proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Alpha Financial Group, Inc., Employee Stock Ownership Plan, Toluca, Illinois; to acquire an additional 6.7 percent, for a total of 39.38 percent, of the voting shares of Alpha Financial Group, Inc., and thereby indirectly acquire Alpha Community Bank, both of Toluca, Illinois.

2. Heartland Financial USA, Inc., Dubuque, Iowa; to acquire 80 percent of Arizona Bank & Trust (in organization), Mesa, Arizona.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of Pacific Northwest Bancorp, Seattle, Washington, and thereby indirectly acquire its wholly-owned subsidiary, Pacific Northwest Bank, Seattle, Washington.

Board of Governors of the Federal Reserve System, June 26, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–16652 Filed 7–1–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act; Meetings

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, July 7, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; (202) 452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 27, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–16834 Filed 6–30–03; 8:34 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 021 0174]

Nestlé Holdings, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 25, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Michael Cowie or Catharine Moscatelli, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2214 or 326–2749.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 25, 2003), on the World Wide Web, at *''http://www.ftc.gov/os/2003/06/index.htm.''* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment from Nestlé Holdings, Inc. (''Nestlé''), Dreyer's Grand Ice Cream Holdings, Inc., and Dreyer's Grand Ice Cream, Inc. (''Dreyer's'') (collectively, ''Proposed Respondents''), an Agreement Containing Consent Order (''Proposed Consent Agreement'') including the Decision and Order (''Proposed Order'') and the Order to Maintain Assets. The Proposed

Respondents have also reviewed a draft complaint. The Commission has now issued the complaint and Proposed Order. The Proposed Consent Agreement is designed to remedy the likely anticompetitive effects arising from the merger of Nestlé and Dreyer's.

II. The Parties and the Transaction

Nestlé S.A., the world's largest food company, is headquartered in Switzerland. Nestlé Holdings, Inc., a wholly owned subsidiary of Nestlé S.A., manufactures, distributes, and sells the Häagen-Dazs brand of superpremium ice cream, as well as such frozen novelty products as Drumstick, Bon Bons, IceScreamers, Dole Fruit Bars, Butterfinger ice cream bars, and the Nestlé Crunch Bar. Sales in 2001 of all Nestlé ice cream products totaled approximately $800 million.

Dreyer's manufactures, distributes, and sells the Dreamery brand of superpremium ice cream, as well as the Godiva brand of superpremium ice cream under a long-term license with Godiva Chocolatier, Inc., and the Starbucks brand of superpremium ice cream products under a joint venture with Starbucks Corporation. Dreyer's also manufactures, distributes and sells such other products as the Dreyer's brand of premium ice cream in thirteen western states and Texas, the Edy's brand of premium ice cream throughout the remaining regions of the United States, and the Whole Fruit line of sorbet. Dreyer's total sales in 2001 were approximately $1.4 billion. As a result of the transaction, Respondent Dreyer's Grand Ice Cream Holdings, Inc., will be the parent of Respondent Dreyer's Grand Ice Cream, Inc.

On June 16, 2002, Nestlé and Dreyer's signed an Agreement and Plan of Merger and Contribution whereby Nestlé and Dreyer's would combine their ice cream businesses. The transaction will increase Nestlé's interest in Dreyer's from 23 percent to approximately 67 percent. At the time Nestlé and Dreyer's announced the merger, the transaction was valued at approximately $2.8 billion.

III. The Complaint

The complaint alleges that the relevant line of commerce (*i.e.*, the product market) in which to analyze the acquisition is the sale of superpremium ice cream to the retail channel. Superpremium ice cream contains more butterfat and less air than premium or economy ice creams. Therefore, superpremium ice cream is higher in fat than the other two segments of ice cream. Ice cream also is differentiated on the quality of ingredients, with superpremium containing more expensive and higher quality inputs. Finally, superpremium ice cream is priced significantly higher than premium or economy ice creams. Superpremium ice cream manufacturers set their prices based on various factors, including the price of other superpremium ice creams. When Dreyer's expanded into superpremium ice cream in 1999, the price of other superpremium ice creams declined.

The complaint alleges that the relevant geographic market in which there are competitive problems related to the acquisition is the United States. The superpremium ice cream market is highly concentrated when measured by the Herfindahl-Hirschman Index (commonly referred to as the "HHI").[1] The post-acquisition HHI would increase over 1,600 points, from 3,501 to 4,897 and the merging parties would have a combined market share of over 55%.

The complaint further alleges that entry would not be likely or sufficient to prevent anticompetitive effects in the United States. It would be very difficult for an entrant with a new or unknown brand to successfully take a sufficient amount of sales from superpremium ice cream incumbents to remain profitable. Furthermore, a superpremium ice cream entrant would face great difficulty developing a nationwide Direct Store Delivery ("DSD") distribution network comparable to either of the merging parties.

