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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

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Preface

The *Federal Reserve Bulletin* was introduced in 1914 as a vehicle to present policy issues developed by the Federal Reserve Board. Throughout the years, the *Bulletin* has been viewed as a journal of record, serving to provide the public with data and research results generated by the Board.

Authors from the Board's Research and Statistics, Monetary Affairs, International Finance, Banking Supervision and Regulation, Consumer and Community Affairs, Reserve Bank Operations, and Legal divisions contribute to the content published in the *Bulletin,* which includes topical research and analysis and quarterly "Legal Developments."

Starting in 2004, the *Bulletin* was published quarterly rather than monthly. In 2006, in response to the increased use of the Internet—and in order to release articles and reports in a more timely fashion—the Board discontinued the quarterly print version of the *Bulletin* and began to publish the contents of the *Bulletin* on its public website as the information became available. All articles, orders on banking applications, and enforcement actions that were published in the online *Bulletin* in 2010 are included in this print compilation.

The tables that appeared in the Financial and Business Statistics section of the *Bulletin* from 1914 through 2003 were removed and published monthly as a separate print and online publication, the *Statistical Supplement to the Federal Reserve Bulletin,* from 2004 to 2008. Effective with the publication of the December 2008 issue, the Federal Reserve Board discontinued both the print and online versions.

The majority of data published in the *Statistical Supplement* are available elsewhere on the Federal Reserve Board's website at www.federalreserve.gov/econresdata/statisticsdata.htm. The Board has created a webpage that provides a detailed list of links to the most recent data on its site and links to other data provided by the Federal Reserve Bank of New York, the U.S. Treasury, and the Federal Financial Institutions Examination Council.

Online access to the *Bulletin* is free. A free e-mail notification service (www.federalreserve.gov/generalinfo/subscribe/notification.htm) is available to alert subscribers to the release of articles and orders in the *Bulletin,* as well as press releases, testimonies, and speeches. The notification message provides a brief description and a link to the recent posting.

- *Federal Reserve Bulletin*: www.federalreserve.gov/pubs/bulletin
- Data sources for the tables in the discontinued *Statistical Supplement to the Federal Reserve Bulletin*: www.federalreserve.gov/pubs/supplement/statsupdata/statsupdata.htm

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The 2014 Home Mortgage Disclosure Act Data

Neil Bhutta, Jack Popper, and Daniel R. Ringo, of the Division of Research and Statistics, prepared this article. Jimmy Kelliher provided research assistance.

This article provides an overview of residential mortgage lending in 2014 and discusses a number of changes in mortgage market activity over time based on data reported under the Home Mortgage Disclosure Act of 1975 (HMDA). HMDA requires most mortgage lending institutions with offices in metropolitan areas to disclose to the public detailed information about their home-lending activity each year. The HMDA data include the disposition of each application for mortgage credit; the type, purpose, and characteristics of each home mortgage that lenders originate or purchase during the calendar year; the census-tract designations of the properties related to those loans; loan pricing information; personal demographic and other information about loan applicants, including their race or ethnicity and income; and information about loan sales (see appendix A for a full list of items reported under HMDA).[1]

HMDA was enacted to help members of the public determine whether financial institutions are serving the housing needs of their local communities and treating borrowers and loan applicants fairly, provide information that could facilitate the efforts of public entities to distribute funds to local communities for the purpose of attracting private investment, and help households decide where they may want to deposit their savings.[2] The data have proven to be valuable for research and are often used in public policy deliberations related to the mortgage market.[3]

Mortgage debt is by far the largest component of household debt in the United States, and mortgage transactions can have important implications for households' financial well-being. The HMDA data are the most comprehensive source of publicly available information on the U.S. mortgage market, providing unique details on how much mortgage credit gets extended each year, who obtains such credit, and which institutions provide such credit.

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[1] The 2014 HMDA data reflect property locations using the census-tract geographic boundaries created for the 2010 decennial census as well as recent updates to the list of metropolitan statistical areas (MSAs) published by the Office of Management and Budget. The first year for which the HMDA data use this most recent list of MSAs is 2014. For further information, see Federal Financial Institutions Examination Council (2013), "OMB Announcement—Revised Delineations of MSAs," press release, February 28, www.ffiec.gov/hmda/OMB_MSA.htm.

[2] A brief history of HMDA is available at Federal Financial Institutions Examination Council, "History of HMDA," webpage, www.ffiec.gov/hmda/history2.htm.

[3] On July 21, 2011, rulemaking responsibility for HMDA was transferred from the Federal Reserve Board to the newly established Consumer Financial Protection Bureau. The Federal Financial Institutions Examination Council (FFIEC; www.ffiec.gov/hmda/history2.htm) continues to be responsible for collecting the HMDA data from reporting institutions and facilitating public access to the information. In September of each year, the FFIEC releases to the public summary disclosure tables pertaining to lending activity from the previous calendar year for each reporting lender as well as aggregations of home-lending activity for each metropolitan statistical area and for the nation as a whole. The FFIEC also makes available to the public a data file containing virtually all of the reported information for each lending institution as well as a file that includes key demographic and housing-related data for each census tract drawn from census sources.

In 2014, house prices continued their upward trend evident since 2012, and mortgage interest rates declined throughout the year, although rates remained slightly higher than the historical lows reached in late 2012 and early 2013. While mortgage credit stayed generally tight, conditions appeared to ease somewhat over the course of the year as the fraction of mortgage lending to lower-credit borrowers increased, and reports from the Senior Loan Officer Opinion Survey on Bank Lending Practices indicate that several large banks relaxed their credit requirements for prime loans. However, growth in new housing construction was slow throughout the year, suggesting some persistent softness in new housing demand.[4]

Significant regulatory changes occurred in 2014 that may have influenced lending patterns. In January 2014, the new ability-to-repay (ATR) and qualified mortgage (QM) rules, issued by the Consumer Financial Protection Bureau (CFPB), went into effect. As discussed in more detail in a later section, the new rules generally require lenders originating closed-end loans to make a reasonable, good faith determination of whether mortgage borrowers will be able to repay their loans. This ATR determination includes consideration and verification of mortgage applicants' incomes, other debts, and credit histories. The rules also define categories of QM loans that are presumed to meet the ATR requirement and receive certain protections from liability. The QM requirements generally include a limit on the borrower's ratio of total debt service payments to income (DTI), limits on points and fees, and various other restrictions on loan terms and features.[5]

Also in January 2014, revised rules implementing the Home Ownership and Equity Protection Act (HOEPA), which provides special consumer protections (such as additional disclosures) for borrowers considering certain mortgage loans that are priced well above prime rates, went into effect. Most notably, the new rules extend HOEPA coverage from refinance and home equity loans to also include home-purchase loans and home equity lines of credit, as well as adding new borrower protections, including a requirement that consumers receive homeownership counseling before obtaining a high-cost mortgage.[6]

This article presents findings from the HMDA data describing mortgage market activity and lending patterns over time, including the incidence of higher-priced or nonprime lending and rates of denial on mortgage applications, across different demographic groups and lender types.[7] Some of the key findings are as follows:

1. The number of mortgage originations in 2014 declined 31 percent, to 6.0 million from 8.7 million in 2013. This decrease was due to a drop in refinance mortgages for one- to four-family properties, which fell by over 2.8 million, or 55 percent, from 2013, as mortgage interest rates in 2014 remained above the low levels experienced in early 2013. In contrast to refinancing, one- to four-family home-purchase originations increased by 123,000, or 4 percent, from 2013, continuing an upward trend since 2011.
2. The nonconventional share of first-lien home-purchase loans for one- to four-family, owner-occupied, site-built properties (that is, loans with mortgage insurance from the

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[4] For more information on credit and economic conditions during 2014, see Board of Governors of the Federal Reserve System (2015), *Monetary Policy Report* (Washington: Board of Governors, February 24), www.federalreserve.gov/monetarypolicy/mpr_default.htm.

[5] For more information, see Consumer Financial Protection Bureau, "Ability to Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z)," webpage, www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z.

[6] For more information, see Consumer Financial Protection Bureau (2014), *2013 Home Ownership and Equity Protection Act (HOEPA) Rule: Small Entity Compliance Guide* (Washington: CFPB, January 9), http://files.consumerfinance.gov/f/201401_cfpb_hoepa-compliance-guide.pdf.

[7] Some lenders file amended HMDA reports, which are not reflected in the initial public data release. A final HMDA data set reflecting these changes is created two years following the initial data release. The data used to prepare this article are drawn from the initial public release for 2013–14 and from the final HMDA data set for years prior to that. Consequently, numbers in this article for the years 2012 and earlier may differ somewhat from numbers calculated from the initial public release files.

Federal Housing Administration (FHA) or guarantees from the Department of Veterans Affairs (VA), the Farm Service Agency (FSA), or the Rural Housing Service (RHS)) stood at about 36 percent in 2014, down from 38 percent in 2013 and from a peak of 54 percent in 2009. The decline since 2009 reflects a decrease in the FHA share of loans, possibly due to a series of increases, starting in 2010, in the mortgage insurance premium (MIP) that the FHA charges borrowers.

3. Black and Hispanic white borrowers increased their share of home-purchase loans for one- to four-family, owner-occupied, site-built properties in 2014. The HMDA data indicate that 5.2 percent of such loans went to black borrowers, up from 4.8 percent in 2013, while 7.9 percent went to Hispanic white borrowers, up from 7.3 percent in 2013, reversing a declining trend for both groups. The share of home-purchase loans to high-income borrowers increased to 46.1 percent from 44.8 percent in 2013.
4. The HMDA data provide little indication that the new ATR and QM rules significantly curtailed mortgage credit availability in 2014 relative to 2013. For example, despite the QM rule that caps borrowers' DTI ratio for many loans, the fraction of high-DTI loans does not appear to have declined in 2014 from 2013. However, as discussed in more detail later, there are significant challenges in determining the extent to which the new rules have influenced the mortgage market, and the results here do not necessarily rule out significant effects or the possibility that effects may arise in the future.
5. The HMDA loan pricing data indicate that, in 2014, lending activity dropped sharply at the pricing thresholds where HOEPA protections kick in. As discussed later, there are several potential interpretations and implications of this finding.
6. In 2014, only about 3 percent of conventional home-purchase loans and 2 percent of conventional refinance loans were higher priced. However, small banks and credit unions were much more likely to originate conventional higher-priced loans than large banks and mortgage companies and thus accounted for a highly disproportionate share of conventional higher-priced loans in 2014. For example, while small banks and credit unions originated about 18 percent of conventional home-purchase loans, they accounted for about 59 percent of higher-priced conventional home-purchase loans.
7. The share of mortgages originated by nondepository, independent mortgage companies has increased sharply in recent years. In 2014, this group of lenders accounted for 47 percent of first-lien owner-occupant home-purchase loans and 42 percent of such refinance loans, higher levels than at any point since at least 1995. This recent rise has been widespread, occurring across a range of demographic groups and for both conventional and nonconventional lending. Small banks and credit unions have also increased their market shares over the past decade, while the fraction of originations attributable to large banks and their nonbank subsidiaries has diminished significantly.
8. Due to this shifting landscape, a historically high share of loans is now originated outside the federally insured banking system by institutions—independent mortgage companies and credit unions—that are not subject to the Community Reinvestment Act (CRA). In addition, small banks have steadily increased the fraction of their lending done outside of their CRA assessment areas. However, assessment-area lending by large banks has held steady in recent years at levels well above those reached during the housing boom.

Mortgage Applications and Originations

In 2014, 7,062 institutions reported data on nearly 10 million home mortgage applications (including about 1.5 million applications that were closed by the lender for incompleteness or were withdrawn by the applicant before a decision was made) that resulted in about 6 million originations. The number of originations in 2014 was down from 8.7 million originations in 2013 (table 1).

Table 1. Applications and originations, 2004–14

Numbers of loans, in thousands, except as noted

Characteristic of loan and of property	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
1–4 Family											
Home purchase											
Applications	9,804	11,685	10,929	7,609	5,060	4,217	3,848	3,650	4,023	4,554	4,662
Originations	6,437	7,391	6,740	4,663	3,139	2,793	2,547	2,430	2,742	3,112	3,235
First lien, owner occupied	4,789	4,964	4,429	3,454	2,628	2,455	2,218	2,073	2,343	2,680	2,804
Site-built, conventional	4,107	4,425	3,912	2,937	1,581	1,089	1,005	999	1,251	1,622	1,736
Site-built, nonconventional	553	411	386	394	951	1,302	1,151	1,019	1,033	993	1,001
FHA share (percent)	74.6	68.6	66.0	65.8	78.9	77.0	77.4	70.9	68.0	62.7	58.3
VA share (percent)	21.6	26.7	29.0	27.1	15.2	13.9	15.2	18.2	19.9	24.3	28.4
FSA/RHS share (percent)	3.9	4.7	5.0	7.1	5.9	9.0	7.4	10.9	12.0	13.0	13.3
Manufactured, conventional	106	100	101	95	68	43	44	40	44	51	51
Manufactured, nonconventional	24	27	30	29	28	21	17	15	14	14	16
First lien, non-owner occupied	857	1,053	880	607	412	292	285	314	355	385	377
Junior lien, owner occupied	738	1,224	1,269	552	93	44	42	41	43	45	53
Junior lien, non-owner occupied	53	150	162	50	6	2	2	1	1	1	2
Refinance											
Applications	16,085	15,907	14,046	11,566	7,805	9,983	8,433	7,422	10,526	8,549	4,386
Originations	7,591	7,107	6,091	4,818	3,491	5,772	4,969	4,330	6,668	5,131	2,301
First lien, owner occupied	6,497	5,770	4,469	3,659	2,934	5,301	4,516	3,856	5,930	4,385	1,950
Site-built, conventional	6,115	5,541	4,287	3,407	2,363	4,264	3,835	3,315	4,971	3,628	1,561
Site-built, nonconventional	297	151	110	180	506	979	646	508	917	713	360
FHA share (percent)	68.3	77.3	87.5	91.5	92.2	83.7	79.3	63.2	61.2	61.1	47.3
VA share (percent)	31.4	22.4	12.3	8.3	7.6	15.9	20.3	35.9	37.8	37.7	52.2
FSA/RHS share (percent)	.2	.3	.2	.1	.2	.4	.4	.9	.9	1.2	0.5
Manufactured, conventional	77	70	60	56	42	36	25	25	31	32	20
Manufactured, nonconventional	7	8	12	16	22	22	10	9	11	12	8
First lien, non-owner occupied	618	582	547	474	330	350	359	394	660	671	292
Junior lien, owner occupied	464	729	1,036	661	219	115	88	74	73	70	55
Junior lien, non-owner occupied	13	25	39	23	9	7	6	5	5	5	4
Home improvement											
Applications	2,200	2,544	2,481	2,218	1,413	832	670	675	779	833	840
Originations	964	1,096	1,140	958	573	390	341	335	382	425	408
Multifamily[1]											
Applications	61	58	52	54	43	26	26	35	47	51	45
Originations	48	45	40	41	31	19	19	27	37	40	35
Total applications	**28,151**	**30,193**	**27,508**	**21,448**	**14,320**	**15,057**	**12,977**	**11,782**	**15,375**	**13,987**	**9,933**
Total originations	**15,040**	**15,638**	**14,011**	**10,480**	**7,234**	**8,974**	**7,876**	**7,122**	**9,828**	**8,707**	**5,980**
Memo											
Purchased loans	5,142	5,868	6,236	4,821	2,935	4,301	3,229	2,939	3,163	2,794	1,752
Requests for preapproval[2]	1,068	1,260	1,175	1,065	735	559	445	429	474	516	501
Requests for preapproval that were approved but not acted on	167	166	189	197	99	61	53	55	64	72	64
Requests for preapproval that were denied	171	231	222	235	177	155	117	130	149	163	126

Note: Components may not sum to totals because of rounding. Applications include those withdrawn and those closed for incompleteness. FHA is Federal Housing Administration; VA is U.S. Department of Veterans Affairs; FSA is Farm Service Agency; RHS is Rural Housing Service.

[1] A multifamily property consists of five or more units.

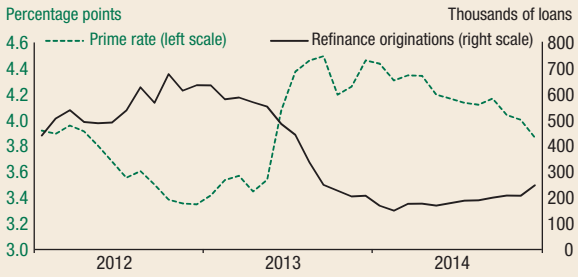
[2] Consists of all requests for preapproval. Preapprovals are not related to a specific property and thus are distinct from applications.

Source: Here and in subsequent tables and figures, except as noted, Federal Financial Institutions Examination Council, data reported under the Home Mortgage Disclosure Act (www.ffiec.gov/hmda).

Refinance mortgages for one- to four-family properties dropped by over 2.8 million, or 55 percent, from 2013 to 2014, as mortgage interest rates remained above the historic lows reached in the early months of 2013 (figure 1). While the number of refinancings fell for the second consecutive year, one- to four-family home-purchase originations grew by almost 123,000, or 4 percent, from 2013. Most one- to four-family home-purchase loans are first liens for owner-occupied properties. In the past three years, such loans have grown over 35 percent, from nearly 2.1 million in 2011 to over 2.8 million in 2014. However, the volume of such home-purchase originations has not yet climbed back to the levels observed from 1994 to 2007 (figure 2).[8] The number of first-lien home-purchase loans for non-owner-occupied properties—that is, purchases of rental properties, vacation properties, and second homes—decreased slightly in 2014, from 385,000 in 2013 to 377,000 in 2014.

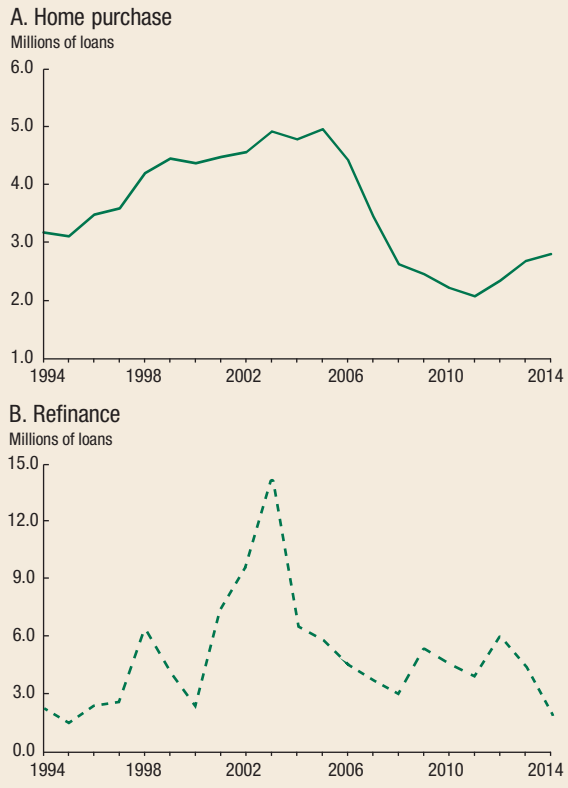
The annual home-purchase loan volumes presented in figure 2 give the impression that the upward trend that began in 2011 slowed in 2014. This impression is mostly an artifact of a decline in lending in the second half of 2013. Figure 3 plots the monthly volume of first-lien home-purchase loans starting in 2011, with and without seasonal

Figure 1. Volume of refinance originations and prime rate, 2012–14



Note: The data are monthly. Loans are first-lien mortgages excluding those for multifamily housing. The prime rate is the average interest rate on 30-year fixed-rate mortgages being offered to high-quality prime borrowers reported by Freddie Mac in its Primary Mortgage Market Survey.

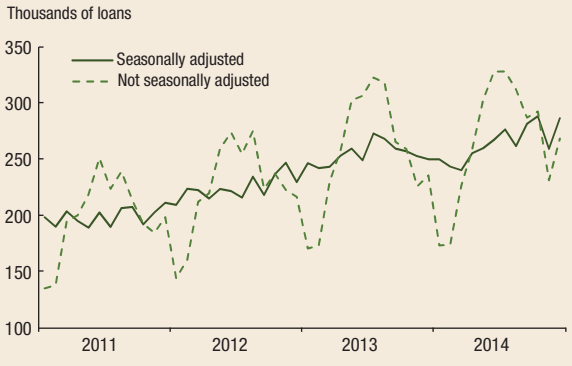
Figure 2. Number of home-purchase and refinance mortgage originations reported under the Home Mortgage Disclosure Act, 1994–2014



Note: The data are annual. Mortgage originations for one- to four-family owner-occupied properties, with junior-lien loans excluded in 2004 and later.

[8] The HMDA data prior to 2004 did not provide lien status for loans, and thus the number of loans prior to 2004 includes both first- and junior-lien loans. That said, including junior-lien home-purchase loans in 2014 does not change the conclusion that home-purchase lending in 2014 was below that in 1994. It should also be noted that, because HMDA coverage has expanded over time, in part as a result of significantly more counties being included in metropolitan statistical areas now than in the early 1990s, the lower loan volume in 2014 relative to 1994 is understated.

Figure 3. Volume of home-purchase originations, 2011–14



Note: The data are monthly. Loans are first-lien home-purchase mortgage originations.

adjustment.[9] The figure shows that, in fact, the seasonally adjusted growth rate of home-purchase originations during the course of 2014 was fairly similar to that seen from 2011 through the first half of 2013.

In table 1, the volume of first-lien lending for owner-occupied properties is further disaggregated by loan and property type. (A larger, supplementary version of table 1, with the data broken down by month, is available in the Excel file posted with this article, as are all of the other tables referenced in the article.) In addition to lien and occupancy status, the HMDA data provide details on the type of property securing the loan (site-built or manufactured home) and on the type of loan (conventional or not).[10] As noted earlier, nonconventional lending involves loans with mortgage insurance or guarantees from federal government agencies, including the FHA, the VA, the RHS, and the FSA. Conventional lending encompasses all other loans, including those sold to the government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac.

Nonconventional loans are more common for home purchases than refinancings and usually involve high loan-to-value (LTV) ratios—that is, the borrowers provide relatively small down payments. For site-built properties, nonconventional home-purchase loans increased less than 1 percent in 2014, while conventional loans increased about 7 percent. The nonconventional share of first-lien home-purchase loans for one- to four-family, owner-occupied, site-built properties stood at about 36 percent in 2014, down slightly from 38 percent in 2013 and down significantly from its peak of 54 percent in 2009 in the wake of the financial crisis.[11] That said, last year, the nonconventional share remained above historical averages (figure 4).

