the MFI.
- **Upper-Income** – An income level that is 120% or more of the MFI.

**Metropolitan Area (MA):** Refers to an MSA or a metropolitan division.

**Metropolitan Division:** As defined by Office of Management and Budget, a county or group of counties within a Metropolitan Statistical Area that contains a population of at least 2.5 million. A Metropolitan Division consists of one or more counties that represent an employment center or centers, plus adjacent counties associated with the main county or counties through commuting ties.

**Metropolitan Statistical Area:** An area, defined by the Office of Management and Budget, as having at least one urbanized area that has a population of at least 50,000. The Metropolitan Statistical Area comprises the central county or counties, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting.

**Net Operating Income:** As listed in the Consolidated Report of Condition and Income: Income before income taxes and extraordinary items and other adjustments.

**Tier 1 Capital:** The total of common shareholders' equity, perpetual preferred shareholders' equity with noncumulative dividends, retained earnings and minority interests in the equity accounts of consolidated subsidiaries

**Total Assets:** Total bank assets as listed in the Consolidated Report of Condition and Income.

**Total Income:** From the Consolidated Report of Condition and Income – Total Interest income plus Total Noninterest income.

**Wholesale Institution:** An institution that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers and for which a designation as a wholesale bank is in effect.