The complaint also alleges that Nestlé's acquisition of Dreyer's, if consummated, may substantially lessen competition in the relevant line of commerce in the relevant market in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 45, by eliminating direct competition between Nestlé and Dreyer's; by eliminating Dreyer's as an important competitive constraint in the relevant market; by increasing the likelihood that the combined Nestlé/Dreyer's will unilaterally exercise market power; and by increasing the likelihood of, or facilitation of, collusion or coordinated interaction in the United States.

IV. The Terms of the Agreement Containing Consent Order

The Proposed Consent Agreement will remedy the Commission's competitive concerns about the proposed acquisition. Proposed Consent Agreement Paragraph II.A. requires that Proposed Respondents divest: (1) All assets, businesses, and goodwill related to the manufacture, marketing, or sale of the Dreamery, Godiva and Whole Fruit brands, and (2) all assets related to Nestlé's distribution of frozen dessert products. These assets, collectively referred to as the "assets to be divested," will be divested to CoolBrands International, Inc. ("CoolBrands") no later than ten (10) days after Nestlé acquires Dreyer's. Proposed Respondents are not obligated to divest those Nestlé distribution assets that CoolBrands elects not to acquire. Proposed Respondents may license back from CoolBrands the rights to use the "Whole Fruit" name for fruit bars for a period not to exceed one (1) year.

The Proposed Consent Agreement requires Proposed Respondents to divest Nestlé's distribution assets to CoolBrands because virtually all superpremium ice cream currently is sold through DSD. This means that the distributor physically places the product on retailers' shelves, and the retailer does not purchase the product until after it is actually delivered to the store.

Paragraph II.B. provides that if the Commission determines that CoolBrands is not an acceptable purchaser of the assets to be divested, or if the divestiture is not accomplished in an acceptable manner, Proposed Respondents shall immediately rescind the sale of the assets to be divested to CoolBrands and divest those assets at no minimum price to another purchaser that receives the prior approval of the Commission within 120 days of the date the Order becomes final.

Paragraph II.C. of the Proposed Consent Agreement requires that, prior to divesting, Proposed Respondents obtain the consent of Godiva Chocolatier, Inc. ("Godiva Chocolatier"), to the assignment of the license agreement between Godiva Chocolatier and Dreyer's for the manufacture, distribution and sale of Godiva ice cream to the acquirer.

Paragraph II.D. of the Proposed Consent Agreement requires Proposed Respondents to maintain the viability and marketability of the assets to be divested. The proposed respondents are also required to maintain the assets pursuant to the Order to Maintain Assets. Paragraph II.E. requires that for a period not to exceed one (1) year from the date that CoolBrands obtains the assets to be divested, Proposed Respondents will supply CoolBrands with the types and quantities of Dreamery, Godiva, and Whole Fruit products that CoolBrands requests at a price no greater than Proposed Respondents' production costs.

[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all participants.

Paragraph II.F. further provides that at the request of CoolBrands, Proposed Respondents will distribute Dreamery, Godiva, and Whole Fruit for CoolBrands for a period not to exceed one (1) year in any areas of the U.S. where Dreyer's previously distributed these products. Paragraph II.G. requires Proposed Respondents to provide technical assistance to CoolBrands, as needed, for a period not to exceed one (1) year. Paragraph II.H. requires Proposed Respondents to provide administrative services to CoolBrands, as needed, for a period not to exceed one (1) year.

Paragraph II.I. requires that, for a period not to exceed five (5) years, Proposed Respondents will supply sufficient volumes of additional ice cream products (*e.g.*, premium ice creams or novelty products) to CoolBrands to enable CoolBrands to profitably distribute Dreamery, Godiva, and Whole Fruit superpremium products. This provision was included in the Proposed Consent Agreement because Nestlé's DSD system handles more products than the Dreamery, Godiva, and Whole Fruit superpremium products that CoolBrands is acquiring, and the provision will enable CoolBrands to operate profitably for a limited term while CoolBrands attempts to attract independent distribution business from unaffiliated third parties.

Paragraph II.J. requires that Proposed Respondents modify the joint venture agreement between Dreyer's and Starbucks to allow Starbucks to manufacture, distribute, and sell the Starbucks brand of ice cream and other ice cream products themselves or in collaboration with other third-parties. Under the existing joint venture agreement between Dreyer's and Starbucks, Dreyer's is the sole manufacturer, distributor and salesman for the Starbucks brand of superpremium ice cream.

Paragraph III limits the ways in which Proposed Respondents may utilize an information it acquires with respect to CoolBrands.