Figure 4 shows that the marked decline in the nonconventional share since 2009 reflects a decrease in the FHA share of loans, while the VA and FSA/RHS shares have held steady over this period. One factor that may help explain the reduction in the FHA share is a series of increases in the annual MIP that the FHA charges to borrowers. Between Octo-

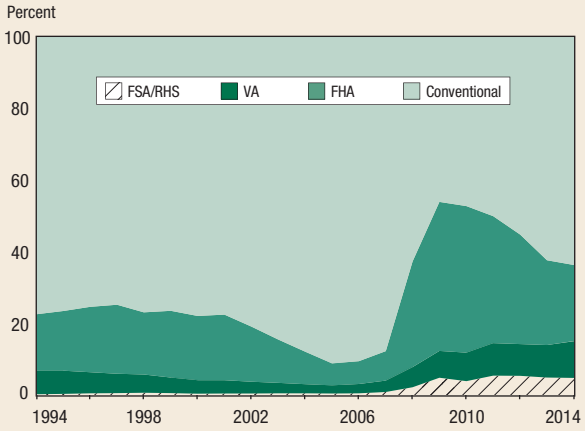
[9] The data series was adjusted for seasonality using the Census Bureau's X-12 package. For a description of X-12 and seasonal adjustment in general, see the Census Bureau's "FAQs on Seasonal Adjustment" at www.census.gov/const/www/faq2.html. The date used to compile data at the monthly level is the "action date," which is the date on which the lending institution took action on an application. For approved applications, this date is usually the closing date or origination date of the loan. The action date is not released in the public HMDA data files.

[10] Manufactured-home lending differs from lending on site-built homes, in part because most of the homes are sold without land and are treated as chattel-secured lending, which typically carries higher interest rates and shorter terms to maturity than those on loans to purchase site-built homes (for pricing information on manufactured home loans, see table 8). This article focuses almost entirely on site-built mortgage originations, which constitute the vast majority of originations (as shown in table 1). That said, it is important to keep in mind that, because manufactured homes typically are less expensive than site-built homes, they provide a low-cost housing option for households with more moderate incomes.

[11] For a more detailed discussion of the post-crisis rise in nonconventional lending, see Robert B. Avery, Neil Bhutta, Kenneth P. Brevoort, and Glenn B. Canner (2010), "The 2009 HMDA Data: The Mortgage Market in a Time of Low Interest Rates and Economic Distress," *Federal Reserve Bulletin,* vol. 96 (December), pp. A39–A77, www.federalreserve.gov/pubs/bulletin/2010/default.htm.

ber 2010 and April 2013, the annual MIP for a typical home-purchase loan more than doubled, from 0.55 percent of the loan amount to 1.35 percent.[12] Also in 2013, the FHA extended the period over which the annual MIP is required to be paid. For a typical home-purchase loan, the annual premium must now be paid over the life of the loan rather than until the LTV ratio falls below 78 percent. Although this extension has no effect on the initial cost of the mortgage, it would change the potential longer-term cost if borrowers continued to hold the mortgage after the LTV ratio fell below 78 percent.[13]

Figure 4. Nonconventional share of home-purchase mortgage originations, 1994–2014



Note: The data are annual. Home-purchase mortgage originations for one- to four-family owner-occupied properties, with junior-lien loans excluded in 2004 and later. Nonconventional loans are those insured by the Federal Housing Administration (FHA) or backed by guarantees from the U.S. Department of Veterans Affairs (VA), the Farm Service Agency (FSA), or the Rural Housing Service (RHS).

The remainder of table 1 provides additional details on the breakdown of one- to four-family home-purchase and refinance loans by lien and occupancy status and by property and loan type.[14] Table 1 also provides the number of applications for and originations of home-improvement loans for one- to four-family properties, many of which are junior liens or unsecured, and loans for the purchase of multifamily properties (consisting of five or more units). Finally, the HMDA data include details about preapproval requests for home-purchase loans and loans purchased by reporting institutions during the reporting year, although the purchased loans may have been originated at any point in time. Lenders also reported roughly 501,000 preapproval requests; roughly 62 percent of these requests turned into an actual loan application for a specific property in 2014.[15] Table 1 also shows that, for 2014, lenders purchased 1.8 million loans from other institutions.

[12] Changes to the FHA's upfront and annual MIPs over time have been documented in Urban Institute, Housing Finance Policy Center (2014), *Housing Finance at a Glance: A Monthly Chartbook* (Washington: Urban Institute, March), www.urban.org/publications/413061.html. A typical FHA home-purchase loan has an LTV of over 95 percent and a loan term in excess of 15 years. The upfront premium, on net, was unchanged between 2010 and 2013; it was briefly increased from 1.75 percent to 2.25 percent and lowered back to 1.00 percent in 2010, and then it was raised back to 1.75 percent in 2012.

[13] For 2015, the FHA reduced the annual premium by 50 basis points on new forward mortgages beginning on January 26. See U.S. Department of Housing and Urban Development (2015), "Reduction of Federal Housing Administration (FHA) Annual Mortgage Insurance Premium (MIP) Rates and Temporary Case Cancellation Authority," Mortgagee Letter 2015-01 (January 9), https://portal.hud.gov/hudportal/documents/huddoc?id=15-01ml.pdf.

[14] Note that under the regulations that govern HMDA reporting, many standalone junior-lien loans are not reported because either the lender does not know the purpose of the loan or the reasons cited for the loan are not ones that trigger a reporting requirement. Unless a junior lien is used for home purchase or explicitly for home improvements, or to refinance an existing lien, it is not reported under HMDA. Further, home equity lines of credit, many of which are junior liens and could also be used to help purchase a home, do not have to be reported in the HMDA data regardless of the purpose of the loan.

[15] Reporters can, but are not required to, report preapproval requests that they approve but are not acted on by the potential borrower.

Mortgage Outcomes by Income and by Race and Ethnicity

A key attribute of the HMDA data is that they help policymakers and the broader public better understand the distribution of mortgage credit across different demographic groups. The next set of tables provides information on loan shares, product usage, denial rates and reasons, and mortgage pricing for population groups defined by applicant income, neighborhood income, and applicant race and ethnicity (tables 2–8). With the exception of table 8, which includes loans for manufactured homes, these tables focus on first-lien home-purchase and refinance loans for one- to four-family, owner-occupied, site-built properties. As can be seen from table 1, such loans accounted for about 78 percent of all HMDA originations in 2014.

The Distribution of Home Loans across Demographic Groups

Table 2 shows different groups' shares of home-purchase and refinance loans and how these shares have changed over time. For example, black borrowers' share of home-purchase loans (conventional and nonconventional loans combined) was 5.2 percent in 2014, up from 4.8 percent in 2013 but still lower than its peak of 8.7 percent in 2006. Similarly, the Hispanic white share of home-purchase loans was 7.9 percent in 2014, up from 7.3 percent in 2013, although well below the 11.7 percent share seen in 2006. Shares of refinance loans to minorities other than Asians have generally increased since 2010. The bottom of the table provides the total loan counts for each year, and thus the number of loans to a given group in a given year can be easily derived.[16]

In terms of borrower income, the share of home-purchase loans to low- or moderate-income (LMI) borrowers declined, from 28.4 percent in 2013 to 27.0 percent in 2014.[17] Following definitions used by the federal bank supervisory agencies in enforcement of the CRA, LMI borrowers are defined as those with incomes of less than 80 percent of estimated current area median family income (AMFI); AMFI is calculated based on the incomes of residents of the metropolitan area or nonmetropolitan portion of the state in which the loan-securing property is located.[18] For 2014, the Office of Management and Budget published new metropolitan area delineations, so caution should be exercised in comparing relative income measures between 2013 and 2014.[19]

From 2013 to 2014, the home-purchase loan share directed to high-income neighborhoods (defined as census tracts) decreased from 43.2 percent to 41.8 percent.[20] LMI and middle-income tracts both saw small gains. In addition to the difficulties in comparison induced by the changing metropolitan area definitions, it is important to note that shares by neighborhood income in 2012 and thereafter are not perfectly comparable with those in 2011 and earlier because census-tract definitions and census-tract median family income estimates were revised in 2012. The current tract demographic measures are based on 2010

[16] For example, the number of home-purchase loans to Asians in 2014 was about 148,000, derived by multiplying 2.737 million loans by 5.4 and then dividing by 100.

[17] Note that the sum of refinance shares across borrower-income groups is significantly less than 100 percent because income is not always relied on in underwriting decisions, particularly in recent years, which appears to reflect increased usage of nonconventional streamline refinance programs. Indeed, in 2014, about 75 percent of refinance loans for which borrower income was not reported were nonconventional.

[18] Middle-income borrowers have incomes of at least 80 percent and less than 120 percent of AMFI, and high-income borrowers have incomes of at least 120 percent of AMFI.

[19] A similar redefinition of metropolitan areas affects comparisons between the 2003 and 2004 HMDA data.

[20] Definitions for LMI, middle-income, and high-income neighborhoods are identical to those for LMI, middle-income, and high-income borrowers but are based on the ratio of census-tract median family income to AMFI measured from the 2006–10 American Community Survey data.

Table 2. Distribution of home loans, by purpose of loan, 2004–14

Percent except as noted

Characteristic of borrower and of neighborhood	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
A. Home purchase											
Borrower race and ethnicity[1]											
Asian	4.8	5.0	4.5	4.5	4.9	5.3	5.5	5.2	5.3	5.7	5.4
Black or African American	7.1	7.7	8.7	7.6	6.3	5.7	6.0	5.5	5.1	4.8	5.2
Hispanic white	7.6	10.5	11.7	9.0	7.9	8.0	8.1	8.3	7.7	7.3	7.9
Non-Hispanic white	57.1	61.7	61.2	65.4	67.5	67.9	67.6	68.7	70.0	70.2	69.1
Other minority[2]	1.4	1.3	1.1	1.0	.9	.9	.9	.8	.8	.7	.8
Joint	2.3	2.3	2.3	2.5	2.8	2.8	2.7	2.8	2.9	3.1	3.3
Missing	19.8	11.5	10.5	10.1	9.6	9.3	9.1	8.6	8.2	8.2	8.3
All	100	100	100	100	100	100	100	100	100	100	100
Borrower income[3]											
Low or moderate	27.7	24.6	23.6	24.7	28.1	36.7	35.5	34.4	33.3	28.4	27.0
Middle	26.9	25.7	24.7	25.2	27.1	26.7	25.6	25.2	25.2	25.2	25.6
High	41.4	45.5	46.7	47.0	43.1	34.7	37.4	38.8	40.0	44.8	46.1
Income not used or not applicable	4.0	4.2	5.0	3.1	1.7	1.9	1.5	1.6	1.5	1.6	1.3
All	100	100	100	100	100	100	100	100	100	100	100
Neighborhood income[4]											
Low or moderate	14.5	15.1	15.7	14.4	13.1	12.6	12.1	11.0	12.8	12.7	13.3
Middle	48.7	49.2	49.5	49.6	49.8	50.2	49.4	49.4	43.6	43.7	44.6
High	35.8	34.7	33.7	35.1	35.9	35.8	37.7	39.1	43.2	43.2	41.8
All	100	100	100	100	100	100	100	100	100	100	100
B. Refinance											
Borrower race and ethnicity[1]											
Asian	3.5	2.9	3.0	3.1	3.1	4.1	5.2	5.4	5.5	4.7	4.4
Black or African American	7.4	8.3	9.6	8.4	6.0	3.5	2.9	3.1	3.3	4.4	5.3
Hispanic white	6.2	8.6	10.1	8.7	5.3	3.2	3.0	3.3	3.9	5.0	6.2
Non-Hispanic white	57.2	60.9	59.6	62.7	70.7	74.6	74.3	73.5	72.5	70.5	67.8
Other minority[2]	1.4	1.4	1.3	1.1	.8	.6	.5	.6	.6	.7	.9
Joint	2.1	2.1	1.9	2.0	2.2	2.6	2.7	2.8	3.1	3.1	3.3
Missing	22.1	15.7	14.6	14.1	11.9	11.4	11.4	11.3	11.1	11.6	12.2
All	100	100	100	100	100	100	100	100	100	100	100
Borrower income[3]											
Low or moderate	26.2	25.5	24.7	23.3	23.5	19.6	19.0	19.2	19.6	21.1	22.2
Middle	26.3	26.8	26.1	25.6	25.5	22.5	22.5	21.3	21.8	21.7	22.2
High	38.8	40.8	43.7	46.1	44.8	45.8	49.6	48.1	47.7	46.3	45.6
Income not used or not applicable	8.7	6.9	5.5	5.0	6.2	12.1	8.9	11.4	10.9	10.9	10.0
All	100	100	100	100	100	100	100	100	100	100	100
Neighborhood income[4]											
Low or moderate	15.3	16.5	17.9	16.1	11.9	7.7	7.2	7.4	10.1	12.1	13.1
Middle	50.0	51.3	52.0	52.2	51.9	47.5	46.1	46.1	41.9	43.8	45.2
High	33.9	31.6	29.4	31.0	35.2	43.5	46.0	46.0	47.6	43.9	41.4
All	100	100	100	100	100	100	100	100	100	100	100
Memo											
Number of home-purchase loans (thousands)	4,660	4,836	4,298	3,331	2,533	2,391	2,157	2,018	2,284	2,615	2,737
Number of refinance loans (thousands)	6,412	5,692	4,397	3,588	2,869	5,243	4,481	3,823	5,888	4,341	1,921

Note: First-lien mortgages for one- to four-family family, owner-occupied, site-built homes. Rows may not sum to 100 because of rounding or, for the distribution by neighborhood income, because property location is missing.

[1] Applications are placed in one category for race and ethnicity. The application is designated as *joint* if one applicant was reported as white and the other was reported as one or more minority races or if the application is designated as white with one Hispanic applicant and one non-Hispanic applicant. If there are two applicants and each reports a different minority race, the application is designated as *two or more minority races*. If an applicant reports two races and one is white, that applicant is categorized under the minority race. Otherwise, the applicant is categorized under the first race reported. "Missing" refers to applications in which the race of the applicant(s) has not been reported or is not applicable or the application is categorized as white but ethnicity has not been reported.

[2] Consists of applications by American Indians or Alaska Natives, Native Hawaiians or other Pacific Islanders, and borrowers reporting two or more minority races.

[3] The categories for the borrower-income group are as follows: Low- or moderate-income (or LMI) borrowers have income that is less than 80 percent of estimated current area median family income (AMFI), middle-income borrowers have income that is at least 80 percent and less than 120 percent of AMFI, and high-income borrowers have income that is at least 120 percent of AMFI.

[4] The categories for the neighborhood-income group are based on the ratio of census-tract median family income to area median family income from the 2006–10 American Community Survey data for 2012 and 2013 and from the 2000 census for 2004–11, and the three categories have the same cutoffs as the borrower-income groups (see note 3).

census data and 2006–10 American Community Survey data, whereas the 2004–11 data relied on 2000 census income and population data.[21]

One way to examine how lending to LMI borrowers and neighborhoods changed between 2013 and 2014 in the absence of changes to metropolitan statistical area (MSA) definitions is to focus exclusively on lending in MSAs whose boundaries remained the same across the two years. There are 282 such MSAs, and they accounted for about half of all HMDA-reported mortgage originations in 2013 and 2014 combined. In these MSAs, changes in the share of loans to different income groups largely mirror the nationwide patterns shown in table 2 (numbers for the 282 MSAs not shown in tables).

Table 3 shows the average dollar value of home-purchase and refinance loans by different groups and how these averages have changed over time. All dollar amounts are reported in nominal terms. Overall, home-purchase dollar values follow the historical trend of home prices, rising during the mid-2000s, falling sharply through 2008 and 2009, then beginning to recover in the past few years. The trends differ substantially by race and ethnicity, however. The average home-purchase loan to a Hispanic white borrower in 2014 was for $198,000, up from $190,000 in 2013 but well below the peak of $238,000 in 2006. In contrast, the average home-purchase loan amount for a non-Hispanic white borrower was about $231,000 in 2014, higher than the pre-crisis peak in 2007 of about $222,000. Asian borrowers took out the largest loans, averaging $344,000 for home purchases and $343,000 for refinancings in 2014, whereas loans to black borrowers averaged $199,000 for home purchases and $175,000 for refinancings.[22]

In terms of borrower income, for LMI borrowers, the average home-purchase loan edged down from $133,000 in 2013 to $132,000 in 2014; it also edged down for middle-income borrowers. High-income borrowers saw their average home-purchase loan value rise to $328,000 in 2014 from $323,000 in 2013. The average refinance loan value declined for LMI borrowers but rose for middle- and high-income borrowers, while the average loan value for both home-purchase and refinance loans rose in LMI, middle-income, and high-income neighborhoods. Refinance loans in high-income neighborhoods increased the most in average value, to $293,000 in 2014 from $270,000 in 2013.

Variation across Demographic Groups in Nonconventional Loan Use

Table 4 shows that black and Hispanic white borrowers are much more likely to use nonconventional loans (FHA, VA, RHS, and FSA loans) than conventional loans compared with other racial and ethnic groups. In 2014, 68 percent of black home-purchase borrowers and 60 percent of Hispanic white home-purchase borrowers took out a nonconventional loan, compared with about 33 percent of non-Hispanic white home-purchase borrowers and just 15 percent of Asian home-purchase borrowers. These numbers have declined from their peaks in 2009 and 2010, when over three-fourths of black and Hispanic white home-purchase borrowers, and over one-half of non-Hispanic white home-purchase borrowers, took out nonconventional loans.

Nonconventional usage is also more prevalent for borrowers with lower incomes and in neighborhoods with lower incomes. In 2014, about one-half of LMI home-purchase borrowers and 48 percent of those borrowing to purchase homes in LMI neighborhoods used

[21] For more information on the transition to the new census-tract data, see Robert B. Avery, Neil Bhutta, Kenneth P. Brevoort, and Glenn B. Canner (2012), "The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act," *Federal Reserve Bulletin,* vol. 98 (December), pp. 1–46, www.federalreserve.gov/pubs/bulletin/2012/default.htm.

[22] Median loan amounts (not shown in tables) followed similar trends as average loan amounts.

Table 3. Average value of home loans, by purpose of loan, 2004–14
Thousands of dollars, nominal

Characteristic of borrower and of neighborhood	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
A. Home purchase											
Borrower race and ethnicity[1]											
Asian	280	316	326	334	299	276	293	291	304	328	344
Black or African American	166	183	197	197	184	172	174	174	179	193	199
Hispanic white	189	224	238	220	186	168	168	168	176	190	198
Non-Hispanic white	193	211	216	222	209	195	204	204	213	226	231
Other minority[2]	206	240	257	245	216	196	201	198	206	219	229
Joint	233	255	261	269	255	248	263	261	274	289	293
Missing	216	248	261	280	265	242	256	262	279	298	293
Borrower income[3]											
Low or moderate	114	116	117	123	128	129	128	125	131	133	132
Middle	165	170	170	176	182	187	189	184	192	194	193
High	281	306	313	317	297	291	303	302	313	323	328
Income not used or not applicable	208	235	254	266	218	195	214	225	233	262	272
Neighborhood income[4]											
Low or moderate	159	180	189	188	175	160	164	163	158	171	178
Middle	172	190	197	196	186	174	177	173	178	191	196
High	258	284	294	301	277	257	270	271	282	300	307
Memo: All home-purchase loans	201	221	228	232	217	202	210	210	221	235	240
B. Refinance											
Borrower race and ethnicity[1]											
Asian	274	325	370	368	321	298	313	309	308	304	343
Black or African American	151	180	199	192	173	184	180	174	181	171	175
Hispanic white	178	219	252	244	193	190	191	183	190	180	190
Non-Hispanic white	180	205	221	222	205	209	210	208	212	205	217
Other minority[2]	190	229	269	258	211	217	218	207	213	201	215
Joint	210	246	265	262	243	247	254	249	254	248	267
Missing	194	226	246	250	242	243	248	253	253	244	247
Borrower income[3]											
Low or moderate	114	124	124	126	129	138	133	128	135	128	124
Middle	162	181	183	181	180	185	179	174	182	171	175
High	256	294	320	311	275	268	274	280	277	276	302
Income not used or not applicable	150	178	240	240	194	204	203	185	212	192	202
Neighborhood income[4]											
Low or moderate	142	169	188	185	164	172	172	167	163	153	158
Middle	158	184	201	198	182	184	182	175	181	173	181
High	245	282	313	311	272	259	265	269	269	270	293
Memo: All refinance loans	185	212	232	231	212	216	220	218	221	213	224

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes.
[1] See table 2, note 1.
[2] See table 2, note 2.
[3] See table 2, note 3.
[4] See table 2, note 4.

nonconventional loans, compared with 24 percent of high-income borrowers and 26 percent of borrowers in high-income neighborhoods. With respect to refinance loans, minority and lower-income borrowers are again more likely to use nonconventional than conventional loans. In general, however, nonconventional loans are less prevalent in refinance lending.[23]

[23] The reported nonconventional share of refinance loans is lower than the true share for the groups categorized

Table 4. Nonconventional share of home loans, by purpose of loan, 2004–14
Percent except as noted

Characteristic of borrower and of neighborhood of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
A. Home purchase											
Borrower race and ethnicity[1]											
Asian	2.9	1.8	2.1	2.6	13.4	26.1	26.6	25.8	21.9	16.0	14.7
Black or African American	21.7	14.3	13.6	21.7	64.1	82.0	82.9	80.3	77.2	70.6	68.0
Hispanic white	13.7	7.5	7.0	12.4	51.4	75.4	77.0	74.1	70.7	62.8	59.5
Non-Hispanic white	11.1	8.9	9.5	11.5	35.4	52.0	50.3	47.4	42.2	35.3	33.4
Other minority[2]	14.0	9.3	9.4	14.8	48.4	67.6	68.8	65.9	62.2	55.3	53.9
Joint	16.9	12.8	14.4	17.2	46.4	59.4	56.3	53.6	48.9	41.8	41.3
Missing	11.3	5.1	5.7	8.8	32.7	50.6	49.4	45.9	39.4	31.9	32.2
Borrower income[3]											
Low or moderate	20.3	15.2	14.9	16.0	46.1	65.3	66.6	64.5	59.7	52.3	50.2
Middle	14.3	11.0	12.6	16.8	46.1	60.4	59.3	57.0	51.5	45.5	44.7
High	5.3	3.9	4.9	7.5	26.7	38.5	37.2	34.3	29.5	25.0	24.2
Neighborhood income[4]											
Low or moderate	15.8	9.7	9.6	13.8	45.5	64.4	65.1	61.2	57.9	49.6	48.0
Middle	14.1	10.2	10.8	14.2	42.7	59.8	59.4	56.9	52.0	44.5	43.0
High	7.1	5.4	6.1	7.6	27.4	43.4	42.0	39.5	34.6	28.0	26.1
Memo: All borrowers	11.9	8.5	9.0	11.8	37.6	54.4	53.4	50.5	45.2	38.0	36.6
B. Refinance											
Borrower race and ethnicity[1]											
Asian	1.2	.7	.6	1.0	4.6	5.7	4.7	4.3	5.9	6.7	6.9
Black or African American	11.1	5.8	4.4	10.2	39.2	53.8	42.0	37.8	38.6	37.0	40.3
Hispanic white	5.6	2.6	1.9	3.9	20.5	36.2	28.1	22.9	26.9	25.7	21.4
Non-Hispanic white	4.0	2.4	2.6	4.9	15.9	16.8	13.6	12.2	14.2	14.8	16.5
Other minority[2]	5.5	3.4	2.4	4.9	20.0	28.3	23.3	21.9	25.5	24.9	25.7
Joint	7.5	3.7	3.4	6.2	19.5	21.1	16.6	16.3	20.1	20.4	26.6
Missing	4.2	1.9	1.7	4.1	18.7	19.0	12.5	13.6	16.5	16.8	21.8
Borrower income[3]											
Low or moderate	2.3	1.6	2.9	5.7	18.3	16.6	14.0	11.5	9.3	9.4	13.0
Middle	1.7	1.3	2.7	6.2	19.6	13.2	12.2	10.9	8.9	9.6	13.3
High	.8	.6	1.1	2.7	10.5	7.2	6.7	6.3	5.5	6.2	8.8
Neighborhood income[4]											
Low or moderate	5.9	3.2	2.9	6.3	24.6	31.3	23.1	19.7	22.2	22.1	23.0
Middle	5.2	3.0	2.9	5.8	20.2	22.3	17.5	16.1	18.4	18.9	21.3
High	2.9	1.7	1.6	3.0	11.3	12.1	10.0	9.3	11.7	12.4	14.6
Memo: All borrowers	4.6	2.6	2.5	5.0	17.6	18.7	14.4	13.3	15.6	16.4	18.7

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes. Nonconventional loans are those insured by the Federal Housing Administration or backed by guarantees from the U.S. Department of Veterans Affairs, the Farm Service Agency, or the Rural Housing Service.

[1] See table 2, note 1.

[2] See table 2, note 2.

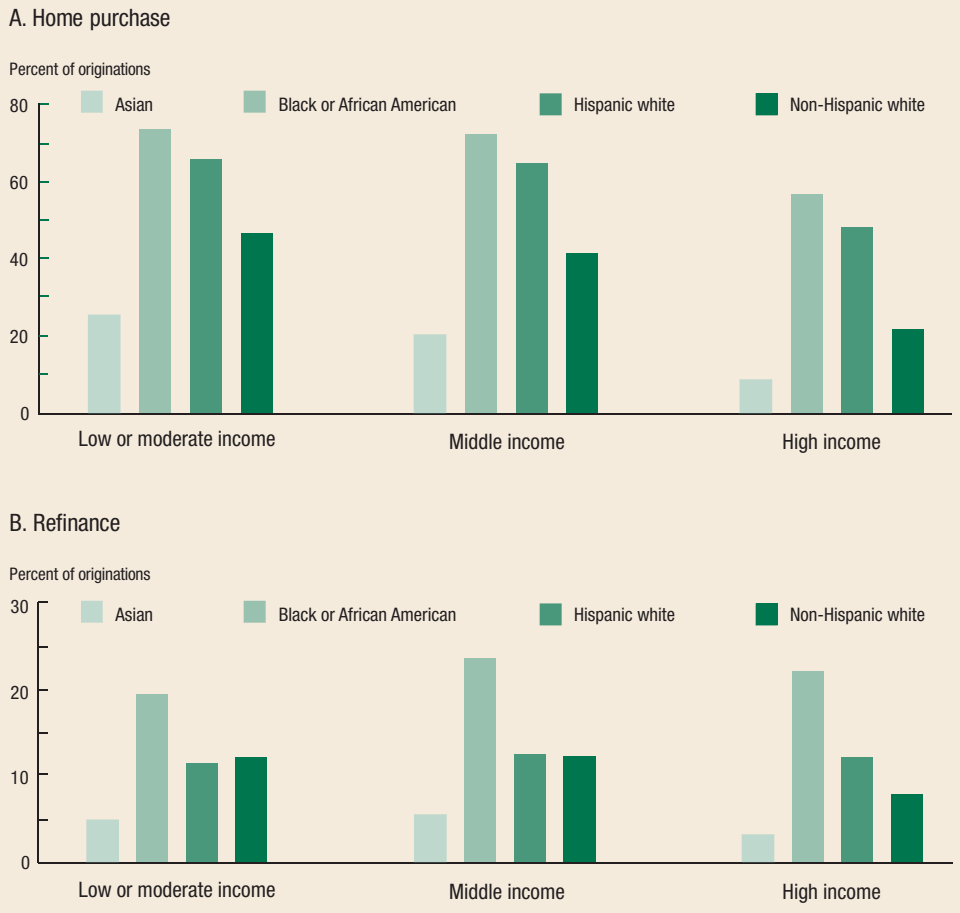
[3] See table 2, note 3.

[4] See table 2, note 4.

Black and Hispanic white borrowers tend to have lower incomes, on average, than non-Hispanic white borrowers. Still, racial and ethnic differences in nonconventional loan use persist within income groups. Figure 5 displays the nonconventional share of home-purchase and refinance loans for Asian, black, Hispanic white, and non-Hispanic white borrowers split into LMI, middle-income, and high-income groups. For home-purchase loans, black

by borrower income because, in most nonconventional refinance loans, income is not reported. Thus, when income is reported on a refinance loan, the loan is likely to be conventional.

Figure 5. Nonconventional share of originations, by borrower race, ethnicity, and income, 2014



Note: The data are annual. Mortgage originations for first-lien, one- to four-family, owner-occupied properties. For definition of borrower race and ethnicity, see table 2, note 1. For explanation of borrower income, see table 2, note 3. For definition of nonconventional loans, see table 5, note 1.

and Hispanic white borrowers were much more likely than non-Hispanic white borrowers to get nonconventional loans within each income grouping. For refinance loans, a substantial black–white gap persists across income groups, but LMI and middle-income Hispanic white borrowers use nonconventional loans at approximately the same rate as their non-Hispanic white counterparts.

Greater reliance on nonconventional loans may reflect the relatively low down-payment requirements of the FHA and VA lending programs, which serve the needs of borrowers who have few assets to meet down-payment and closing-cost requirements.[24] The patterns of product incidence could also reflect the behavior of lenders to some extent; for example, concerns have been raised about the possibility that lenders steer borrowers in certain neighborhoods toward nonconventional loans.[25]

[24] Findings of the Federal Reserve Board's Survey of Consumer Finances for 2010 indicate that liquid asset levels and financial wealth holdings for minorities and lower-income groups are substantially smaller than they are for non-Hispanic white borrowers or higher-income populations. See Board of Governors of the Federal Reserve System, "2010 Survey of Consumer Finances," webpage, www.federalreserve.gov/econresdata/scf/scf_2010.htm.

[25] See, for example, Glenn B. Canner, Stuart A. Gabriel, and J. Michael Woolley (1991), "Race, Default Risk and

Denial Rates and Denial Reasons

In 2014, the overall denial rate on applications for home-purchase loans of 13.2 percent was somewhat lower than in 2013, while the denial rate for refinance loan applications of 30.6 percent was substantially higher than in 2013 (table 5).[26] Over longer horizons, denial rates have exhibited significant variation, and these changes differ by type of loan. For example, for conventional home-purchase loan applications, the denial rate of 11.7 percent in 2014 was 6.8 percentage points lower than in 2006, while for nonconventional home-purchase loan applications, the denial rate of 15.6 percent in 2014 was 3.5 percentage points higher than in 2006. Changes in raw denial rates over time reflect not only changes in credit standards, but also changes in the demand for credit and in the composition of borrowers applying for mortgages. For example, the denial rate on applications for conventional home-purchase loans was lower in 2014 than during the housing boom years, even though most measures of credit availability suggest that credit standards are tighter today.[27] This result may stem from a relatively large drop in applications from riskier applicants.

As in past years, black, Hispanic white, and "other minority" borrowers had notably higher denial rates in 2014 than non-Hispanic white borrowers, while denial rates for Asian borrowers were more similar to those for non-Hispanic white borrowers. For example, the denial rates for conventional home-purchase loans were about 25 percent for black borrowers, 19 percent for Hispanic white borrowers, 20 percent for other minority borrowers, 12 percent for Asian borrowers, and 10 percent for non-Hispanic white borrowers.

Previous research and experience gained in the fair lending enforcement process show that differences in denial rates and in the incidence of higher-priced lending (the topic of the next subsection) among racial or ethnic groups stem, at least in part, from factors related to credit risk that are not available in the HMDA data, such as credit history (including credit scores) and LTV ratios. Differential costs of loan origination and the competitive environment also may bear on the differences in pricing, as may differences across populations in credit-shopping activities.

Despite these limitations, the HMDA data play an important role in fair lending enforcement. The data are regularly used by bank examiners to facilitate the fair lending examination and enforcement processes. When examiners for the federal banking agencies evaluate an institution's fair lending risk, they analyze HMDA price data and loan application outcomes in conjunction with other information and risk factors that can be drawn directly from loan files or electronic records maintained by lenders, as directed by the Interagency Fair Lending Examination Procedures.[28] The availability of broader information allows the examiners to draw stronger conclusions about institution compliance with the fair lending laws.

Lenders can, but are not required to, report up to three reasons for denying a mortgage application, selecting from nine potential denial reasons (table 6). Among denied first-lien applications for one- to four-family, owner-occupied, site-built properties in 2014, about

Mortgage Lending: A Study of the FHA and Conventional Loan Markets," *Southern Economic Journal*, vol. 58 (July), pp. 249–62.

[26] Denial rates are calculated as the number of denied loan applications divided by the total number of applications, excluding withdrawn applications and application files closed for incompleteness.

[27] Both the Mortgage Bankers Association and the Urban Institute publish indexes of mortgage credit availability suggesting that standards have been much tighter since the crisis. See Wei Li, Laurie Goodman, Ellen Seidman, Jim Parrott, Jun Zhu, and Bing Bai (2014), "Measuring Mortgage Credit Accessibility," working paper (Washington: Urban Institute, November), www.urban.org/research/publication/measuring-mortgage-credit-accessibility.

[28] The Interagency Fair Lending Examination Procedures are available at www.ffiec.gov/PDF/fairlend.pdf.

Table 5. Denial rates, by purpose of loan, 2004–14
Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
A. Home purchase											
Conventional and nonconventional[1]											
All applicants	14.4	16.0	18.0	18.7	18.0	15.5	15.6	15.8	14.9	14.5	13.2
Asian	13.7	15.9	16.9	17.5	19.2	16.3	15.8	16.5	15.8	15.1	13.9
Black or African American	23.6	26.5	30.3	33.5	30.6	25.5	24.8	26.0	26.0	25.5	22.7
Hispanic white	18.3	21.1	25.1	29.5	28.3	22.2	21.8	21.1	20.2	20.5	18.1
Non-Hispanic white	11.1	12.2	12.9	13.3	14.0	12.8	12.9	13.1	12.5	12.2	11.0
Other minority[2]	19.4	20.8	24.0	26.7	25.5	21.2	21.9	20.9	20.8	21.5	18.8
Conventional only											
All applicants	14.6	16.3	18.5	19.0	18.3	15.8	15.2	15.1	13.6	12.9	11.7
Asian	13.7	16.0	17.1	17.5	19.1	15.8	14.8	15.5	14.4	13.9	13.0
Black or African American	25.0	27.8	31.9	35.7	37.6	35.8	33.6	33.2	32.0	28.5	24.6
Hispanic white	18.6	21.4	25.7	30.5	32.5	26.9	24.9	24.2	22.4	21.5	18.7
Non-Hispanic white	11.2	12.3	13.2	13.3	14.1	13.3	12.9	12.7	11.6	10.9	9.8
Other minority[2]	19.7	21.2	24.8	27.8	29.0	25.9	28.0	24.6	23.6	22.6	20.1
Nonconventional only[1]											
All applicants	13.3	12.5	12.1	16.2	17.4	15.3	16.0	16.5	16.3	17.0	15.6
Asian	12.6	11.6	10.6	15.5	20.2	17.7	18.6	19.3	20.2	20.7	18.6
Black or African American	17.7	16.8	16.2	22.8	25.3	22.6	22.7	23.9	24.0	24.2	21.7
Hispanic white	16.3	17.2	15.7	20.5	23.1	20.4	20.7	19.9	19.3	20.0	17.7
Non-Hispanic white	10.7	10.2	10.0	13.1	13.9	12.5	13.0	13.6	13.7	14.4	13.2
Other minority[2]	16.8	16.3	15.2	18.6	20.9	18.7	18.7	18.8	18.9	20.5	17.7
B. Refinance											
Conventional and nonconventional[1]											
All applicants	29.5	32.6	35.4	39.6	37.7	24.0	23.3	23.8	19.9	22.7	30.6
Asian	18.8	23.5	27.5	32.6	32.5	21.4	19.5	20.1	17.3	20.5	27.5
Black or African American	39.9	42.2	44.1	52.0	56.0	42.2	41.7	40.0	32.8	33.9	45.4
Hispanic white	28.7	30.1	33.2	43.0	49.1	36.4	33.4	33.2	27.5	28.7	36.0
Non-Hispanic white	24.1	26.9	30.1	33.7	32.2	20.7	20.6	21.3	17.8	20.0	27.1
Other minority[2]	33.7	35.5	40.6	52.0	57.4	37.3	35.3	34.4	30.0	30.5	41.3
Conventional only											
All applicants	30.1	32.9	35.6	39.9	37.0	22.1	21.3	22.3	19.4	22.0	29.0
Asian	18.8	23.5	27.5	32.5	31.5	20.2	18.5	19.4	17.0	20.0	26.6
Black or African American	41.7	43.0	44.7	53.3	60.9	48.6	41.4	40.6	34.8	35.1	46.5
Hispanic white	29.3	30.2	33.3	43.2	50.2	38.9	33.6	33.5	28.9	29.8	36.5
Non-Hispanic white	24.6	27.1	30.4	33.9	31.5	19.1	18.9	20.1	17.4	19.4	25.7
Other minority[2]	34.5	35.7	40.9	52.6	59.4	38.4	34.8	34.4	31.1	31.0	40.3
Nonconventional only[1]											
All applicants	15.0	20.1	21.9	31.6	40.9	31.1	33.3	32.2	22.2	25.9	36.5
Asian	15.0	20.0	22.0	38.5	48.9	37.2	34.2	32.7	22.2	26.1	37.5
Black or African American	17.5	23.6	24.6	33.7	43.5	35.1	42.2	39.1	29.5	31.6	43.8
Hispanic white	15.7	23.6	26.3	34.6	43.4	31.4	33.0	32.3	23.3	25.4	34.4
Non-Hispanic white	12.0	17.6	19.7	28.3	36.1	27.4	29.3	29.0	19.7	23.0	33.7
Other minority[2]	15.2	25.8	22.2	34.8	45.4	34.1	37.0	34.4	26.6	28.9	43.9

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes. Excludes applications where no credit decision was made. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1.

[1] Nonconventional loans are those insured by the Federal Housing Administration or backed by guarantees from the U.S. Department of Veterans Affairs, the Farm Service Agency, or the Rural Housing Service.

[2] See table 2, note 2.

75 percent of denied home-purchase applications and about 63 percent of denied refinance applications had at least one reported denial reason. The two most frequently cited denial reasons for both home-purchase and refinance loans were the applicant's credit history and DTI ratio (note that the columns in table 6 can add up to more than 100 percent because lenders can cite more than one denial reason). For both home-purchase and refinance

Table 6. Reasons for denial, by purpose of loan, 2014
Percent

Type of loan and race and ethnicity of borrower	Debt-to-income ratio	Employment history	Credit history	Collateral	Insufficient cash	Unverifiable information	Credit application incomplete	Mortgage insurance denied	Other	No reason given
A. Home purchase										
Conventional and nonconventional[1]										
All applicants	23.1	3.7	22.2	12.9	6.5	5.2	9.5	.6	10.5	25.2
Asian	28.3	4.7	13.5	12.0	7.6	8.7	13.5	.6	11.4	20.5
Black or African American	25.1	2.9	28.2	9.6	7.3	4.6	6.9	.6	10.0	27.3
Hispanic white	25.0	3.9	20.8	11.1	6.6	5.8	6.8	.5	12.0	28.4
Non-Hispanic white	21.9	3.8	21.8	14.1	6.2	4.9	9.8	.7	10.3	25.2
Other minority[2]	23.6	3.4	26.6	9.7	7.3	5.3	7.0	.7	11.3	26.6
Conventional only										
All applicants	23.7	3.2	20.9	15.0	7.2	5.6	10.8	1.0	10.2	22.7
Asian	28.1	4.5	11.8	12.8	8.1	9.1	14.9	.7	11.3	19.4
Black or African American	24.5	2.2	32.2	12.1	8.5	4.3	6.9	1.4	10.1	23.4
Hispanic white	25.4	3.1	22.1	13.8	7.6	6.1	7.5	1.0	12.5	24.1
Non-Hispanic white	23.0	3.3	20.1	16.2	6.8	5.3	11.0	1.0	9.6	23.0
Other minority[2]	24.0	3.4	26.7	10.1	8.0	6.0	7.6	1.0	11.2	25.8
Nonconventional only[1]										
All applicants	22.3	4.3	23.8	10.3	5.6	4.7	7.9	.1	11.0	28.5
Asian	29.0	5.2	20.0	9.2	5.8	7.3	7.9	.1	11.8	24.8
Black or African American	25.5	3.3	25.9	8.2	6.6	4.8	6.8	.1	10.0	29.5
Hispanic white	24.8	4.5	19.9	9.2	5.8	5.7	6.2	.2	11.6	31.5
Non-Hispanic white	20.4	4.6	24.2	11.1	5.3	4.4	8.1	.2	11.3	28.3
Other minority[2]	23.1	3.4	26.5	9.2	6.6	4.6	6.4	.4	11.3	27.4
B. Refinance										
Conventional and nonconventional[1]										
All applicants	15.8	1.0	18.4	15.3	2.9	3.0	10.4	.1	8.1	36.5
Asian	25.4	1.6	15.3	12.3	3.3	5.3	10.0	.2	9.7	31.3
Black or African American	11.5	.5	20.0	12.8	3.3	2.0	7.7	.1	7.6	44.9
Hispanic white	19.4	1.0	20.6	11.4	3.6	3.6	7.7	.2	9.5	36.2
Non-Hispanic white	15.9	1.0	17.8	16.3	2.8	3.0	10.4	.1	8.0	35.9
Other minority[2]	16.4	.7	18.9	12.2	3.0	2.9	7.7	.1	8.3	41.1
Conventional only										
All applicants	18.7	1.1	19.8	15.7	2.8	3.4	10.3	.2	8.2	32.8
Asian	27.1	1.7	15.4	12.7	3.3	5.6	10.0	.2	9.8	29.3
Black or African American	14.6	.6	23.0	12.9	2.7	2.2	7.6	.2	7.1	41.0
Hispanic white	21.7	1.0	21.5	11.8	3.4	3.8	7.5	.2	9.0	34.4
Non-Hispanic white	18.5	1.1	19.1	16.7	2.7	3.3	10.3	.2	8.1	32.4
Other minority[2]	19.8	.8	21.2	12.5	2.9	3.2	7.8	.1	8.7	35.9
Nonconventional only[1]										
All applicants	7.0	.7	14.0	14.1	3.3	2.0	10.7	.03	7.7	47.7
Asian	11.5	1.0	14.7	9.4	3.1	3.2	9.7	.05	9.3	47.5
Black or African American	6.2	.4	15.2	12.7	4.2	1.7	7.7	.01	8.3	51.3
Hispanic white	10.1	.9	17.1	9.7	4.8	2.7	8.6	.05	11.5	43.1
Non-Hispanic white	7.0	.7	13.4	15.0	3.1	2.0	10.7	.03	7.6	47.6
Other minority[2]	7.8	.4	13.3	11.6	3.4	2.1	7.6	.03	7.2	54.4

Note: Denied first-lien mortgage applications for one- to four-family, owner-occupied, site-built homes. Columns sum to more than 100 because lenders may report up to three denial reasons. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1.

[1] See table 5, note 1.

[2] See table 2, note 2.

applications, collateral is more likely to be cited as a denial reason on conventional than nonconventional applications. For refinance applications, the DTI ratio is more likely to be cited as a denial reason on conventional than nonconventional applications.

Denial reasons vary across racial and ethnic groups to some degree. For example, among denied home-purchase loan applications in 2014, credit history was cited as a denial reason for 28 percent of denied black applicants, 21 percent of denied Hispanic white applicants, 22 percent of denied non-Hispanic white applicants, and just 13 percent of denied Asian applicants. The DTI ratio was cited most often as a denial reason for Asian home-purchase applicants at 28 percent, compared with 22 percent for non-Hispanic white applicants at the lower end. Finally, collateral was cited most often as a denial reason on home-purchase applications for non-Hispanic white applicants at 14 percent, compared with 10 percent for black applicants.

The Incidence of Higher-Priced Lending

Current price-reporting rules under HMDA, in effect since October 2009, define higher-priced first-lien loans as those with an annual percentage rate (APR) of at least 1.5 percentage points above the average prime offer rate (APOR) for loans of a similar type (for example, a 30-year fixed-rate mortgage).[29] The spread for junior-lien loans must be at least 3.5 percentage points for such loans to be considered higher priced. The APOR, which is published weekly by the Federal Financial Institutions Examination Council, is an estimate of the APR on loans being offered to high-quality prime borrowers based on the contract interest rates and discount points reported by Freddie Mac in its Primary Mortgage Market Survey.[30]

In 2014, the fraction of home-purchase loans (again, first liens for one- to four-family, owner-occupied, site-built properties) above the higher-priced threshold increased to 11.5 percent from 7.1 percent in 2013 (table 7.A). This increase stemmed from a rise in the higher-priced share of nonconventional loans from 13.8 percent to 26 percent, while the higher-priced share of conventional loans increased only slightly, from 2.9 percent to 3.1 percent.

The higher-priced fraction of FHA home-purchase loans spiked from about 5 percent in early 2013 to about 40 percent after May 2013 and continued at monthly rates between 35 and 52 percent through 2014, for an annual average incidence of about 44 percent in 2014 (table 8). In contrast, less than 1 percent of VA and FSA/RHS home-purchase loans were higher priced in 2014. Increases in the FHA's MIP and the term length over which it must be paid appear to have pushed many FHA home-purchase loans just over the reporting threshold; as shown in table 8, over 75 percent of higher-priced FHA home-purchase loans were within 0.5 percentage point of the higher-priced threshold. With the FHA reducing the MIP by 0.5 percentage point in January 2015, the fraction of FHA borrowers above the reporting threshold may fall in next year's data.

There was a smaller increase in the higher-priced fraction of refinance mortgages—to 3.3 percent from 1.9 percent in 2013 (as shown in table 7.A). This increase was also largely driven by the higher-priced share of FHA refinance loans, which rose to 15.7 percent from 6.2 percent in 2013.

Table 7.A also shows that, in 2014 as well as earlier years, black and Hispanic white borrowers had the highest incidences of higher-priced loans within both the conventional and

[29] For more information about the rule changes related to higher-priced lending and the ways in which they affect the incidence of reported higher-priced lending over time, see Avery and others, "The 2009 HMDA Data," in note 11.

[30] See Freddie Mac, "Mortgage Rates Survey," webpage, www.freddiemac.com/pmms; and Federal Financial Institutions Examination Council, "FFIEC Rate Spread Calculator," webpage, www.ffiec.gov/ratespread/newcalc.aspx.