Paragraph IV of the Proposed Consent Agreement allows the Commission to appoint an Interim Monitor to monitor compliance with the terms of this Proposed Order. The Proposed Consent Agreement provides the Monitor Trustee with the power and authority to monitor the Proposed Respondents' compliance with the terms of the Proposed Consent Agreement, and full and complete access to personnel, books, records, documents, and facilities of the Proposed Respondents to fulfill that responsibility. In addition, the Interim Monitor may request any other relevant information that relates to the Proposed Respondents' obligations under the Proposed Consent Agreement. The Proposed Consent Agreement precludes Proposed Respondents from taking any action to interfere with or impede the Interim Monitor's ability to perform his or her responsibilities or to monitor compliance with the Proposed Consent Agreement.

The Interim Monitor may hire such consultants, accountants, attorneys, and other assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities. The Proposed Consent Agreement requires the Proposed Respondents to bear the cost and expense of hiring these assistants.

Paragraph V.A. of the Proposed Consent Agreement authorizes the Commission to appoint a divestiture trustee in the event Nestlé fails to divest the assets as required by the Proposed Consent Agreement.

Paragraph VI. of the Proposed Consent Agreement provides that Proposed Respondents allow, Mars, Incorporated (''Mars''), to terminate its agreements and joint ventures with Dreyer's. Mars' agreements with Dreyer's involved Dreyer's manufacturing and distributing ice cream products for Mars. Mars planned to have Dreyer's manufacture and distribute a new superpremium ice cream for Mars. Mars will now be free to enter this market on their own or as part of a new joint venture, or other arrangement, with a third party.

Paragraph VII. of the Proposed Consent Agreement requires Proposed Respondents to permit Unilever's Ben & Jerry's subsidiary to terminate its distribution agreement with Dreyer's by December 31, 2003. The existing distribution agreement between Dreyer's & Ben & Jerry's required Ben & Jerry's to give Dreyer's approximately nine (9) months notice prior to terminating distribution. This provision will reduce the notice period that Ben & Jerry's must provide.

Paragraph VIII. through XII. detail certain general provisions. Paragraph VIII. prohibits Proposed Respondents from acquiring, without providing the Commission with prior notice, any ownership or other interest in Dreamery, Godiva, or Starbucks superpremium ice cream brands or in any of the Nestlé distribution assets that CoolBrands is acquiring, or other DSD distribution assets. These are the assets that Proposed Respondents are divesting. The provisions regarding prior notice are consistent with the terms used in prior orders. The Proposed Consent Agreement does not restrict the Proposed Respondents from developing any new superpremium brands.

Paragraph IX. requires the Proposed Respondents to file compliance reports with the Commission, the first of which is due within thirty (30) days of the date on which the Proposed Consent Agreement becomes final, and every sixty (60) days thereafter until the divestitures are completed. Paragraph X. provides for notification to the Commission in the event of any changes in the corporate Proposed Respondents. Paragraph XI. requires Proposed Respondents to grant access to any authorized Commission representative for the purpose of determining or securing compliance with the Proposed Consent Agreement. Paragraph XII. terminates the Proposed Consent Agreement after ten (10) years from the date the Proposed Order becomes final.

V. Opportunity for Public Comment

The Proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Consent Agreement and the comments received and will decide whether it should withdraw from the agreement or make the Proposed Consent Agreement final.

By accepting the Proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Agreement, including the proposed sale of assets to CoolBrands, in order to aid the Commission in its determination of whether to make the Proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the Proposed Consent Agreement nor is it intended to modify the terms of the Proposed Consent Agreement in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Sheila F. Anthony Nestlé S.A./Dreyer's Grand Ice Cream Holdings, Inc./ / Dreyer's Grand Ice Cream, Inc.

The Federal Trade Commission has voted to accept a proposed consent agreement designed to remedy the likely anticompetitive effects arising from the merger of Nestlé and Dreyer's. While I concur in the Commission's decision, I write separately to highlight several lingering concerns.

As explained in greater detail in the Analysis to Aid Public Comment, to remedy overlaps in the ''superpremium'' ice cream businesses of Nestlé and Dreyer's, the parties will be required to divest a package of assets—including Dreyer's Dreamery ice cream and Whole Fruit sorbet brands, Dreyer's license to the Godiva brand,[1] and Nestlé's frozen dessert Direct Store Delivery (DSD) distribution network—to CoolBrands International, Inc. However, Nestlé's DSD system currently handles more product volume than that represented by the products CoolBrands will acquire. Therefore, the proposed consent agreement also requires the merged competitors, for a period of five years, to supply CoolBrands with sufficient volumes of additional ice cream products to enable it profitably to operate the distribution system.

CoolBrands is a qualified buyer whose management team has significant experience in the ice cream business. With respect to the acquisition of the three product brands, CoolBrands has existing manufacturing capacity and expertise, which should facilitate a smooth transition on the manufacturing side. With respect to the acquisition of Nestlé's DSD distribution assets, CoolBrands already has some DSD assets and business of its own, and appears to understand how to operate a DSD network. This is particularly important, because DSD is the method currently used to sell virtually all superpremium ice cream in the United States. In sum, CoolBrands seems well-positioned to make the most of the product and distribution assets it will acquire.