Table 7. Incidence of higher-priced lending, by purpose of loan, 2004–14
A. Unadjusted
Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Home purchase											
Conventional and nonconventional[1]											
All borrowers	9.8	22.5	23.2	12.7	8.1	4.6	2.2	3.3	3.1	7.1	11.5
Asian	5.5	16.3	16.4	7.6	4.0	2.4	1.0	1.5	1.4	3.0	5.1
Black or African American	24.3	46.7	46.4	27.6	14.5	7.1	3.0	5.0	5.3	14.2	25.5
Hispanic white	17.5	42.0	43.3	25.9	15.8	8.1	3.9	6.1	5.9	16.8	28.3
Non-Hispanic white	7.8	15.5	16.0	9.6	7.2	4.3	2.2	3.1	2.9	6.1	9.4
Other minority[2]	14.4	30.3	30.7	16.1	9.1	5.3	2.3	3.5	3.4	8.7	13.5
Conventional only											
All borrowers	11.0	24.5	25.3	14.0	7.3	4.6	3.3	3.8	3.2	2.9	3.1
Asian	5.6	16.6	16.7	7.7	3.3	1.9	1.0	1.3	1.2	1.1	1.5
Black or African American	30.6	54.1	53.4	34.0	17.4	8.7	6.1	8.0	6.7	6.1	7.7
Hispanic white	20.0	45.3	46.3	28.9	17.7	11.0	9.6	10.7	8.7	7.3	6.5
Non-Hispanic white	8.6	16.9	17.5	10.5	6.5	4.8	3.4	3.9	3.2	2.9	3.0
Other minority[2]	16.1	33.3	33.6	18.5	9.5	6.7	4.6	5.5	5.1	4.9	5.0
Nonconventional only[1]											
All borrowers	1.2	.9	1.8	3.0	9.5	4.6	1.3	2.7	3.0	13.8	26.0
Asian	2.4	.6	.8	1.3	8.2	3.9	.8	2.0	1.9	13.1	26.0
Black or African American	1.4	1.6	2.5	4.5	12.8	6.8	2.4	4.3	4.9	17.6	33.8
Hispanic white	2.0	1.4	3.5	4.5	14.0	7.1	2.2	4.5	4.8	22.4	43.0
Non-Hispanic white	1.0	.7	1.5	2.5	8.4	3.9	1.0	2.3	2.6	12.0	22.2
Other minority[2]	4.4	.7	2.1	2.4	8.8	4.7	1.2	2.5	2.4	11.7	20.7
Refinance											
Conventional and nonconventional[1]											
All borrowers	14.5	25.0	30.3	21.0	10.9	3.8	1.8	2.1	1.5	1.9	3.3
Asian	5.8	15.1	19.5	12.5	3.1	.9	.4	.5	.4	.5	1.1
Black or African American	30.0	46.2	50.7	38.1	22.8	9.0	6.5	6.8	4.1	3.8	5.7
Hispanic white	18.2	32.6	36.9	26.5	15.1	7.0	4.4	4.4	2.6	3.1	4.8
Non-Hispanic white	12.3	20.4	25.0	17.6	10.2	3.7	1.8	2.2	1.5	2.0	3.3
Other minority[2]	17.6	26.9	32.3	23.8	13.9	4.7	2.6	2.6	2.0	2.2	3.0
Conventional only											
All borrowers	15.2	25.7	31.0	21.8	10.4	3.1	1.3	1.5	1.2	1.5	2.2
Asian	5.8	15.2	19.6	12.5	2.9	.7	.2	.3	.3	.3	.7
Black or African American	33.7	49.0	52.8	41.5	27.6	9.9	4.0	4.2	2.9	3.3	4.1
Hispanic white	19.2	33.4	37.5	27.3	16.0	7.2	3.3	3.3	2.3	2.4	2.8
Non-Hispanic white	12.8	20.9	25.6	18.2	9.8	3.1	1.3	1.6	1.2	1.6	2.4
Other minority[2]	18.2	27.7	32.9	24.5	14.7	4.8	1.9	2.2	1.7	2.0	2.2
Nonconventional only[1]											
All borrowers	1.5	.9	3.1	6.6	13.2	6.7	4.9	5.9	3.2	3.9	7.9
Asian	3.6	2.1	2.5	4.9	8.9	4.8	3.1	4.0	1.8	2.6	6.8
Black or African American	1.0	1.2	4.1	7.8	15.2	8.2	9.8	10.9	6.0	4.6	8.1
Hispanic white	2.0	.9	2.6	6.2	11.6	6.6	7.3	7.9	3.6	5.1	11.8
Non-Hispanic white	1.3	.7	2.8	6.0	12.1	6.5	4.6	5.9	3.3	4.2	8.3
Other minority[2]	8.1	3.9	9.6	9.9	10.5	4.5	4.6	4.3	2.9	2.9	5.2

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1.

[1] See table 5, note 1.

[2] See table 2, note 2.

nonconventional loan types. The table provides the raw rates of higher-priced lending by group from 2004 to 2014, but, as discussed in detail in previous *Bulletin* articles, the raw rates reported in the public HMDA data can be difficult to compare over longer time horizons for two main reasons. First, a different price-reporting rule was in place prior to October 2009, with the spread between a mortgage's APR and the rate on a Treasury bond of

Table 7. Incidence of higher-priced lending, by purpose of loan, 2004–14
B. Adjusted
Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Home purchase											
Conventional and nonconventional[1]											
All borrowers	7.4	18.3	17.1	6.3	1.3	1.3	.6	.8	.8	.7	.8
Asian	3.8	13.0	11.4	3.1	.5	.5	.3	.3	.3	.3	.4
Black or African American	19.3	40.3	38.5	16.7	1.9	1.3	.6	.7	.9	1.1	1.2
Hispanic white	12.3	34.5	32.8	13.0	2.1	1.4	1.0	1.3	1.6	1.6	1.6
Non-Hispanic white	5.8	12.1	10.9	4.3	1.3	1.4	.7	.8	.8	.7	.7
Other minority[2]	10.5	24.7	22.7	8.0	1.5	1.4	.8	.9	1.1	.9	.9
Conventional only											
All borrowers	8.2	20.0	18.7	7.1	1.9	2.3	1.3	1.4	1.2	.9	.8
Asian	3.8	13.3	11.6	3.2	.5	.6	.3	.4	.4	.3	.4
Black or African American	24.4	46.9	44.5	21.2	4.7	4.0	2.6	2.6	2.7	1.8	1.4
Hispanic white	14.0	37.2	35.2	14.8	3.9	4.6	3.9	4.1	4.5	2.8	2.3
Non-Hispanic white	6.5	13.2	12.0	4.9	1.9	2.6	1.3	1.5	1.2	.8	.7
Other minority[2]	11.6	27.2	25.0	9.3	2.7	3.7	2.3	2.5	2.6	1.7	1.3
Nonconventional only[1]											
All borrowers	.9	.3	.2	.3	.4	.4	.1	.2	.3	.5	.7
Asian	2.2	.3	.1	.2	.2	.2	.1	.2	.2	.3	.4
Black or African American	1.0	.5	.3	.6	.4	.7	.2	.3	.3	.8	1.1
Hispanic white	1.6	.3	.3	.2	.5	.4	.1	.3	.3	.8	1.1
Non-Hispanic white	.8	.2	.2	.2	.3	.3	.1	.2	.3	.5	.7
Other minority[2]	3.9	.3	.2	.2	.3	.3	.1	.1	.2	.3	.6
Refinance											
Conventional and nonconventional[1]											
All borrowers	11.3	20.1	21.3	12.7	4.3	1.4	.6	.8	.7	.7	1.0
Asian	4.1	12.2	12.1	5.4	.8	.2	.1	.2	.1	.1	.2
Black or African American	24.3	38.5	39.0	26.4	10.6	3.5	2.6	3.3	2.5	1.6	2.0
Hispanic white	13.4	27.0	25.8	14.8	5.6	2.5	1.8	1.8	1.1	.9	1.0
Non-Hispanic white	9.5	15.9	16.9	10.3	4.1	1.4	.6	.8	.7	.7	1.1
Other minority[2]	13.2	22.0	22.3	14.5	7.1	2.1	.9	1.1	1.1	.8	.9
Conventional only											
All borrowers	11.8	20.7	21.9	13.3	5.1	1.5	.5	.6	.4	.4	.7
Asian	4.1	12.3	12.1	5.4	.9	.2	.1	.1	0	0	.1
Black or African American	27.3	40.8	40.7	29.4	17.1	6.3	2.0	1.8	1.0	1.0	1.4
Hispanic white	14.1	27.7	26.2	15.4	6.9	3.5	1.4	1.3	.8	.7	.8
Non-Hispanic white	9.9	16.3	17.3	10.9	4.8	1.6	.5	.6	.4	.5	.8
Other minority[2]	13.6	22.6	22.7	14.9	8.3	2.8	.9	.9	.7	.7	.7
Nonconventional only[1]											
All borrowers	1.0	.6	.7	.5	.4	.5	1.2	2.5	2.4	1.8	2.1
Asian	2.9	1.8	1.3	1.4	.5	.3	.5	1.5	1.4	1.1	1.6
Black or African American	.6	.8	1.2	.6	.5	1.1	3.5	5.9	4.9	2.6	2.8
Hispanic white	1.4	.4	.3	.6	.7	.8	2.8	3.5	1.9	1.3	1.7
Non-Hispanic white	.8	.4	.4	.3	.4	.5	1.0	2.4	2.5	2.1	2.5
Other minority[2]	6.3	3.4	7.8	6.3	1.9	.4	1.1	2.0	2.2	1.3	1.5

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes. For a description of how borrowers are categorized by race and ethnicity, see table 2, note 1. See text for details on how adjusted incidences of higher-priced lending are calculated.

[1] See table 5, note 1.

[2] See table 2, note 2.

comparable term (rather than the APOR) reported if it rose above 3 percentage points.[31] Second, the previous price-reporting rule created unintended distortions in reporting over

[31] The reporting threshold for junior liens was 5 percentage points.

Table 8. Distribution of price spread, 2014
Percent except as noted

Purpose and type of loan	Total number	Loans with APOR spread above 1.5 percentage points[1]							
		Number	Percent	Distribution, by percentage points of APOR spread					
				1.5–1.99	2–2.49	2.5–2.99	3–3.99	4–4.99	5 or more
Site-built homes									
Home purchase									
Conventional	1,735,766	53,654	3.1	56.3	18.5	10.8	8.6	3.1	2.6
FHA[2]	583,539	258,647	44.3	76.2	21.0	2.1	.6	.03	.05
VA/RHS/FSA[3]	417,201	1,538	.4	79.5	12.9	1.4	.9	3.1	2.3
Refinance									
Conventional	1,561,325	34,546	2.2	48.1	19.8	11.3	11.8	5.0	4.1
FHA[2]	170,306	26,675	15.7	58.0	13.8	6.0	19.6	1.5	1.1
VA/RHS/FSA[3]	189,626	1,745	.9	88.6	1.0	2.0	1.2	6.2	1.1
Manufactured homes									
Home purchase									
Conventional	50,957	39,193	76.9	6.1	4.7	6.8	13.7	12.9	55.8
FHA[2]	12,231	8,163	66.7	53.4	31.3	7.0	4.0	4.3	.01
VA/RHS/FSA[3]	4,012	46	1.2	87.0	10.9	0	2	0	.01
Refinance									
Conventional	20,405	6,147	30.1	20.6	14.7	14.0	21.9	12.4	16.4
FHA[2]	5,009	1,034	20.6	60.1	21.3	6.3	11.5	.7	.2
VA/RHS/FSA[3]	3,162	25	.8	84.0	12	0	0	4	0

Note: First-lien mortgages for one- to four-family owner-occupied homes.

[1] Average prime offer rate (APOR) spread is the difference between the annual percentage rate on the loan and the APOR for loans of a similar type published weekly by the Federal Financial Institutions Examination Council. The threshold for first-lien loans is a spread of 1.5 percentage points.

[2] Loans insured by the Federal Housing Administration.

[3] Loans backed by guarantees from the U.S. Department of Veterans Affairs, the Rural Housing Service, or the Farm Service Agency.

time (which is why the reporting rule was changed), so data from years prior to 2009 are not even directly comparable from year to year.[32]

Table 7.B provides adjusted rates of higher-priced lending that are intended to be more comparable over time. Using the dates of application and origination (which are not released in the public HMDA data files) and assuming all loans are 30-year fixed-rate mortgages, we can estimate the APR of loans that were originated under the old pricing rule.[33] This estimated APR can then be compared with the APOR, as is done under the new price-reporting rule. Finally, because the implied threshold spread over the APOR during the previous reporting regime got to as high as about 2.5 percentage points, table 7.B reports the fraction of loans with an estimated APR spread over the APOR (or the actual reported spread for loans made under the new rules) of at least 2.5 percentage points—

[32] These distortions are related to the fact that changes in long-term Treasury rates do not always lead to parallel changes in mortgage rates. For a discussion of how the old rule could produce misleading data about trends in higher-priced lending, see Neil Bhutta and Daniel R. Ringo (2014), "The 2013 Home Mortgage Disclosure Act Data," *Federal Reserve Bulletin,* vol. 100 (November), pp. 1–32, www.federalreserve.gov/pubs/bulletin/2014/default.htm.

[33] The assumption that all mortgages were fixed rate likely understates the extent of higher-priced lending during the early years of the housing boom. During this period, adjustable-rate mortgages were quite prevalent, and the APRs on such loans are tied to even shorter-term Treasury rates than fixed-rate mortgages. Thus, when the yield curve is relatively steep, as it was in 2004, the bar for adjustable-rate mortgages to be reported as higher priced would have been even higher than for fixed-rate mortgages.

rather than 1.5 percentage points, as in table 7.A.[34] Higher-priced lending by this measure virtually disappeared by 2008 and has not reemerged, likely reflecting the lack of subprime mortgage lending.

Regulatory Changes

Several significant changes to the regulation of the mortgage market took place in 2014. This section briefly discusses the new rules and analyzes some possible effects of these new rules.

Ability-to-Repay and Qualified Mortgage Rules

On January 10, 2014, the CFPB's final ATR and QM rules, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, went into effect. To help ensure that lenders make a reasonable, good faith determination that borrowers will be able to repay their mortgage loans, the new ATR rules require lenders to meet minimum underwriting standards, such as considering and verifying a mortgage applicant's assets or income, debt load, and credit history for most closed-end residential mortgage loans. Borrowers may allege a violation of the ATR requirement within three years of the date of violation or use a violation of the ATR requirement as a defense to foreclosure for the life of the loan. Lenders that are found to violate the ATR rules can be liable for monetary damages.

Lenders are presumed to comply with the ATR requirement when they make a QM loan, which must meet further underwriting and pricing standards.[35] These requirements generally include a limit on points and fees to 3 percent of the loan amount and various restrictions on loan terms and features (for example, no negative amortization or interest-only payments and a loan term of 30 years or less).[36] QM loans also generally require that the borrower's total DTI ratio does not exceed 43 percent. However, currently, the 43 percent DTI cap does not apply to FHA, VA, FSA, and RHS loans, loans that are eligible for purchase by the GSEs, and portfolio loans made by small creditors.

The HMDA data can provide some insight into whether these new rules had an effect on credit availability, although they are an imperfect resource. For example, if the new rules discouraged lending to riskier borrowers, they could have led to a significant reduction in the share of loans to minority and LMI borrowers, who tend to have lower assets and credit scores and higher DTI ratios.[37] However, as discussed earlier, black and Hispanic

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[34] For a more detailed discussion of this adjustment technique, see Avery and others, "The 2009 HMDA Data," in note 11.

[35] In fact, there are two levels of legal protection: a "safe harbor" (that is, a conclusive presumption of compliance) for QM loans that are not higher priced (first liens with an APR that is less than 1.5 percentage points above the APOR or junior liens with an APR that is less than 3.5 percentage points above the APOR) and a "rebuttable presumption of compliance" for QM loans that are higher priced. For FHA loans, the safe harbor is given to loans with APRs that are equal to or less than 1.15 percentage points plus the ongoing MIP over the APOR. Most VA loans have safe-harbor status regardless of the APR. The safe-harbor price threshold also differs for small creditors.

[36] For information on how the terms "points and fees" and "loan amount" are defined for the purposes of QMs and other guidance on the rules, see Consumer Financial Protection Bureau (2014), *Ability-to-Repay and Qualified Mortgage Rule: Small Entity Compliance Guide* (Washington: CFPB, November 3), http://files.consumerfinance.gov/f/201411_cfpb_atr-qm_small-entity-compliance-guide.pdf.

[37] For data on credit scores and DTI ratios by borrower race and income, see Neil Bhutta and Glenn B. Canner (2013), "Mortgage Market Conditions and Borrower Outcomes: Evidence from the 2012 HMDA Data and Matched HMDA–Credit Record Data," *Federal Reserve Bulletin,* vol. 99 (November), pp. 1–58, www.federalreserve.gov/pubs/bulletin/2013/default.htm.

white borrowers' share of home-purchase loans increased in 2014 after having declined for several years. In addition, if the QM cap on the DTI ratio for conventional non-GSE loans was binding, there could have been a significant increase in the frequency at which lenders cited the DTI ratio as a reason for denial. However, there was little change in this frequency.[38] Also, as will be discussed later, jumbo home-purchase loans, which are not eligible for GSE purchase and would be subject to the DTI cap to qualify as QMs, grew much more rapidly than other home-purchase loans.

To explore further, this section examines whether the rules may have curbed high-DTI loans. The HMDA data do not provide all of the information necessary to calculate DTI ratios, so we cannot directly measure how the frequency of loans with DTI ratios in excess of 43 percent has changed with the introduction of the ATR and QM rules. Other debts, such as auto loans and student loans, are added to monthly mortgage obligations in the numerator of the DTI calculation. The term of the loan, which is not reported under HMDA, can also affect the DTI ratio, as a shorter term increases monthly mortgage payments, holding all else equal.

With these caveats in mind, we may still be able to glean some useful information on the extent of high-DTI lending. For each HMDA loan with a reported income, we estimate a "front end" DTI ratio based on the loan amount, income, origination date, and reported spread over the APOR. This approximate DTI ratio is the ratio of monthly mortgage payment (principal and interest only) to income, assuming that the loan follows a 30-year fixed-rate structure, with all points and fees financed over the life of the loan. The interest rate is assumed to be the reported spread over the APOR plus the APOR taken from two weeks before the loan was originated. If the spread was below the reportable threshold, the interest rate is assumed to be the APOR plus 0.25 percentage point for conventional loans.[39] For example, for a loan of $100,000 to a borrower with annual income of $50,000, an unreported spread, and the relevant APOR equal to 4 percent, the approximate DTI ratio would be 11.8 percent.

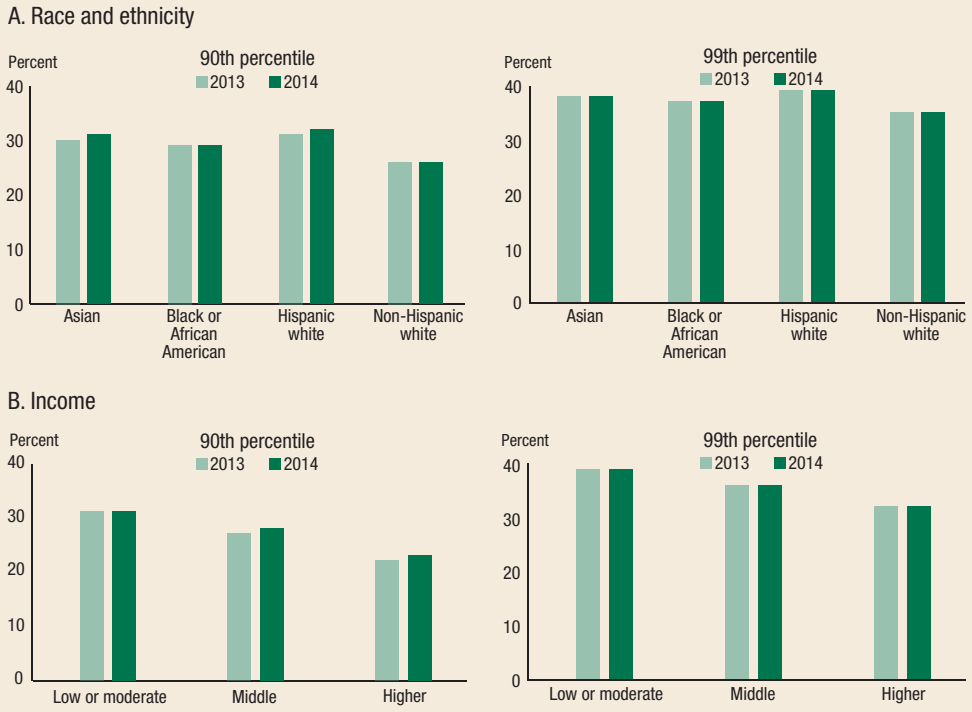
Figure 6 displays the distributions of these approximate DTI ratios by demographic group in 2013 and 2014 (additional data are reported in table 9). The 2014 data are restricted to loans with an application date on or after January 10, 2014, the date when the ATR rules were implemented. Again, the estimated front-end DTI ratios are lower than the "back end" DTI ratios lenders actually use to assess the ATR and QM eligibility, which include other housing-related obligations, such as taxes and insurance, as well as nonmortgage debt payments. That said, if the ATR and QM rules were a significant deterrent to loans with a back-end DTI ratio above 43 percent, we might expect to see the upper percentiles of the estimated front-end DTI ratio decrease noticeably between 2013 and 2014. In fact, the distributions look quite similar across the two years.[40] Even for conventional jumbo loans, which are not eligible for purchase by the GSEs and therefore must have a DTI below

[38] The frequency with which the DTI ratio was cited as a denial reason edged up to 23.1 percent from 22.1 percent in 2013 for denied home-purchase applications and dropped slightly to 15.8 percent from 16.6 percent for refinance denials.

[39] The lack of data on spreads below the reporting threshold could mask some small changes in the distribution of DTI ratios between 2013 and 2014. In the absence of data on the true APRs, we assume a spread of 0.25 percentage point on conventional and VA loans to reflect the fact that interest rates near the prevailing prime rate are more common than those far from it. For FHA loans without a reported spread, we assume a spread of 1.35 percentage points for loans with an application date on or after April 1, 2013. For loans with an application date before April 1, 2013, we assume a spread of 1.25 percentage points for FHA home-purchase loans and a spread of 0.75 percentage point for FHA refinancings. These spreads reflect the typical MIP rates. FSA and RHS loans are assumed to have a spread of 0.5 percentage point if no spread is reported to match the guarantee fees. The approximate DTI ratios are capped at 51 percent, as extremely high values likely reflect misreported data.

[40] As seen in table 9, the 90th and 95th percentiles of the approximate DTI ratio for refinance loans to LMI bor-

Figure 6. Percentiles of approximate debt-to-income ratios for home-purchase mortgages, by borrower race, ethnicity, and income, 2013 and 2014



Note: The data are annual. First-lien home-purchase mortgages for one- to four-family, owner-occupied, site-built homes. The data for 2014 are restricted to loans with an application date on or after January 10, 2014. For definition of borrower race and ethnicity, see table 2, note 1. For explanation of borrower income, see table 2, note 3.

43 percent in order to be a QM, the estimated DTI ratios largely held steady between 2013 and 2014.

A number of factors may help explain why the ATR and QM rules appear to have had little bite in 2014 *relative to 2013*. Since the financial crisis and through 2013, lenders have tightened standards, and most loans have been either GSE eligible or nonconventional; thus, most lending in 2013 may have already met the new ATR, if not QM, standards. Moreover, lenders may have adjusted to the new rules prior to the actual implementation date in 2014, reducing the differences between 2013 and 2014. At the same time, lenders making loans in 2013 that would not have been QM loans under the new rules may have been willing to continue doing so in 2014 despite some added legal risk.

Still, it is important to recognize that we do not know how the market would have evolved in 2014 in the absence of the new rules. Perhaps in their absence, DTI ratios would have risen significantly. In addition, borrowers may have reduced nonmortgage debt, which we do not observe in the HMDA data, in response to the new rules. Thus, we cannot rule out that there was an effect on DTI ratios in 2014 relative to 2013. Furthermore, the ATR and QM rules could have affected other dimensions of the mortgage market that are not observed in the HMDA data, such as the use of low-documentation and interest-only loans. Finally, even if the rules had little effect in 2014, they may become more binding in the future if mortgage lenders and investors regain their appetite for risk.

rowers did come down a little, but, for all home-purchase loans and most other groups in the refinance market, the upper percentiles either stayed the same or increased.

Table 9. Percentiles of estimated front-end debt-to-income ratios, by purpose of loan, 2013–14
Percent

Characteristic of borrower and of neighborhood	Percentile									
	2013					2014				
	50	75	90	95	99	50	75	90	95	99
A. Home purchase										
Borrower race and ethnicity[1]										
Asian	19	24	30	33	38	19	25	30	33	38
Black or African American	18	23	27	30	35	18	23	28	31	36
Hispanic white	19	25	30	32	37	20	26	31	33	38
Non-Hispanic white	16	20	25	28	34	16	21	26	29	34
Other minority[2]	18	24	29	32	37	19	24	29	32	38
Joint	15	20	25	28	34	16	20	25	28	34
Missing	16	21	27	30	35	17	22	27	30	35
Borrower income[3]										
Low or moderate	20	25	29	32	38	20	25	30	33	38
Middle	17	22	27	30	35	18	22	27	30	35
High	14	18	22	25	31	14	18	23	26	32
Neighborhood income[4]										
Low or moderate	17	22	28	31	36	18	23	29	32	37
Middle	16	21	26	29	35	17	22	27	30	35
High	16	21	26	29	35	16	21	26	29	35
Income not used or not applicable	15	20	25	28	35	14	19	24	27	35
Memo										
Conventional jumbo loans[5]	17	23	28	31	38	18	23	28	31	37
All home-purchase loans	16	21	26	29	35	17	22	27	30	35
B. Refinance										
Borrower race and ethnicity[1]										
Asian	16	21	28	32	51	18	24	29	33	45
Black or African American	13	19	26	32	51	14	20	26	32	51
Hispanic white	15	22	29	35	51	17	23	30	34	51
Non-Hispanic white	12	17	23	28	42	13	19	25	29	42
Other minority[2]	15	21	29	36	51	16	23	30	34	51
Joint	12	17	23	27	39	14	19	25	29	39
Missing	13	18	25	30	48	14	20	26	30	43
Borrower income[3]										
Low or moderate	18	25	33	42	51	18	25	32	39	51
Middle	14	19	24	27	34	15	20	26	29	36
High	10	14	19	22	29	12	17	22	25	31
Neighborhood income[4]										
Low or moderate	13	19	26	32	51	14	20	27	32	51
Middle	12	18	24	29	46	14	19	26	30	44
High	13	18	24	28	42	14	20	26	30	41
Income not used or not applicable	11	16	22	26	35	12	17	23	27	36
Memo										
Conventional jumbo loans[5]	17	23	29	33	43	18	24	29	33	41
All refinance loans	13	18	24	29	46	14	20	26	30	43

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes. The data for 2014 are restricted to loans with an application date on or after January 10, 2014. See text for details on how the front-end debt-to-income ratio is estimated.

[1] See table 2, note 1.

[2] See table 2, note 2.

[3] See table 2, note 3.

[4] See table 2, note 4.

[5] Jumbo loans are loans with amounts in excess of the single-family conforming loan-size limits for eligibility for purchase by the government-sponsored enterprises.

Table 10. Distribution of HOEPA loans, by characteristic of loan, 2004–14
Percent except as noted

Loans by purpose, lien status, property type, and amount	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
HOEPA loans (total)	**24,437**	**35,985**	**15,195**	**10,780**	**8,577**	**6,446**	**3,407**	**2,373**	**2,193**	**1,873**	**1,262**
Loan purpose											
Home purchase	0	0	0	0	0	0	0	0	0	0	31.8
Home improvement	37.7	26.1	42.4	45.4	30.5	31.1	32.6	32.3	31.5	30.1	18.0
Refinance	62.3	73.9	57.6	54.6	69.5	68.9	67.4	67.7	68.5	69.9	50.2
Lien status											
First	55.5	60.5	53.6	52.8	78.5	84.1	83.9	82.8	84.6	84.0	91.6
Junior	44.5	39.5	46.4	47.2	21.5	15.9	16.1	17.2	15.4	16.0	8.4
Property type											
Site built	88.0	91.8	83.7	81.0	72.7	67.8	68.3	65.7	65.7	69.1	75.2
Manufactured home	12.0	8.2	16.3	19.0	27.3	32.2	31.7	34.3	34.3	30.9	24.8
Loan amount											
Less than $50,000	72.4	48.4	72.1	74.3	66.7	72.5	76.5	77.8	75.6	71.0	53.2
Greater than $50,000	27.6	51.6	27.9	25.7	33.3	27.5	23.5	22.2	24.4	29.0	46.8

Note: Mortgages for one- to four-family owner-occupied homes. HOEPA loans are mortgages with terms that triggered the additional protections provided by the Home Ownership and Equity Protection Act.

HOEPA Loans

Under HOEPA, certain types of mortgage loans that have interest rates or fees above specified levels are subject to additional consumer protections, such as special disclosures and restrictions on loan features. New rules extending HOEPA's protections from refinance and home equity loans to also include home-purchase loans and home equity lines of credit became effective on January 10, 2014. These rules also added new protections for high-cost mortgages, such as a pre-loan counseling requirement for borrowers.

The new rules also changed the benchmark used to identify high-cost loans that are covered by HOEPA's protections. Instead of using the yield on Treasury securities, high-cost loans are identified by comparing a loan's APR with the APOR. HOEPA coverage now applies to first liens with an APR more than 6.5 percentage points above the APOR. If the loan is a junior lien or the loan amount is less than $50,000 and is secured by personal property (such as a manufactured home), then the high-cost threshold is 8.5 percentage points above the APOR. Prior to 2014, HOEPA's protections were triggered if the loan's APR exceeded 8 percentage points above the rate on a Treasury security of similar term for first liens, and 10 percentage points for junior liens. Finally, under the new rules, HOEPA coverage is also triggered if the points and fees exceed certain thresholds.[41]

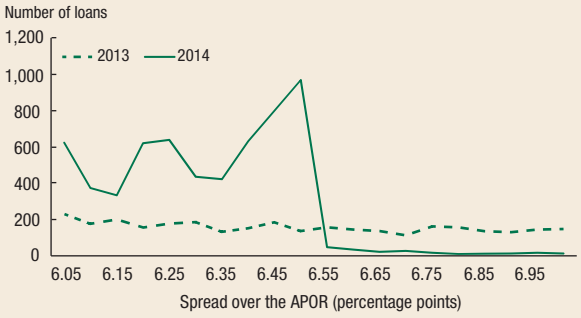
While HOEPA loans were never a large fraction of the mortgage market, they have become even rarer since the housing boom. In 2005, lenders reported nearly 36,000 HOEPA loans (table 10). In 2014, the total was 1,262 loans, down from 1,873 in 2013 despite the additional coverage of home-purchase loans.

While HOEPA loans were quite rare in 2014, mortgages with an APR near to, but below, the triggering threshold were somewhat more common. Figure 7 plots the frequency of first-lien mortgages for owner-occupied properties against the spread over the APOR in a

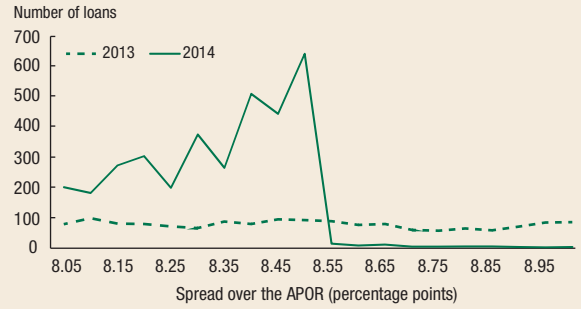
[41] Under the new rules, a loan is also considered high cost if the points and fees exceed 5 percent of the total loan amount for a loan equal to or more than $20,000 and 8 percent of the total loan amount or $1,000 for a loan less than $20,000, with the loan amounts adjusted annually for inflation.

Figure 7. Number of originations near HOEPA spread thresholds, 2013 and 2014

A. Manufactured and loan amount ≥ $50,000 or site built



B. Manufactured and loan amount < $50,000



Note: The data are annual. First-lien mortgage originations for owner-occupied properties clustered into bins of 0.05 percentage point. The data for 2014 are restricted to loans with an application date on or after January 10, 2014. HOEPA is Home Ownership and Equity Protection Act; APOR is average prime offer rate.

1 percentage point range around the HOEPA triggering threshold. The top panel combines loans of $50,000 or more for manufactured homes with all loans for site-built homes, as these loans all have a HOEPA threshold of 6.5 percentage points. The bottom panel presents the frequency of loans less than $50,000 for manufactured homes, which trigger HOEPA protections if the APR is more than 8.5 percentage points above the APOR. In both panels, the values from 2013 are plotted for comparison, as the APOR-based definition of high-cost mortgages was not in use then. In both panels, the 2014 plots are restricted to loans with an application date on or after January 10, 2014, when the new rule went into effect.

Both panels show a precipitous drop in the number of loans originated in 2014 at the HOEPA price threshold, whereas for 2013—before the new threshold rules took effect—no such discontinuity was evident. This pattern suggests that HOEPA discouraged lending above the price thresholds, but the mechanism by which the market responds to HOEPA is unclear. One possibility is that lenders reduce the APR on their offers to push the loan under the threshold, which would imply a benefit to consumers in the form of a lower price. Another possibility is that, rather than adjusting prices, lenders denied applications they would have accepted in the absence of HOEPA. In this case, consumers may or may not benefit from the law. Finally, prospective borrowers may have chosen to reject high-cost offers when presented with the additional HOEPA disclosures. Further research is needed to understand the relative importance of each of these mechanisms.

Lending Institutions

In 2014, there were 7,062 reporting institutions (table 11). The total consisted of 4,118 banks and thrifts (hereafter, banks), of which 3,367 were small, defined as having assets of less than $1 billion; 1,984 credit unions; 139 mortgage companies affiliated with depositories (banks and credit unions); and 821 independent mortgage companies.[42] Banks collec-

[42] Data on bank assets were drawn from the Federal Deposit Insurance Corporation Reports of Condition and Income. The $1 billion threshold is based on the combined assets of all banks within a given banking organization. Data available in the HMDA Reporter Panel can be used to help identify the various types of institutions. Affiliate institutions include all mortgage companies known to be wholly or partially owned by a depository—

Table 11. Lending activity, by type of institution, 2014
Percent except as noted

Institutions and type of activity	Type of institution[1]					
	Small bank	Large bank	Credit union	Affiliated mortgage company	Independent mortgage company	All
Number of institutions	3,367	751	1,984	139	821	7,062
Applications (thousands)	787	3,616	909	501	4,119	9,933
Originations (thousands)	558	2,161	545	313	2,403	5,980
Purchases (thousands)	26	1,061	12	172	481	1,752
Number of institutions with fewer than 100 loans	1,935	149	1,150	38	88	3,360
Originations (thousands)	79.3	6.7	44.5	1.6	3.4	135.5
Number of institutions with fewer than 25 loans	667	45	443	16	41	1,212
Originations (thousands)	8.2	.6	5.2	.2	.5	14.7
Home-purchase loans (thousands)[2]	220	869	172	189	1,288	2,737
Conventional	73.8	74.3	86.8	58.9	51.9	63.4
Higher-priced share of conventional loans	11.3	1.7	8.9	1.0	1.5	3.1
LMI borrower[3]	28.9	23.5	26.1	30.1	28.8	27.0
LMI neighborhood[4]	11.9	11.8	12.7	12.6	14.7	13.3
Non-Hispanic white[5]	81.3	69.9	70.7	71.0	65.9	69.1
Minority borrower[5]	11.8	17.8	14.4	16.8	22.6	19.3
Sold[6]	70.6	72.7	43.7	97.3	97.6	84.1
Refinance loans (thousands)[2]	119	723	177	86	816	1,921
Conventional	85.7	90.6	96.4	80.2	69.2	81.3
Higher-priced share of conventional loans	11.3	1.5	3.5	.8	1.2	2.2
LMI borrower[3]	22.5	23.5	24.6	21.1	20.6	22.2
LMI neighborhood[4]	11.3	12.8	13.9	12.0	13.6	13.1
Non-Hispanic white[5]	84.2	68.8	71.2	68.3	63.7	67.8
Minority borrower[5]	8.2	17.1	14.6	17.1	18.2	16.8
Sold[6]	58.0	72.6	29.8	96.4	98.4	79.4

[1] Small banks consist of those banks with assets (including the assets of all other banks in the same banking organization) of less than $1 billion at the end of 2013. Large banks are all other banks. Affiliated mortgage companies are nondepository mortgage companies owned by or affiliated with a banking organization or credit union.

[2] First-lien mortgages for one-to-four family, owner-occupied, site-built homes.

[3] See table 2, note 3.

[4] See table 2, note 4.

[5] See table 2, note 1. "Minority borrower" refers to nonwhite (excluding joint or missing) or Hispanic white applicants.

[6] Excludes originations made in the last quarter of the year because the incidence of loan sales tends to decline for loans originated toward the end of the year, as lenders report a loan as sold only if the sale occurs within the same year as origination.

Source: FFIEC HMDA data; bank asset data drawn from Federal Deposit Insurance Corporation Reports of Condition and Income.

tively accounted for about 45 percent of all reported mortgage originations; independent mortgage companies, about 40 percent; credit unions, over 9 percent; and affiliates, the remainder.

Many institutions report little activity. About 48 percent of institutions (3,360 out of 7,062) reported fewer than 100 mortgage originations in 2014, accounting for about 136,000 originations, or 2 percent of all originations. About 17 percent of institutions originated fewer than 25 loans, in total accounting for about one-fourth of 1 percent of all originations.

that is, institutions for which the "other lender code" in the Reporter Panel equals 1, 2, or 5. All credit unions report to the National Credit Union Administration except four large credit unions (Boeing Employees Credit Union, Navy Federal Credit Union, Pentagon Federal Credit Union, and State Employees Credit Union), which report to the CFPB.

Table 11 provides several other statistics to help compare the lending patterns of different types of institutions in 2014, and we discuss some highlights here. First, depositories tend to originate a significantly higher fraction of conventional loans than nondepositories. As will be seen in the next section, this difference holds historically as well.

Second, in 2014, small banks and credit unions accounted for a highly disproportionate share of conventional higher-priced loans. Over 11 percent of conventional home-purchase loans for one- to four-family, owner-occupied, site-built properties originated by small banks were higher priced, as were nearly 9 percent of such loans originated by credit unions. In contrast, less than 2 percent of such loans originated by other types of institutions were higher priced. The numbers for both home-purchase and refinance lending imply that, even though small banks and credit unions accounted for less than 18 percent of conventional home-purchase and refinance loans, they originated over 55 percent of conventional higher-priced loans. Interestingly, further analysis indicates that these differences in higher-priced lending hold, on average, even when comparing small banks and credit unions to other lenders operating in the same county.

Notably, under the new QM rules, higher-priced conventional QM loans will have a rebuttable presumption of compliance with the ATR rules, as opposed to a conclusive presumption of compliance (that is, a safe harbor), unless the loan is originated by a small creditor, in which case the safe-harbor APR threshold is 3.5 percentage points over the APOR rather than 1.5 percentage points.[43] Many small banks and credit unions may fit the small creditor definition, and over 85 percent of the higher-priced loans originated by these institutions had APOR spreads of less than 3.5 percentage points. Thus, many of these higher-priced loans may have safe-harbor status if they satisfy all of the other QM criteria.

Third, small banks and credit unions are significantly less likely to originate mortgages to minority borrowers, compared with independent mortgage companies, but are more similar to independent mortgage companies in terms of their share of lending to LMI borrowers and neighborhoods. Patterns of lending over time by demographic group and lender type are discussed in detail in a later section.

Fourth, the HMDA data provide information on whether originated loans were sold within the same calendar year and the type of institution to which they were sold, such as one of the GSEs or a banking institution (see appendix A for a full list of purchaser types). Table 11 displays the fraction of loans sold within the calendar year, as opposed to being held in portfolio.[44] Nondepositories sold virtually all of their loans in 2014. In contrast, credit unions sold less than one-half of the home-purchase loans they originated and less than one-third of the refinance loans they originated. That said, as discussed later, portfolio lending among depositories has declined significantly over time.

Table 12 lists the top 25 reporting institutions according to their total number of originations, along with the same set of lending characteristics as those listed in table 11.[45] Wells Fargo reported the most originations, with about 374,000. The next-highest total was for Quicken Loans, followed by Bank of America and JPMorgan Chase. Overall, the top 25 lenders accounted for about 34 percent of all loan originations in 2014, down from 41 per-

[43] Other criteria must also be met to achieve safe-harbor status, such as holding the loan in portfolio for at least three years.

[44] Because loan sales are recorded in the HMDA data only if the loans are originated and sold in the same calendar year, loans originated toward the end of the year are less likely to be reported as sold. For that reason, statistics on loan sales are computed using only loans originated during the first three quarters of the year.

[45] Some institutions may be part of a larger organization; however, the data in table 12 are at the reporter level. Because affiliate activity has declined markedly since the housing boom, a top 25 list at the organization level is not likely to be significantly different.

Table 12. Top 25 respondents in terms of total originations, 2014
Percent except as noted

Respondent	Institution type[1]	Total originations (thousands)	Total purchases (thousands)	Home-purchase loans [2]							
				Number (thousands)	Conventional	Higher priced[3]	LMI borrower[4]	LMI neighborhood[5]	Non-Hispanic white[6]	Minority borrower[6]	Sold[7]
Wells Fargo Bank, NA	Large bank	374	448	151	76.2	.2	18.5	11.2	68.0	20.3	74.2
Quicken Loans, Inc.	Ind. mort. co.	283	0	46	54.7	.5	26.8	13.1	55.7	13.3	100.0
Bank of America, NA	Large bank	162	43	43	80.3	0	019.8	11.7	62.9	27.4	73.7
JPMorgan Chase Bank, NA	Large bank	145	218	51	85.7	.7	18.7	11.1	64.0	22.7	62.5
U.S. Bank, NA	Large bank	87	106	27	79.4	.4	28.3	11.7	70.9	11.1	75.5
Flagstar Bank, FSB	Large bank	82	22	45	58.8	.9	25.1	12.6	66.9	25.5	99.2
Citibank, NA	Large bank	72	24	21	95.4	0	11.7	12.9	47.7	30.3	52.0
PNC Bank, NA	Large bank	72	0	19	69.8	0	33.7	14.2	62.7	15.2	87.8
Nationstar Mortgage	Ind. mort. co.	61	27	3	53.0	.1	18.1	15.7	48.7	38.0	99.4
loanDepot.com	Ind. mort. co.	58	0	17	50.3	.9	17.0	14.9	53.2	31.8	99.9
Freedom Mortgage Corp.	Ind. mort. co.	58	47	10	54.0	.1	25.3	12.3	66.2	21.8	99.9
USAA Federal Savings Bank	Large bank	55	0	41	29.1	.1	13.5	9.6	64.1	14.2	92.8
PrimeLending, A Plainscapital Company	Affiliated mort. co.	48	0	36	57.6	1.2	28.8	13.0	69.0	16.5	99.9
Branch Banking and Trust Co.	Large bank	47	48	21	70.1	.2	26.4	12.0	69.3	12.1	72.2
Navy Federal Credit Union	Credit union	47	0	23	41.3	22.6	21.9	12.6	55.4	21.4	47.2
Stearns Lending, Inc.	Ind. mort. co.	47	16	26	56.7	.7	32.4	16.3	63.8	25.4	98.3
Regions Bank	Large bank	41	0	16	65.0	3.9	33.3	13.9	72.9	22.8	66.9
Shore Mortgage	Ind. mort. co.	38	0	19	77.9	1.2	28.5	13.3	63.9	29.5	99.7
Guild Mortgage Co.	Ind. mort. co.	37	0	26	43.1	2.8	29.8	18.1	67.4	23.3	99.9
Guaranteed Rate, Inc.	Ind. mort. co.	37	0	24	78.3	.6	22.2	12.5	74.0	14.9	99.5
SunTrust Mortgage, Inc.	Affiliated mort. co.	35	33	14	85.7	0	20.2	10.0	64.1	16.3	98.8
Caliber Home Loans, Inc.	Ind. mort. co.	35	16	24	54.6	.5	33.2	16.2	59.5	24.6	100.0
Stonegate Mortgage Corp.	Ind. mort. co.	29	30	18	45.9	1.6	33.9	13.8	72.0	19.6	99.7
Franklin American Mortgage Co.	Ind. mort. co.	28	54	19	56.0	1.1	30.3	11.5	80.9	13.8	100.0
Academy Mortgage Corp.	Ind. mort. co.	28	0	21	42.0	1.0	33.1	16.6	64.8	25.6	99.9
Top 25 institutions	…	2,007	1,132	760	65.0	1.0	23.7	12.7	65.1	20.6	84.6
All institutions	**…**	**5,980**	**1,752**	**2,737**	**63.4**	**3.1**	**27.0**	**13.3**	**69.1**	**19.3**	**84.1**

[1] See table 11, note 1
[2] See table 11, note 2.
[3] Share of conventional loans that are higher priced.
[4] See table 2, note 3.
[5] See table 2, note 4.
[6] See table 2, note 1. "Minority borrower" refers to nonwhite (excluding joint or missing) or Hispanic white applicants.
[7] See table 11, note 6.
... Not applicable.
Source: FFIEC HMDA data; bank asset data drawn from Federal Deposit Insurance Corporation Reports of Condition and Income.