However, the ''mix-and-match'' nature of the divestiture package is far from ideal, especially when compared with the assets to be retained by the combined Nestlé/Dreyer's. Post-merger, Nestlé/Dreyer's will own Nestlé's dominant Häagen-Dazs superpremium ice cream brand as well as Dreyer's superior DSD distribution system. CoolBrands, on the other hand, will end up with one company's less-popular brands and the other company's weaker DSD distribution system.

As Commission staff recently has acknowledged, and as I have maintained throughout my tenure as Commissioner, the divestiture of a complete, autonomous, ongoing business unit minimizes the risks of anticompetitive harm because ''such a remedy requires the Commission and the Bureau to make the fewest assumptions and to draw the fewest conclusions about the market and its participants and about the viability and competitiveness of the proposed package of assets.'' [2] In this case, it is a foregone conclusion that the ''mix-and-match'' product and distribution assets to be acquired by CoolBrands are *not* a perfect fit for each other. The proposed consent agreement explicitly recognizes that, absent a short-term commitment of product volume from competitor Nestlé/Dreyer's, CoolBrands would have insufficient volume to operate the Nestlé DSD distribution system profitably. The resulting volume commitments are a more regulatory form of relief than I ordinarily like to see, in large part because they effectively will require the Commission to supervise the superpremium ice cream marketplace for the next five years.

Moreover, there is no guarantee that the CoolBrands DSD distribution system will, in fact, be profitable once the volume commitments terminate. In the meantime, all of the risk of failure is borne by CoolBrands and, ultimately, consumers—not by the parties. Five years from now, Nestlé/Dreyer's almost certainly will retain its leading Häagen-Dazs brand, an excellent DSD distribution system, and plenty of volume to drive through that system. In contrast, if CoolBrands finds itself unable to attract additional DSD product volume from third parties, the company may suffer from decreased profitability. Depending upon the strategic choices CoolBrands might be forced to make, consumers could be faced with fewer, higher-priced superpremium offerings on supermarket shelves.

Every settlement has elements of uncertainty and risk. Our job is to determine whether the risk is small enough to be acceptable. I have voted to accept the proposed settlement based upon staff's extensive investigation of the ice cream industry, as well as CoolBrands' track record. CoolBrands appears capable of attracting enough independent distribution business to fill its excess DSD capacity over time. In addition, CoolBrands always has the option of scaling down its DSD system to more closely match available volume and maintain profitability. Therefore, based upon the evidence available to me at this time, I am reasonably comfortable that things will work out as intended, and that the competitive *status quo* can be attained.

[1] The parties will not be required to divest Dreyer's license to the Starbucks brand. The combined Nestlé/Dreyer's will retain the existing Starbucks ice cream business. However, the current joint venture between Dreyer's and Starbucks will be modified to make it a non-exclusive joint venture, thereby allowing Starbucks (if it so chooses) to conduct ice cream business apart from the joint venture.

[2] Bureau of Competition, Federal Trade Commission, Statement of the Federal Trade Commission's Bureau of Competition on Negotiating Merger Remedies (Apr. 2, 2003), available at *http://www.ftc.gov/bc/bestpractices/bestpractices030401.htm.*

[FR Doc. 03–16700 Filed 7–1–03; 8:45 am]
BILLING CODE 6750–01–P

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Government Auditing Standards

AGENCY: General Accounting Office.

ACTION: Notice of document availability.

SUMMARY: David M. Walker, Comptroller General of the United States and head of the U.S. General Accounting Office (GAO), on Wednesday, June 25, 2003, announced the release of a new edition of ''Government Auditing Standards'' commonly referred to as the Yellow Book. GAO's publication of ''Government Auditing Standards'' provides a framework for ensuring the competence, integrity, objectivity, and independence of government audits at a time of urgent need for integrity in the auditing profession and for transparency and accountability in the management of limited government resources. This fourth revision since the standards were first published in 1972 will guide audits of financial and program management not only in Federal agencies, but also State and local governments, and nonprofit organizations that receive Federal funds. Bringing the 1994 edition up to date after an extensive process of consultation with auditors and stakeholders, the standards incorporate amendments on computer-based information systems, auditor communication, and auditor independence. The revision strengthens audit requirements for identifying fraud, illegal acts, and noncompliance; redefines the types of audits and services covered; provides consistency of requirements across types of audits; and gives clear guidance to auditors as they work toward a government that is efficient, effective, and accountable to the people.

New standards are applicable for financial audits and attestation engagements of periods ending on or after January 1, 2004, and for performance audits beginning on or after January 1, 2004. Early applications is permissible and encouraged.

''Government Auditing Standards'' is available on the GAO Web site at