(continued on next page)

cent in 2013. These same firms also purchased over 1 million loans from other lending institutions during 2014 (these loans could have been originated in 2014 or in earlier years).

The top institutions differ significantly in their lending patterns. For example, over 95 percent of Citibank's home-purchase loans were conventional, compared with 29 percent for USAA Federal Savings Bank. Regarding loan sales, Navy Federal Credit Union sold only 47 percent of its home-purchase originations, whereas the average across the top 25 institutions was about 85 percent. Finally, the composition of borrowers varied across the top 25 institutions. For some institutions, one-third or more of home-purchase borrowers were

Table 12. Top 25 respondents in terms of total originations, 2014–*continued*
Percent except as noted

Respondent	Institution type[1]	Refinance loans[2]							
		Number (thousands)	Conventional	Higher priced[3]	LMI borrower[4]	LMI neighborhood[5]	Non-Hispanic white[6]	Minority borrower[6]	Sold[7]
Wells Fargo Bank, NA	Large bank	137	86.4	.5	19.8	13.2	67.1	19.7	88.2
Quicken Loans, Inc.	Ind. mort. co.	217	69.2	.3	22.8	12.9	58.5	11.5	100.0
Bank of America, NA	Large bank	87	93.8	.2	28.9	14.8	63.6	24.0	87.7
JPMorgan Chase Bank, NA	Large bank	70	90.6	1.4	24.1	13.0	65.9	21.3	80.7
U.S. Bank, NA	Large bank	38	94.1	3.7	26.6	14.0	62.7	10.0	53.0
Flagstar Bank, FSB	Large bank	26	77.0	.9	17.6	12.1	67.0	23.3	98.1
Citibank, NA	Large bank	39	93.4	0	29.3	15.1	61.4	19.0	93.2
PNC Bank, NA	Large bank	33	87.0	.1	30.8	14.2	67.1	11.6	64.6
Nationstar Mortgage	Ind. mort. co.	47	88.0	3.1	34.9	18.8	64.0	25.1	99.9
loanDepot.com	Ind. mort. co.	35	61.1	.9	22.8	14.5	66.1	19.6	100.0
Freedom Mortgage Corp.	Ind. mort. co.	42	15.6	.1	5.6	15.1	58.2	23.5	99.9
USAA Federal Savings Bank	Large bank	9	51.6	.1	9.8	10.6	59.8	15.8	69.8
PrimeLending, A Plainscapital Company	Affiliated mort. co.	7	88.7	1.3	19.8	11.5	74.8	14.5	99.8
Branch Banking and Trust Co.	Large bank	11	91.4	.5	27.9	13.1	73.7	9.8	58.1
Navy Federal Credit Union	Credit union	8	40.0	1.3	14.6	11.9	53.5	24.9	55.1
Stearns Lending, Inc.	Ind. mort. co.	15	84.8	.2	22.1	13.8	64.5	23.4	97.9
Regions Bank	Large bank	13	94.5	1.2	31.4	15.1	80.2	16.0	30.8
Shore Mortgage	Ind. mort. co.	14	94.3	.7	19.0	11.4	66.7	25.0	99.5
Guild Mortgage Co.	Ind. mort. co.	5	82.2	.7	23.5	15.9	71.6	18.5	99.9
Guaranteed Rate, Inc.	Ind. mort. co.	9	95.1	.3	14.3	10.0	77.7	11.9	99.1
SunTrust Mortgage, Inc.	Affiliated mort. co.	16	87.6	0	28.2	13.3	66.3	14.9	98.8
Caliber Home Loans, Inc.	Ind. mort. co.	7	85.0	.1	19.3	12.4	63.9	21.0	99.9
Stonegate Mortgage Corp.	Ind. mort. co.	8	64.1	.9	17.4	11.5	68.7	17.0	99.6
Franklin American Mortgage Co.	Ind. mort. co.	7	81.8	.7	22.0	11.3	79.1	14.4	99.9
Academy Mortgage Corp.	Ind. mort. co.	3	84.4	.4	23.3	11.0	75.5	16.2	99.8
Top 25 institutions	…	904	78.9	.8	23.3	13.7	63.9	17.8	89.4
All institutions	…	**1,921**	**81.3**	**2.2**	**22.2**	**13.1**	**67.8**	**16.8**	**79.4**

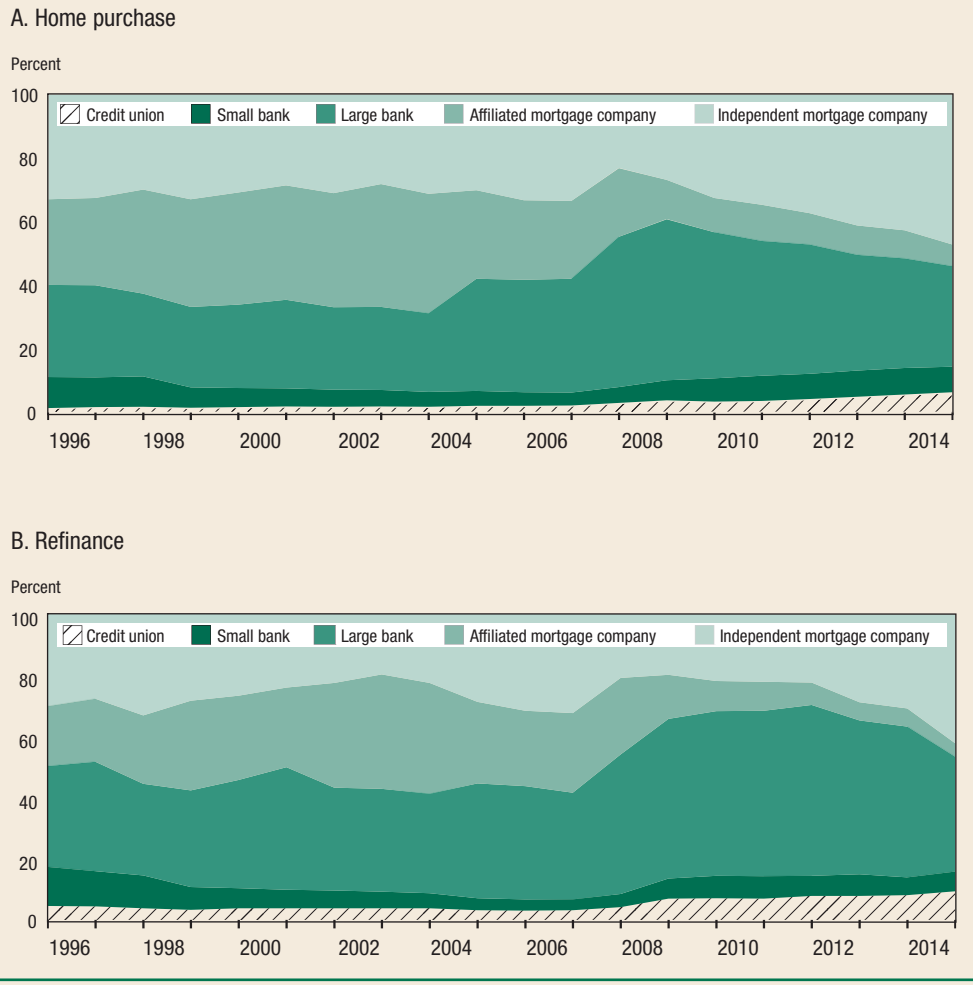
LMI, while at other institutions fewer than 20 percent of borrowers were in that category.[46] While it is difficult to know precisely why such variation exists, these differences could reflect different business strategies, different customer demands in the markets and geographic regions they serve, or some combination of these two broad factors.

Changes in Market Structure over Time

Over the past two decades or so, several developments have influenced the evolution of the mortgage market. One development has been the emergence of credit scoring and automated underwriting, which has facilitated the growth of secondary markets for mortgages and other consumer loans. Another was bank deregulation in the mid-1990s, which allowed banks to more easily expand across the nation and grow their balance sheets. Finally, the recent mortgage and financial crisis led to the failure of many (major and minor) lenders and ongoing difficulties for some survivors, and it has stimulated new regulations aimed at discouraging risky mortgage lending and limiting the systemic risk posed by the largest financial institutions. The HMDA data, which go back to the early 1990s and disclose the identity of the lender on each mortgage application, allow us to study how the market has

[46] Note that for lenders with a significant nonconventional share of refinance loans (for example, Freedom Mortgage Corporation), borrower income may not be reported for most loans, thus pushing down the LMI share of borrowers.

Figure 8. Market shares, by lender type, 1995–2014



Note: The data are annual. Mortgage originations for one- to four-family owner-occupied properties, with junior-lien loans excluded in 2004 and later. Small banks are part of organizations with less than $1 billion in assets, measured in 2014 dollars. Large banks are all other banks.
Source: FFIEC HMDA data; bank asset data drawn from Federal Deposit Insurance Corporation Reports of Condition and Income.

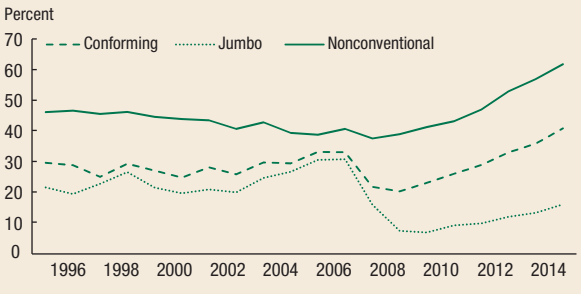
evolved in response to these and other events. To that end, the remainder of this section documents changes over the past 20 years in the lending activity and market share of the different types of mortgage lenders described earlier.

Figure 8 displays the market shares of the five types of institutions listed earlier in table 11 for home-purchase and refinance loans since 1995, focusing on first-lien mortgages for one- to four-family owner-occupied properties.[47] The figure panels illustrate the sharply rising share since 2007 of both home-purchase and refinance loans originated by independent mortgage companies.[48] With the collapse of the housing and secondary mortgage market,

[47] For historical categorizations of HMDA reporters into lender types, we rely heavily on information provided by Robert B. Avery. Small banks are defined as those having assets (including all institutions in the banking organization) of less than $1 billion, inflation-adjusted to 2014 dollars.

[48] HMDA coverage has expanded over time, particularly with the addition of new MSAs and the expansion of existing MSA borders in 2004 and 2014. The trends in market shares over time are essentially unchanged by the restriction of data to counties that have continuously been part of an MSA since 1995 (where HMDA coverage is close to 100 percent).

Figure 9. Share of home-purchase loans originated by independent mortgage companies, by loan type, 1995–2014



Note: The data are annual. Home-purchase mortgage originations for first-lien, one- to four-family, owner-occupied properties. Conforming loans have a loan amount below the single-family loan-size limit for eligibility for purchase by a government-sponsored enterprise. For definition of jumbo loans, see table 9, note 5; for definition of nonconventional loans, see table 5, note 1.

many independent mortgage companies went out of business, especially those focused on subprime lending, and the market share of this group dropped sharply between 2006 and 2007.[49] The industry has more than recovered its market share, however, and, in 2014, independent mortgage companies accounted for about 47 percent of home-purchase loans and 42 percent of refinancings, fractions that are higher than at any point in the past 20 years.

The market shares of credit unions have also reached historic highs, though they are still under 10 percent for both home-purchase and refinance lending. In contrast, large banks have lost significant market share in home-purchase lending since 2008, and nonbank affiliates of depositories, which tend to be owned by the largest banking organizations, have become far less active than they were in the late 1990s and early 2000s. Finally, small banks slowly lost market share from the mid-1990s through 2006 and then rebounded sharply in the next four years. However, since 2010, their share has been mostly flat for home-purchase loans and declined slightly for refinance loans, and both shares stand below what they were in the mid-1990s.

There are a variety of potential explanations for the decline in large banks' share of mortgage originations. One possible cause is the new regulatory environment, with higher capital and liquidity requirements that may be most binding for the largest banks. The largest banks may also have sizable volumes of pre-crisis vintage mortgages in their portfolios (due in part to acquisitions of failed banks), so the reduction in market share could reflect an effort to rebalance their assets. Yet another possibility is that large banks have found more profitable investment opportunities in other markets, whereas monoline mortgage companies will continue to focus on mortgage lending. More research is needed to understand the importance of these and other explanations for the contraction in large banks' mortgage origination activity.

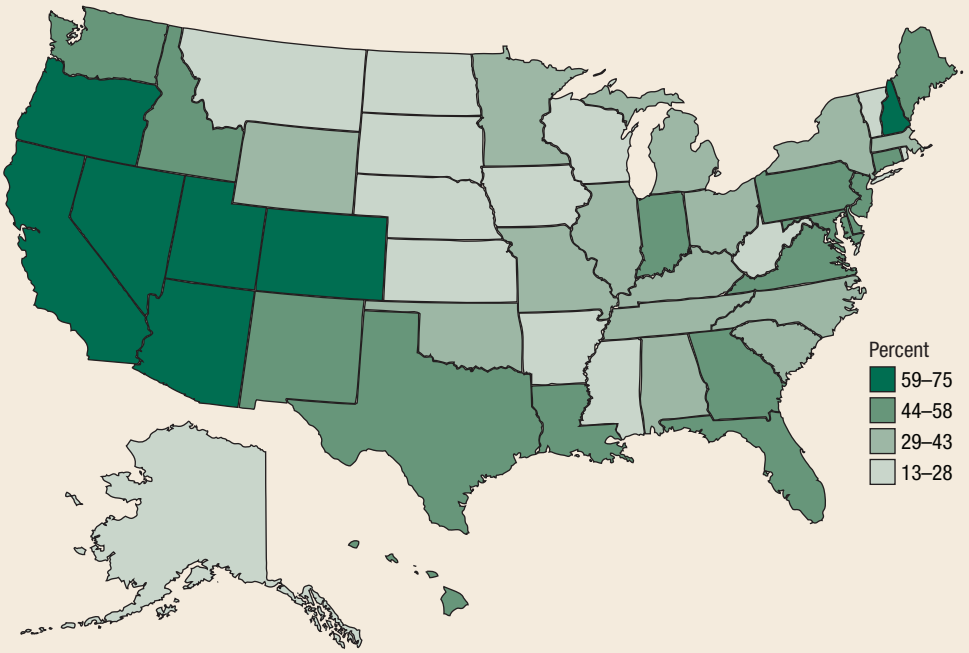
Market Shares by Loan Type and Size

Some reports suggest that the rise of independent mortgage companies is closely tied to nonconventional lending and a willingness to originate riskier loans.[50] However, the HMDA data indicate that their rise has been broad based across different types of loans and demographic groups. As figure 9 shows, independent mortgage companies have markedly increased their share of conventional conforming, conventional jumbo, and nonconventional home-purchase loans since 2008 (market shares for other lender types and for

[49] The market share of independent mortgage companies in 2007 may be slightly understated due to the closure of several large lenders that did not submit HMDA data for 2007 even though they made loans during the year prior to their closure. For more information, see Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner (2008), "The 2007 HMDA Data," *Federal Reserve Bulletin,* vol. 94 (December), pp. A107–A146, www.federalreserve.gov/pubs/bulletin/2008/articles/hmda/default.htm.

[50] See, for example, Joe Light (2014), "Nonbank Mortgage Lenders Bounce Back," *Wall Street Journal,* August 27.

Figure 10. Market share of independent mortgage companies, by state, 2014



Note: The data are annual. Home-purchase mortgage originations for first-lien, one- to four-family, owner-occupied properties.

refinance loans are shown in tables 13.A and 13.B; for brevity, only selected years are shown in these tables).[51] Furthermore, as discussed in more detail in the next subsection, independent nonbanks have significantly increased their lending to both white and minority borrowers and in lower- and higher-income neighborhoods. All of that said, the rise in lending by independent mortgage companies has not been entirely uniform across the country. Their activity has risen most significantly, on average, in states to the west and southwest, where independent mortgage companies now tend to originate the majority of home-purchase loans (figure 10).

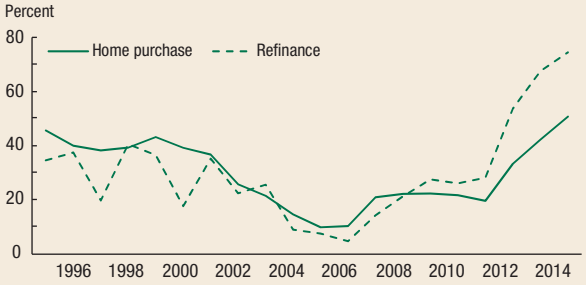
Figure 11 indicates (as do tables 13.A and 13.B) that independent mortgage companies were significantly more likely in 2014 than in 2010 to report selling conventional conforming loans to the GSEs and nonconventional loans into Ginnie Mae–guaranteed securities, suggesting a tighter link between these government-backed secondary-market institutions

[51] A loan qualifies as conforming in tables 13.A and 13.B if the loan amount is below the GSEs' conforming loan-size limit for a single-family home for that year and location. The conforming loan-size limit was mostly uniform across the nation prior to 2008. The limits in Alaska, Hawaii, the U.S. Virgin Islands, and Guam are 50 percent higher than in the nation at large. For the years 2008 and thereafter, designated higher-cost areas have elevated limits. For 2014, the general conforming loan-size limit was $417,000, and the maximum high-cost-area loan-size limit was $625,000 (and 50 percent higher in Alaska, Hawaii, the U.S. Virgin Islands, and Guam). In tables 13.A, 13.B, 14.A, and 14.B, "jumbo loans" refers to loans above this limit, which are not eligible for sale to the GSEs. Conforming loan-size limits increase with the number of units that make up the property, but the HMDA data do not differentiate between properties with anywhere from one to four units. Some loans in the table may therefore have been misclassified as jumbo despite being eligible for purchase by a GSE.

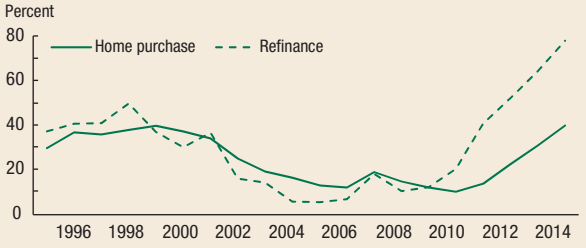
Prior to 2004, the HMDA data did not distinguish between manufactured and site-built properties and did not provide information on the lien status of the loan. For consistency over time, tables 13.A, 13.B, 14.A, and 14.B include loans for both site-built properties and manufactured homes. However, regarding lien status, the data in tables 13.A, 13.B, 14.A, and 14.B include both first- and junior-lien loans prior to 2004 and first liens only from 2004 onward, as junior liens became highly prevalent in 2005 and 2006.

Figure 11. Loans sold by independent mortgage companies, by type, purpose, and purchaser of the loan, 1995–2014

A. Conventional conforming loans sold to a GSE



B. Nonconventional loans securitized with Ginnie Mae guarantee



Note: The data are annual. Home-purchase mortgage originations for first-lien, one- to four-family, owner-occupied properties. GSE is government-sponsored enterprise. Conforming loans have a loan amount below the single-family loan-size limit for eligibility for purchase by a GSE. For definition of nonconventional loans, see table 5, note 1.

and nonbank originators.[52] For example, in 2014, almost 40 percent of nonconventional home-purchase loans and 78 percent of nonconventional refinancings originated by independent mortgage companies were reported as securitized by the originating institution with Ginnie Mae backing. In 2010, these numbers were only 10 percent for home purchases and 20 percent for refinancings. While banks have reportedly become less willing in recent years to purchase loans originated by nonbanks and bundle them for sale to the GSEs or for creating Ginnie Mae securities, nonbanks appear to have adapted to the new environment by working directly with these agencies.

One potential concern with this tightening link is that, because nonbanks may have less stable sources of financing and less financial oversight than banks, they may be more likely to fail and expose the GSEs and Ginnie Mae to losses.[53] However, others have noted that, since the financial crisis, nonbanks are subject to more federal and state oversight than they once were, and nonbanks have to meet certain financial standards set by the GSEs and Ginnie Mae in order to work with them.[54]

Other interesting patterns over time and across institution types in portfolio and jumbo lending emerge in tables 13.A and 13.B. Financing for conventional jumbo loans contracted with the collapse in the private-label mortgage-backed securities market. Conforming loan limits increased for higher-cost areas in 2008 while house prices generally fell, further reducing the pool of potential jumbo loans. There were only 36,000 conventional home-purchase jumbo loans in 2010, down from a pre-crisis peak of 614,000 such loans in 2005. In 2014, this number had risen again to 132,000 loans but continued to rely heavily

[52] The HMDA data understate the true share of loans ultimately sold to the GSEs or into pools backed by Ginnie Mae, because many loans are first sold by the originator to another bank or mortgage bank, which then sells or securitizes them. In these cases, the loans are not likely to be reported as sold to the GSEs or into a Ginnie Mae security.

[53] See Federal Housing Finance Agency, Office of Inspector General (2014), *Recent Trends in the Enterprises' Purchases of Mortgages from Smaller Lenders and Nonbank Mortgage Companies* (Washington: FHFA, July), www.fhfaoig.gov/AuditsAndEvaluations/RecentTrendsEnterprises. Also see Kate Berry (2015), "Ginnie Mae's Quandary: Scant Resources to Police Nonbanks," *National Mortgage News,* April 22, www.nationalmortgagenews.com/news/servicing/ginnie-maes-quandary-scant-resources-to-police-nonbanks-1049380-1.html.

[54] See Marshall Lux and Robert Greene (2015), "What's Behind the Non-Bank Mortgage Boom?" MRCBG Associate Working Paper Series 42 (Cambridge, Mass.: Mossavar-Rahmani Center for Business and Government, Harvard Kennedy School, June), www.hks.harvard.edu/centers/mrcbg/publications/awp/awp42.

Table 13. Distribution of lender and purchaser type, by purpose and type of loan, 1995–2014
A. Home purchase
Percent except as noted

Loans by type, lender, and purchaser	1995	2000	2005	2010	2012	2013	2014
All loans (in thousands)	**3,112**	**4,375**	**4,964**	**2,218**	**2,343**	**2,680**	**2,804**
Small bank	9.7	5.7	4.3	7.9	8.3	8.4	8.1
Large bank	28.9	27.8	35.3	42.4	36.3	34.4	31.5
Credit union	1.5	1.9	2.1	3.7	4.9	5.7	6.4
Affiliated mortgage company	26.9	35.9	25.0	11.4	9.3	8.6	6.8
Independent mortgage company	33.0	28.6	33.3	34.7	41.3	42.9	47.2
Conventional conforming loan (in thousands)	**2,199**	**3,082**	**3,912**	**1,014**	**1,229**	**1,569**	**1,655**
Small bank	11.2	6.8	4.6	10.7	10.8	10.3	9.9
Portfolio	72.2	69.7	50.2	48.2	42.0	40.9	40.6
Sold (GSE)	14.6	11.0	12.8	19.6	23.0	22.9	23.9
Large bank	33.4	31.3	34.6	45.7	39.3	37.2	33.8
Portfolio	61.0	52.9	23.7	23.2	25.5	25.6	26.2
Sold (GSE)	22.2	28.5	36.7	58.3	60.8	59.7	58.2
Credit union	1.9	2.4	2.5	7.0	8.1	8.2	9.0
Portfolio	80.9	78.8	61.5	53.3	52.6	54.6	60.5
Sold (GSE)	7.9	12.5	26.2	31.6	35.9	32.7	27.6
Affiliated mortgage company	23.9	34.5	25.1	10.5	8.7	8.1	6.4
Portfolio	14.3	14.0	10.4	10.4	2.2	1.9	3.3
Sold (GSE)	57.4	44.7	45.1	51.4	46.3	53.1	55.1
Independent mortgage company	29.6	24.8	33.1	26.0	33.1	36.1	40.9
Portfolio	12.4	10.6	10.4	13.1	9.5	7.4	6.4
Sold (GSE)	45.7	39.4	9.8	21.7	33.4	42.4	50.9
Conventional jumbo loan (in thousands)[1]	**183**	**329**	**614**	**36**	**67**	**105**	**132**
Small bank	6.9	4.0	1.8	6.6	5.4	4.7	4.4
Portfolio	82.2	80.4	59.5	92.6	89.7	85.8	79.2
Large bank	41.7	44.6	42.3	69.3	75.6	74.2	71.6
Portfolio	85.8	80.2	42.3	95.4	96.7	92.4	92.6
Credit union	.8	1.4	.8	4.3	3.6	4.6	4.9
Portfolio	87.3	86.5	83.6	89.9	85.0	92.2	91.3
Affiliated mortgage company	29.1	31.4	24.4	13.5	6.8	5.8	4.6
Portfolio	32.7	21.9	15.1	43.9	18.7	12.7	20.8
Independent mortgage company	21.5	18.6	30.7	6.3	8.6	10.8	14.4
Portfolio	18.8	16.9	8.4	26.5	9.3	9.8	11.1
Nonconventional loan (in thousands)[2]	**729**	**963**	**438**	**1,168**	**1,047**	**1,007**	**1,017**
Small bank	5.7	3.0	4.4	5.4	5.5	5.7	5.7
Sold (Ginnie Mae)	11.3	6.1	1.4	2.2	3.1	3.3	5.5
Large bank	12.2	10.8	31.5	38.6	30.2	26.0	22.5
Sold (Ginnie Mae)	41.2	42.7	46.1	61.8	69.9	68.8	66.8
Credit union	.4	.5	.5	.8	1.3	1.7	2.3
Sold (Ginnie Mae)	37.7	50.8	1.9	23.2	36.9	52.3	48.5
Affiliated mortgage company	35.5	41.6	24.8	12.0	10.0	9.7	7.7
Sold (Ginnie Mae)	55.8	62.2	54.9	22.6	18.0	22.9	36.6
Independent mortgage company	46.1	43.9	38.8	43.2	53.0	57.0	61.8
Sold (Ginnie Mae)	29.7	37.3	12.9	10.1	22.5	30.9	39.9

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes for 2005 and after. Mortgages for one- to four-family owner-occupied homes for 1995 and 2000. Rows may not sum to 100 because of rounding. Small banks consist of those banks with assets (including the assets of all other banks in the same banking organization) of less than $1 billion at the end of 2013. Large banks are all other banks. GSE is government-sponsored enterprise.

[1] See table 9, note 5.

[2] See table 5, note 1.

Source: FFIEC HMDA data; bank asset data drawn from Federal Deposit Insurance Corporation Reports of Condition and Income.

on portfolio lending. In contrast to conforming loans, large banks accounted for 72 percent of jumbo loans in 2014, sharply higher than their 42 percent share in 2005, and over 90 percent of these loans were held in portfolio.

Table 13. Distribution of lender and purchaser type, by purpose and type of loan, 1995–2014
B. Refinance
Percent except as noted

Loans by type, lender, and purchaser	1995	2000	2005	2010	2012	2013	2014
All loans (in thousands)	**1,437**	**2,235**	**5,770**	**4,516**	**5,930**	**4,385**	**1,950**
Small bank	12.7	6.0	3.6	7.3	7.1	5.8	6.4
Large bank	33.0	40.2	37.1	54.1	50.4	49.3	37.6
Credit union	4.5	3.7	3.0	6.9	7.7	8.0	9.3
Affiliated mortgage company	19.6	26.0	24.7	9.5	5.9	5.7	4.5
Independent mortgage company	30.1	24.1	31.7	22.2	28.9	31.2	42.3
Conventional conforming loan (in thousands)	**1,238**	**2,052**	**4,962**	**3,790**	**4,872**	**3,529**	**1,499**
Small bank	14.0	6.3	3.9	7.9	7.7	6.4	6.9
Portfolio	73.8	76.1	52.2	27.7	24.5	32.0	50.0
Sold (GSE)	14.8	9.1	14.9	34.4	38.9	33.6	23.9
Large bank	34.3	40.6	36.4	56.2	52.5	51.0	40.3
Portfolio	66.4	74.3	28.8	13.1	15.0	19.0	24.9
Sold (GSE)	24.4	13.3	34.5	63.9	72.0	65.9	62.3
Credit union	5.0	3.9	3.3	7.9	8.9	9.3	11.3
Portfolio	88.2	89.0	71.1	55.2	56.2	59.6	71.3
Sold (GSE)	4.3	4.7	17.9	33.2	33.6	30.8	18.9
Affiliated mortgage company	18.2	25.4	25.1	9.6	5.9	5.4	4.5
Portfolio	17.3	36.3	20.3	5.5	1.5	1.7	3.6
Sold (GSE)	61.8	30.0	42.5	67.7	63.7	67.4	68.9
Independent mortgage company	28.4	23.8	31.2	18.4	25.0	27.9	37.0
Portfolio	30.0	17.2	7.4	3.2	1.7	1.6	1.8
Sold (GSE)	34.6	17.8	7.5	26.0	53.8	67.7	74.7
Conventional jumbo loan (in thousands)	**104**	**118**	**649**	**70**	**131**	**131**	**83**
Small bank	6.1	4.0	1.5	4.5	3.8	3.6	4.1
Portfolio	76.4	78.4	42.0	87.3	84.5	83.2	83.4
Large bank	40.2	48.0	43.1	69.7	77.9	74.1	70.0
Portfolio	84.5	79.9	39.2	94.5	96.4	88.2	91.4
Credit union	.9	1.2	1.2	5.0	4.0	4.7	5.5
Portfolio	90.2	86.1	84.1	93.6	92.1	93.0	90.4
Affiliated mortgage company	30.6	27.1	22.0	14.9	5.6	4.6	3.5
Portfolio	33.4	22.2	17.5	53.4	21.4	12.5	27.0
Independent mortgage company	22.1	19.7	32.3	5.9	8.6	13.0	17.0
Portfolio	30.6	16.2	7.5	28.3	8.6	8.5	7.8
Nonconventional loan (in thousands)	**95**	**65**	**158**	**655**	**927**	**725**	**368**
Small bank	4.0	2.2	1.4	4.2	4.5	3.4	4.6
Sold (Ginnie Mae)	21.1	2.4	.9	1.8	6.1	4.3	4.0
Large bank	7.8	13.0	33.4	40.5	35.3	36.9	19.0
Sold (Ginnie Mae)	50.2	66.2	59.4	69.0	82.2	88.2	85.5
Credit union	.9	.3	.3	1.0	2.1	2.3	1.8
Sold (Ginnie Mae)	52.9	21.8	14.0	61.0	67.7	74.7	58.2
Affiliated mortgage company	26.5	44.0	20.1	8.3	6.0	7.1	4.8
Sold (Ginnie Mae)	71.2	70.8	60.5	35.9	41.9	55.3	62.3
Independent mortgage company	60.8	40.5	44.8	46.0	52.1	50.4	69.8
Sold (Ginnie Mae)	37.2	30.2	5.4	20.4	52.3	64.4	78.1

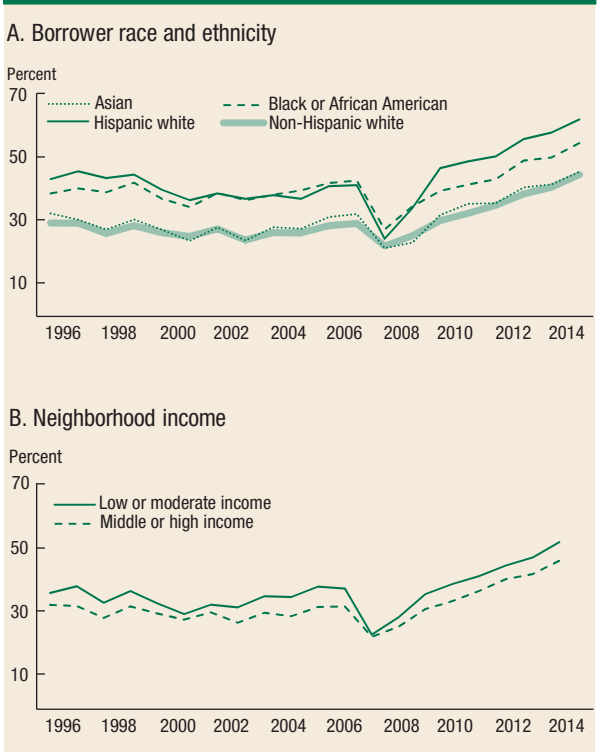
Note: See notes to table 13.A.

Regarding conventional conforming loans, among depositories, small banks and credit unions have always been more likely than large banks to hold loans in portfolio. However, across all institutions, portfolio lending is far less common than it was in the 1990s and early 2000s. In 1995, small banks held nearly three-fourths of the conventional conforming loans they originated, large banks held over 60 percent, and credit unions held over 80 percent; in 2014, those numbers decreased to about 41 percent, 26 percent, and 60 percent, respectively.

Market Shares by Demographic Group

For the past 20 years, the overall market shares of the different lender types have followed similar trends across demographic groups, even for those groups that account for a relatively small proportion of total lending. Nevertheless, a number of significant differences between various groups have persisted, and a few group-specific deviations from the broader trends have occurred.

Figure 12. Share of home-purchase loans originated by independent mortgage companies, by borrower race and ethnicity and by neighborhood income,1995–2014



Note: The data are annual. Home-purchase mortgage originations for first-lien, one- to four-family, owner-occupied properties. For definition of borrower race and ethnicity, see table 2, note 1; for definition of neighborhood income, see table 2, note 4.

As figure 12 shows, black and Hispanic white borrowers have generally obtained a greater share of their loans from independent mortgage companies than Asian and non-Hispanic white borrowers, particularly in recent years (tables 14.A and 14.B provide—for home-purchase and refinance loans, respectively—the market shares of all five lender types by borrower demographic group). Between 1995 and 2006, the independent mortgage company share of home-purchase loans was fairly constant for all four groups: on average, just under 30 percent for Asian and non-Hispanic white borrowers and just above 40 percent for black and Hispanic white borrowers. Following the financial crisis, these shares increased substantially for all groups and have risen in parallel since 2009.

Independent mortgage companies also tend to have a higher market share in LMI neighborhoods than in non-LMI neighborhoods. In every year since 1995, the independent nonbank share of home-purchase mortgages to borrowers residing in LMI tracts has exceeded that to borrowers in middle- and high-income tracts, with an average difference of about 4.5 percentage points. This difference has held steady as the share of loans originated by independent mortgage companies has increased since 2007. In the refinance market, differences between the distributions of lender shares by neighborhood income have decreased (as shown in table 14.B). Prior to 2007, the independent mortgage company share of refinance loans within low-income tracts was 8.5 percentage points higher than in middle- and high-income tracts. Since 2010, the differences in market share for all lender types have been less than 2 percentage points.

Changing Market Structure and the Community Reinvestment Act

The CRA, passed in 1977, aims to help ensure that the credit needs of LMI communities are being met. To that end, the CRA directs the federal banking regulatory agencies, including the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, to use their supervisory authority to encourage

Table 14. Distribution of lender type, by borrower race and ethnicity, neighborhood income, and purpose of loan, 1995–2014

A. Home purchase

Percent except as noted

Loans by characteristic of borrower and of neighborhood, and by lender type	1995	2000	2005	2010	2012	2013	2014
All loans (thousands)	3,112	4,375	4,964	2,218	2,343	2,680	2,804
Asian borrower[1]							
All loans (thousands)	86	155	245	120	121	149	149
Large bank	34.2	39.7	38.7	46.4	42.9	42.0	39.6
CRA share	81.3	73.1	53.9	76.9	75.7	77.0	74.0
Small bank	6.0	3.2	1.9	4.5	5.1	5.4	4.6
CRA share	71.7	64.3	55.8	58.6	58.3	58.8	53.7
Credit union	0.9	1.5	1.1	2.4	3.2	3.9	4.9
Affiliated mortgage company	26.3	31.7	26.8	11.0	8.0	7.0	5.0
Independent mortgage company	32.6	23.9	31.4	35.6	40.9	41.8	45.8
Black or African American borrower[1]							
All loans (thousands)	216	279	376	134	120	128	147
Large bank	25.5	21.0	28.5	37.0	31.1	29.1	25.5
CRA share	76.5	66.5	37.4	70.2	70.6	69.8	66.9
Small bank	5.1	3.2	1.8	6.5	6.1	6.3	6.2
CRA share	75.0	65.7	59.3	46.7	51.8	51.0	42.0
Credit union	0.8	0.9	1.2	2.3	3.4	4.7	5.6
Affiliated mortgage company	29.6	40.0	26.2	12.4	10.1	9.6	7.7
Independent mortgage company	39.0	34.6	42.3	41.8	49.4	50.4	55.0
Hispanic white borrower[1]							
All loans (thousands)	195	345	515	180	180	194	220
Large bank	26.4	24.3	29.6	34.1	30.3	27.4	24.3
CRA share	80.6	71.4	49.7	76.7	76.7	76.4	72.9
Small bank	6.5	2.7	1.5	4.5	4.2	4.4	4.2
CRA share	81.4	73.5	66.5	59.9	60.0	61.5	55.9
Credit union	0.6	0.8	0.8	1.9	2.8	3.4	3.8
Affiliated mortgage company	22.9	35.2	26.9	10.3	6.4	6.5	5.2
Independent mortgage company	43.5	36.8	41.2	49.1	56.3	58.3	62.5
Non-Hispanic white borrower[1]							
All loans (thousands)	2,371	2,897	3,084	1,504	1,638	1,879	1,934
Large bank	30.2	29.5	37.8	42.8	36.7	34.8	32.0
CRA share	75.3	66.0	51.7	67.4	69.7	69.7	67.1
Small bank	11.0	7.4	5.9	9.4	9.8	9.8	9.6
CRA share	77.3	75.0	70.9	63.9	61.9	61.6	58.5
Credit union	1.6	2.0	2.5	4.0	5.3	5.8	6.5
Affiliated mortgage company	27.8	35.7	25.2	11.2	9.5	8.7	7.0
Independent mortgage company	29.5	25.2	28.7	32.6	38.8	40.9	44.9
Low- or moderate-income neighborhood[2]							
All loans (thousands)	316	526	752	269	302	344	377
Large bank	27.0	26.5	31.4	40.5	34.1	31.2	27.8
CRA share	79.0	67.2	48.8	71.7	73.0	73.0	69.8
Small bank	8.8	4.7	3.0	7.1	7.6	7.7	7.3
CRA share	85.5	76.8	71.1	62.0	63.8	63.2	57.7
Credit union	1.2	1.2	1.6	3.2	4.8	5.6	6.1
Affiliated mortgage company	26.5	37.8	25.7	10.1	8.5	8.0	6.4
Independent mortgage company	36.4	29.7	38.4	39.2	45.0	47.5	52.4
Middle- or high-income neighborhood[2]							
All loans (thousands)	2,300	3,738	4,159	1,925	2,026	2,322	2,417
Large bank	26.7	28.7	36.4	43.0	36.8	35.1	32.2
CRA share	76.7	66.2	50.6	68.8	70.2	70.2	67.4
Small bank	9.3	5.5	4.4	7.9	8.1	8.3	8.1
CRA share	79.7	74.2	69.5	62.0	62.6	61.7	58.0
Credit union	1.5	1.8	2.1	3.7	4.9	5.6	6.3
Affiliated mortgage company	29.8	35.9	25.1	11.7	9.4	8.8	6.9
Independent mortgage company	32.6	27.9	31.9	33.8	40.7	42.3	46.5

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes for 2005 and after. Mortgages for one- to four-family owner-occupied homes for 1995 and 2000. Community Reinvestment Act (CRA) share refers to the fraction of loans originated in a county in which the originating bank operates a branch office. Small banks consist of those banks with assets (including the assets of all other banks in the same banking organization) of less than $1 billion at the end of 2013. Large banks are all other banks.

[1] See table 2, note 1.

[2] See table 2, note 4.

Source: FFIEC HMDA data; bank asset data drawn from Federal Deposit Insurance Corporation Reports of Condition and Income.

Table 14. Distribution of lender type, by borrower race and ethnicity, neighborhood income, and purpose of loan, 1995–2014

B. Refinance

Percent except as noted

Loans by characteristic of borrower and of neighborhood, and by lender type	1995	2000	2005	2010	2012	2013	2014
All loans (thousands)	1,437	2,235	5,770	4,516	5,930	4,385	1,950
Asian borrower							
All loans (thousands)	34	41	168	232	327	203	84
Large bank	36.4	46.5	45.1	55.7	47.6	49.1	40.8
CRA share	82.8	76.3	59.9	75.7	69.3	73.4	73.8
Small bank	4.9	2.4	1.5	3.9	3.1	2.7	2.6
CRA share	75.0	66.5	45.1	35.2	47.9	45.6	42.3
Credit union	2.5	3.1	1.9	3.7	4.2	5.3	6.4
Affiliated mortgage company	21.7	25.3	23.5	9.5	5.5	5.1	4.2
Independent mortgage company	34.4	22.8	28.0	27.2	39.5	37.7	46.1
Black or African American borrower							
All loans (thousands)	82	151	476	130	198	194	103
Large bank	27.1	32.6	32.2	52.6	53.9	51.2	34.7
CRA share	84.6	57.7	42.7	71.2	69.3	71.3	71.1
Small bank	6.9	3.1	1.4	4.5	3.6	3.1	4.5
CRA share	78.9	61.6	59.4	53.9	48.0	48.7	40.4
Credit union	4.1	2.3	2.1	6.8	7.2	7.3	8.5
Affiliated mortgage company	17.6	30.3	27.0	9.0	5.2	5.4	4.5
Independent mortgage company	44.1	31.7	37.3	27.2	30.1	33.0	47.9
Hispanic white borrower							
All loans (thousands)	61	119	492	135	229	219	120
Large bank	36.6	35.8	36.8	54.1	55.5	53.1	39.8
CRA share	91.0	71.8	62.1	81.3	81.5	83.2	81.0
Small bank	8.8	2.1	1.0	3.0	2.6	2.1	2.2
CRA share	84.6	65.3	60.8	57.8	48.5	51.3	48.4
Credit union	3.3	2.3	1.5	7.1	6.8	6.8	8.9
Affiliated mortgage company	16.1	26.4	22.9	10.2	5.4	5.1	5.0
Independent mortgage company	35.1	33.3	37.9	25.5	29.6	33.0	44.1
Non-Hispanic white borrower							
All loans (thousands)	1,081	1,354	3,529	3,360	4,304	3,095	1,326
Large bank	34.2	41.2	38.7	53.4	50.1	49.1	38.1
CRA share	83.6	69.0	53.7	71.6	68.4	69.1	69.8
Small bank	15.1	8.7	5.0	8.6	8.5	7.1	7.9
CRA share	82.0	78.7	73.3	68.8	64.8	64.5	62.4
Credit union	4.7	4.4	3.4	7.0	8.0	8.3	9.7
Affiliated mortgage company	21.1	24.9	25.5	9.4	6.1	5.7	4.5
Independent mortgage company	24.8	20.7	27.4	21.6	27.3	29.8	39.7
Low- or moderate-income neighborhood							
All loans (thousands)	153	340	953	325	602	532	257
Large bank	28.4	35.9	33.4	53.1	52.3	49.6	36.6
CRA share	84.6	59.4	53.5	74.1	70.1	72.2	72.8
Small bank	10.4	4.6	2.5	6.7	5.6	4.7	5.6
CRA share	88.9	75.2	70.3	70.3	66.3	64.8	63.2
Credit union	4.3	2.3	2.3	7.7	8.1	8.2	9.8
Affiliated mortgage company	15.8	28.3	23.9	8.6	5.1	5.1	4.1
Independent mortgage company	41.0	28.9	37.8	23.9	28.9	32.5	43.9
Middle- or high-income neighborhood							
All loans (thousands)	1,061	1,845	4,783	4,160	5,303	3,841	1,687
Large bank	31.7	41.9	38.1	54.4	50.4	49.5	37.8
CRA share	84.1	64.8	53.0	72.1	68.4	69.8	70.3
Small bank	11.8	5.7	3.7	7.2	7.	5.8	6.4
CRA share	84.8	76.3	70.9	66.3	64.8	63.2	59.7
Credit union	4.4	3.5	3.0	6.7	7.6	7.9	9.1
Affiliated mortgage company	22.1	25.8	24.9	9.6	6.1	5.8	4.6
Independent mortgage company	29.9	22.9	30.3	22.1	29.0	31.0	42.1

Note: See notes to table 14.A.

insured depository institutions to help meet the credit needs of all segments of their local communities—those areas where banking institutions have a physical branch office presence and take deposits (their CRA assessment areas)—including LMI areas.

At the time of the CRA's enactment, federally insured banking institutions dominated mortgage lending and held nearly three-fourths of mortgage debt.[55] Because the CRA applies only to banks and focuses in particular on banks' assessment areas, shifts in lending activity away from banks and their assessment areas may weaken the CRA as a tool for communities to help ensure financial institutions are making credit available and doing so in a safe and sound manner.[56] Indeed, the CRA provides community groups with opportunities to provide feedback to bank regulators on the CRA performance of local banks during CRA exams and to protest expansion activities of banks on CRA grounds. Research has found that, during the housing boom, higher-priced lending and mortgage delinquencies were much more prevalent among loans originated by independent mortgage companies and by banks outside of their assessment areas compared with bank loans within their assessment areas.[57]

The analysis thus far indicates that non-CRA-covered institutions—credit unions and independent mortgage companies—now account for a historically large share of mortgage lending, and their share of lending to certain groups, such as Hispanics, is especially high. Now we examine trends in the assessment-area share of loans made by banks (not including loans originated by their nonbank subsidiaries, which tend to be outside banks' assessment areas). In particular, figure 13 presents assessment-area shares of home-purchase loans over time, separately for small and large banks, by race and ethnicity and by neighborhood income. For this analysis, we define a bank's CRA share as the fraction of loans originated within counties where the bank has at least one branch office.

For small banks, there has been a persistent decline in the within-assessment-area share of their home-purchase lending for each group examined, although the decline appears somewhat more pronounced for loans going to black borrowers and in LMI neighborhoods. As of 2014, the share of loans originated by small banks within their assessment areas was between 50 and 60 percent for all groups, except for loans to black borrowers, for which the assessment-area share was closer to just 40 percent.

In contrast, large banks' share of lending within their assessment areas declined sharply from 2004 through 2007, especially for black borrowers, but since 2008 it has risen back to levels that are comparable with those in pre-2004 years. At close to 70 percent for all groups in 2014, the assessment-area shares of home-purchase lending by large banks tend now to exceed the shares for small banks.

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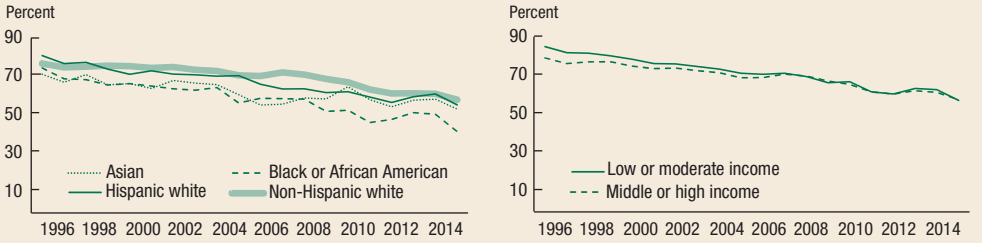
[55] See Robert B. Avery, Marsha J. Courchane, and Peter M. Zorn (2009), "The CRA within a Changing Financial Landscape," in Prabal Chakrabarti, David Erickson, Ren S. Essene, Ian Galloway, and John Olson, eds., "Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act," special issue, *Community Development Investment Review,* vol. 4 (February), pp. 30–46, www.frbsf.org/community-development/files/revisiting_cra.pdf.

[56] The CRA does not focus solely on mortgage lending, but mortgage lending has been a historically important component in the evaluation of banks' CRA performance.

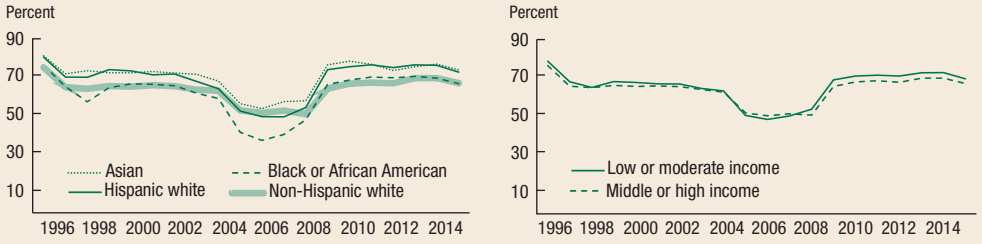
[57] See Robert B. Avery and Kenneth P. Brevoort (2015), "The Subprime Crisis: Is Government Housing Policy to Blame?" *Review of Economics and Statistics,* vol. 97 (May), pp. 352–63. Also see Bhutta and Canner, "Mortgage Market Conditions and Borrower Outcomes," in note 37.

Figure 13. CRA share of home-purchase loans, by bank size, borrower race and ethnicity, and neighborhood income, 1995–2014

A. Small banks



B. Large banks



Note: The data are annual. First-lien mortgages for one- to four-family, owner-occupied, site-built homes. Community Reinvestment Act (CRA) share refers to the fraction of loans originated in a county in which the originating bank operates a branch office. Small banks are part of organizations with less than $1 billion in assets, measured in 2014 dollars. Large banks are all other banks. For definition of borrower race and ethnicity, see table 2, note 1; for definition of neighborhood income, see table 2, note 4.

Source: FFIEC HMDA data; bank asset data drawn from Federal Deposit Insurance Corporation Reports of Condition and Income.

Appendix A: Requirements of Regulation C

Regulation C requires lenders to report the following information on home-purchase and home-improvement loans and on refinancings:

For each application or loan

- application date and the date an action was taken on the application
- action taken on the application
  - approved and originated
  - approved but not accepted by the applicant
  - denied (with the reasons for denial—voluntary for some lenders)
  - withdrawn by the applicant
  - file closed for incompleteness
- preapproval program status (for home-purchase loans only)
  - preapproval request denied by financial institution
  - preapproval request approved but not accepted by individual
- loan amount
- loan type
  - conventional
  - insured by the Federal Housing Administration
  - guaranteed by the Department of Veterans Affairs
  - backed by the Farm Service Agency or Rural Housing Service
- lien status
  - first lien
  - junior lien
  - unsecured
- loan purpose
  - home purchase
  - refinance
  - home improvement
- type of purchaser (if the lender subsequently sold the loan during the year)
  - Fannie Mae
  - Ginnie Mae
  - Freddie Mac
  - Farmer Mac
  - private securitization
  - commercial bank, savings bank, or savings association
  - life insurance company, credit union, mortgage bank, or finance company
  - affiliate institution
  - other type of purchaser

For each applicant or co-applicant

- race
- ethnicity
- sex
- income relied on in credit decision

For each property

- location, by state, county, metropolitan statistical area, and census tract
- type of structure
  - one- to four-family dwelling
  - manufactured home
  - multifamily property (dwelling with five or more units)
- occupancy status (owner occupied, non-owner occupied, or not applicable)

For loans subject to price reporting

- spread above comparable Treasury security for applications taken prior to October 1, 2009
- spread above average prime offer rate for applications taken on or after October 1, 2009

For loans subject to the Home Ownership and Equity Protection Act

- indicator of whether loan is subject to the Home Ownership and Equity Protection Act

Federal Reserve
BULLETIN
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Legal Developments: Fourth Quarter, 2014

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

First American Bank Corporation
Elk Grove Village, Illinois

Order Approving the Acquisition of a Bank
FRB Order No. 2014–18 (November 13, 2014)

First American Bank Corporation ("First American"), Elk Grove Village, Illinois, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire Bank of Coral Gables, Coral Gables, Florida. Immediately following the proposed acquisition, Bank of Coral Gables would be merged into First American's subsidiary bank, First American Bank, Elk Grove Village.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 26758 (2014)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

First American, with consolidated assets of approximately $3.4 billion, is the 234th largest insured depository organization in the United States.[4] First American controls First American Bank, which operates only in Illinois. First American Bank is the 21st largest insured depository institution in Illinois, controlling approximately $2.4 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[5]

Bank of Coral Gables, with consolidated assets of approximately $99 million, is the 4,653rd largest insured depository organization in the United States. Bank of Coral Gables operates only in Florida. Bank of Coral Gables is the 204th largest insured depository institution in Florida, controlling approximately $92 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

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1 12 U.S.C. § 1842.

2 The merger of Bank of Coral Gables into First American Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on September 26, 2014.

3 12 CFR 262.3(b).

4 Asset and nationwide deposit-ranking data are as of June 30, 2014, unless otherwise noted.

5 State data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, cooperative banks, industrial banks, and savings banks.

On consummation of this proposal, First American would become the 225th largest depository organization in the United States, with consolidated assets of approximately $3.5 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. First American would have total deposits of approximately $2.4 billion. In Florida, First American would become the 204th largest depository organization.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act imposes certain requirements on interstate transactions. Section 3(d) generally provides that the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.[6] However, this section further provides that the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state that has not been in existence for the lesser of the state statutory minimum period of time or five years.[7] The Board also must take into account the record of performance of the acquiring bank under the Community Reinvestment Act ("CRA")[8] and applicable state community reinvestment laws.[9] In addition, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of such insured depository institution is a state other than the home state of the bank holding company and the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.[10]

For purposes of the BHC Act, the home state of First American is Illinois and the home state of Bank of Coral Gables is Florida.[11] First American is well capitalized and well managed under applicable law. Florida has a three-year minimum age requirement,[12] and Bank of Coral Gables has been in existence for more than three years.

Based on the latest available data reported by all insured depository institutions, the total amount of consolidated deposits of insured depository institutions in the United States is $11.0 trillion. On consummation of the proposed transaction, First American would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. The Board also has taken into account First American Bank's record of performance under the CRA and determined that it does not prohibit the Board from approving the proposal. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

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6 12 U.S.C. § 1842(d)(1)(A).

7 12 U.S.C. § 1842(d)(1)(B).

8 12 U.S.C. § 2901 *et seq*.

9 12 U.S.C.§ 1842(d)(1)(3).

10 12 U.S.C. § 1842(d)(2)(A). The Board also may not approve an application if the combined organization would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations. 12 U.S.C. § 1842(d)(2)(B). First American and Bank of Coral Gables do not have overlapping banking operations in any state.

11 *See* 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date when the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

12 *See* FLA. STAT. § 658.295(3)(b) (2005). Florida law prohibits a Florida bank from being acquired by an out-of-state bank holding company or bank unless the Florida bank has existed and continuously operated as a bank for more than three years.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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.[13] First American Bank and Bank of Coral Gables do not compete directly in any banking market.

The Department of Justice has conducted a review of the potential competitive effects of the proposal and advised the Board that it does not believe that consummation of the proposal is likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only basis and a consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the combined organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. Further, the Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. First American and First American Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company acquisition of a bank and a subsequent bank merger, structured as a cash transaction. The asset quality, earnings, and liquidity of First American Bank and Bank of Coral Gables are consistent with approval, and First American appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations.[14] Based on

[13] 12 U.S.C. § 1842(c)(1).

[14] The anticipated aggregate cash consideration to be paid in connection with the merger is approximately $7.5 million, and First American has sufficient cash to fund the proposed transaction. A commenter criticized First American for the proposed purchase price, claiming that it does not reflect the amount shareholders of Bank of Coral Gables previously invested in the bank. This allegation is outside the scope of what the Board is required to consider as part of the applications process. *See Western Bancshares, Inc. v. Board of Governors of the Federal Reserve System* , 480 F.2d 749 (10th Cir. 1973).

its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.[15]

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of First American, First American Bank, and Bank of Coral Gables, including assessments of their management, risk management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money laundering laws.

First American and First American Bank are each considered to be well managed. First American's existing risk management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of First American have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered First American's plans for implementing the proposal. First American is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. First American would implement its risk management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, First American's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and First American is proposing to integrate Bank of Coral Gables' existing management and personnel in a manner that augments First American Bank's management.[16]

First American's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the record of effectiveness of First American and Bank of Coral Gables in combatting money laundering activities, are consistent with approval.

Convenience and Needs 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 Community Reinvestment Act ("CRA").[17] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[18] and requires the appropriate federal financial supervisory agency to take into account a relevant

[15] As part of this proposal, some shareholders of Bank of Coral Gables are required to purchase shares of First American. The commenter further criticized First American for failing to disclose the purchase price per share to be paid by these shareholders. This allegation also is outside the scope of what the Board is required to consider as part of the applications process.

[16] On consummation, two individuals currently serving as directors of Bank of Coral Gables will be added to the board of directors of First American Bank.

[17] 12 U.S.C. § 1842(c)(2); 12 U.S.C.§ 2901 *et seq*.

[18] 12 U.S.C. § 2901(b).

depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[19]

The Board has considered all the facts of record, including reports of examination of the CRA performance of First American Bank and Bank of Coral Gables, data reported by First American Bank under the Home Mortgage Disclosure Act ("HMDA"),[20] other information provided by First American, confidential supervisory information, and the public comment received on the proposal. The Board received one comment that objected to the proposal on the basis of First American Bank's fair-lending record in the Chicago Metropolitan Statistical Area ("Chicago MSA") as reflected in 2012 HMDA data.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisor of the CRA performance records of that institution.[21] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[22] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of First American Bank. First American Bank was assigned an overall rating of "satisfactory" at its most recent CRA performance evaluation by the FDIC in February 2013 ("FAB Evaluation"). First American Bank received a "high satisfactory" rating for both the Lending Test and the Service Test and a "low satisfactory" rating for the Investment Test.[23]

With respect to the Lending Test, examiners noted that First American Bank's lending activity was adequate in response to assessment area credit needs. Examiners determined that the bank originated an adequate percentage of its loans inside its assessment area. Although First American Bank's distribution of lending to borrowers of different incomes and businesses of different sizes was considered adequate, examiners highlighted that, with respect to the bank's overall home mortgage lending, lending to low-income as well as moderate-income borrowers was considered good. Examiners found that First American Bank's geographic distribution of loans was adequate, including its distribution of home mortgage loans.[24]

The bank's small business lending performance was considered adequate, including its distribution of small loans (less than or equal to $1 million) to businesses, consistent with the demographic characteristics of the area. Examiners found that First American Bank made a relatively high level of community development loans. Examiners also noted that First

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[19] 12 U.S.C. § 2903.

[20] 12 U.S.C. § 2801 *et seq*.

[21] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

[22] 12 U.S.C. § 2906.

[23] The evaluation was prepared using the interagency evaluation procedures for large institutions covering the period from June 2, 2010, through February 19, 2013. The assessment area encompassed Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Kankakee, Lake, McHenry, and Will counties in Illinois.

[24] The FAB Evaluation found that opportunities for financial institutions to lend in low-and moderate-income tracts were limited because only 4 percent of housing units located in low-income tracts, and 18 percent of housing units located in moderate-income tracts, were owner-occupied.

American Bank made use of innovative and/or flexible lending practices to serve assessment area credit needs, in particular the credit needs of small businesses and first-time home buyers. First American Bank is qualified as a preferred U.S. Small Business Administration ("SBA") lender and, during the evaluation period, funded a number of SBA loans. First American Bank also participated in guaranteed loan programs sponsored by the Federal Housing Administration and the U.S. Department of Veterans Affairs.

With respect to the Investment Test, examiners concluded that First American Bank had an adequate level of qualified community development investments and grants, occasionally using complex investment instruments. With respect to the Service Test, examiners found that First American Bank's delivery systems were reasonably accessible to all portions of the institution's assessment area and highlighted the bank's convenient branch hours of operation, automated teller machine network, mobile banking, and flexibility of products and services. Furthermore, examiners found that First American Bank was a leader in providing community development services; and that bank employees, management, and board members participated in a number of different qualifying community development services, a significant portion of which targeted assistance to low- and moderate-income individuals and families.

CRA Performance of Bank of Coral Gables. Bank of Coral Gables was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of June 2011 ("Bank of Coral Gables Evaluation").[25] Examiners noted that the bank's CRA performance demonstrated a reasonable responsiveness to the credit needs of its assessment area. Examiners found that a majority of the small business and residential real estate loans originated by Bank of Coral Gables were made within the bank's assessment area. Examiners also noted that Bank of Coral Gables' overall distribution of loans reflected a reasonable dispersion within its assessment area and that Bank of Coral Gables' penetration of loans among individuals of different income levels, including LMI individuals, and among businesses of different sizes was reasonable given the demographics of the assessment area.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of First American Bank and Bank of Coral Gables in complying with fair lending and other consumer protection laws. As part of this evaluation, the Board reviewed the First American Bank and Bank of Coral Gables Evaluations, assessed First American Bank's HMDA data, and considered the comment on the application and other agencies' views on First American Bank's record of performance under fair lending laws. The Board also considered First American Bank's fair lending policies and procedures.

Analysis of HMDA Data. The Board analyzed First American Bank's 2012 HMDA data, the most recent publicly available in the specific market area addressed in the public comment (Chicago MSA), as well as its 2013 HMDA data. The Board reviewed data related to all HMDA reportable loans to develop a view of the bank's overall lending patterns, as well as the subset of those data related specifically to the loan products that were the subject of the public comment on the proposal, including conventional home purchase loans, home improvement loans, and refinance loans. The Board analyzed the bank's combined assessment area in addition to the specific market area addressed in the public com-

[25] The Bank of Coral Gables Evaluation was prepared using evaluation procedures for small institutions covering the period from June 5, 2008, through June 3, 2011. These procedures evaluate the CRA performance of a bank's lending relative to five performance categories: average net loan-to-deposit ratio, assessment area lending, geographic distribution, borrower distribution, and response to CRA-related complaints.

ment (Chicago MSA). Within those data sets, the Board focused its review on data related to conventional home purchase loans, refinance loans, and home improvement loans made or denied to borrowers of the races and ethnicities highlighted by the public comment (i.e., African Americans and Hispanics).

The commenter expressed concerns, based on 2012 HMDA data, that First American Bank was not meeting the credit needs of minority individuals in the Chicago MSA. In particular, the commenter alleged that First American Bank did not originate any conventional home purchase loans to African Americans, and originated more refinance loans and home improvement loans to whites than to African Americans or Hispanics. The commenter also asserted that First American Bank disproportionately denied applications by African American and Hispanic applicants for home purchase loans and home improvement loans in the Chicago MSA, suggesting a pattern of denial rate disparities.[26]

The Board's review confirmed the levels of lending by First American Bank to African American and Hispanic borrowers and denial disparity ratios noted by the commenter. However, the Board's analysis of HMDA data for conventional home purchase loans, refinance loans, and home improvement loans by First American Bank in the Chicago MSA did not show any significant differences between First American Bank's lending and the aggregate lending for such loan products in that MSA for 2012 and 2013.[27] In 2012, 4.3 percent of First American Bank's HMDA loans in the Chicago MSA were originated to African Americans, and 9.7 percent of First America Bank's HMDA loans were originated to Hispanics. In comparison, for all HMDA reporters in the Chicago MSA in 2012, the percentage of loans originated to African Americans was 4.6 percent and the percentage of loans originated to Hispanics was 6.7 percent. Similarly, in 2013, 3.2 percent of First American Bank's HMDA loans in the Chicago MSA were originated to African Americans and 8 percent of First American Bank's HMDA loans were originated to Hispanics. In comparison, for all HMDA reporters in the Chicago MSA in 2013, the percentage of loans originated to African Americans was 5.7 percent and the percentage of loans originated to Hispanics was 8 percent.

Further, HMDA data for the Chicago MSA demonstrate that in 2012 and 2013, First American Bank had a lower disparity in its denial percentages for HMDA loans to African American and Hispanic applicants as compared to white non-Hispanic applicants than the aggregate disparity in denial percentages for HMDA loans among such applicants by all HMDA lenders in the Chicago MSA. In 2012, the disparities between the percentages of HMDA loans denied to African American and Hispanic applicants as compared to the percentages of HMDA loans denied to white non-Hispanic applicants were 1.7 percent and 1.4 percentage points, respectively, for First American Bank and 2.1 and 1.8 percentage points, respectively for all HMDA lenders in the Chicago MSA. Similarly, in 2013, the disparities between the percentages of HMDA loans denied to African American and Hispanic applicants compared to the percentages of HMDA loans denied to white applicants were 1.9 and 1.6 percentage points, respectively, for First American Bank, and 2.1 and 1.8 percentage points, respectively, for all HMDA lenders in the Chicago MSA.

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[26] In addition to these fair lending allegations, the commenter provided information related to an individual consumer's complaint about First American Bank's rewards checking product. Individual consumer complaints generally are considered to be outside the scope of what the Board is required to consider as part of the applications process, unless they allege a pattern or practice in violation of federal banking laws, which is not the present case. The FDIC's recent FAB Evaluation did not find such a pattern or practice by First American Bank.

[27] Aggregate lending is defined as the number of loans originated and purchased by all reporting lenders in specified income categories as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan or assessment area. In this context, aggregate lending is considered an indicator of the lending opportunities in the geographic area in which the bank is located.

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether the bank excluded or denied credit to any group on a prohibited basis.[28] Fully evaluating a bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The Board has consulted with, and places special emphasis on the views of, First American Bank's primary federal supervisor, the FDIC, regarding its evaluation of the bank's compliance with fair lending laws and regulations. Based on its recent FAB Evaluation, the FDIC reported that it did not find evidence that First American Bank engaged in discriminatory or other illegal credit practices and expressed no concern regarding the adequacy of First American Bank's fair lending policies and procedures.

With respect to the specific HMDA data on home purchase, home improvement, and refinance loans cited by the commenter, First American provided information reflecting nondiscriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio). First American also provided the Board with detailed information on First American Bank's training, marketing, advertising, and underwriting guidelines, reflecting its stated commitment to the prevention of prescreening, discouragement, and exclusion of credit applications on a prohibited basis. These same materials were available to the FDIC during its recent review of First American Bank.

First American Bank's Fair Lending Program. First American Bank has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The bank's legal and compliance risk management program includes written policies outlining the bank's responsibility for compliance with fair lending laws and regulations. The program provides for a second-level review of all declined and withdrawn retail and mortgage loans by a committee composed of the bank's chairman, president, and managers in the retail and mortgage loan departments. The program also requires annual fair lending training for all employees involved in any aspect of the bank's credit transactions.

In addition, fair lending audits are conducted periodically throughout the year by First American Bank's Internal Audit Department, which reports directly to First American Bank's Audit Committee. These internal audits evaluate the bank's compliance with fair lending laws and monitors for fair lending risk in decision-making and pricing using the Interagency Fair Lending Review Guidelines. The Internal Audit Department performs annual in-depth fair lending reviews of the bank's HMDA data. First American Bank's risk management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

[28] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. First American has represented that one of the motivating factors behind the proposed acquisition is to allow First American to better serve its customers in the Coral Gables, Florida area.[29] In addition, Bank of Coral Gables is operating under a Consent Order with the FDIC and the Florida Office of Financial Regulation,[30] and its lending has been constrained by the terms of the Consent Order. Through consummation of the proposal, First American would be able to provide additional financial and managerial resources needed to enable the merged bank to increase its lending in the greater Coral Gables market and reach customers throughout the entire Miami/Dade area.

First American represents that upon consummation of the proposal, it will provide customers of Bank of Coral Gables with the full range of products and services currently being offered to customers of First American Bank, including trust services, health savings accounts, a broader broker origination model, and a service mortgage program aimed at meeting the need for fixed-rate mortgages in low- and moderate-income areas. First American also plans to expand the marketing of Bank of Coral Gables' home equity lending program and to use First American Bank's SBA Preferred Lender status to expand Bank of Coral Gables' existing trade finance business.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by First American, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of the mortgage lending operations and compliance programs of First American Bank and Bank of Coral Gables, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[31]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the

[29] First American Bank originated 10 small business loans in the state of Florida in 2013.

[30] Consent Order, FDIC-09-6906, OFR 0697-FI-12/09 (2010).

[31] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

financial system, and the extent of the cross-border activities of the resulting firm.[32] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[33]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, First American would have approximately $3.5 billion in consolidated assets and would be the 225th largest financial institution in the United States. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, First American's intrafinancial assets and liabilities would constitute a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[34] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on

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[32] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[33] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

[34] The commenter requested that the Board hold public hearings 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 authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

compliance by First American with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months after the date of this Order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective November 13, 2014.

Voting for this action: Chair Yellen and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

ViewPoint Financial Group, Inc.
Plano, Texas,

LegacyTexas Bank
Plano, Texas,

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2014–20 (December 9, 2014)

ViewPoint Financial Group, Inc. ("ViewPoint"), has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with LegacyTexas Group, Inc. ("LegacyTexas"), and thereby acquire its subsidiary state member bank, LegacyTexas Bank, all of Plano, Texas. In addition, LegacyTexas Bank has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[2] to merge with ViewPoint's subsidiary bank, ViewPoint Bank, N.A. ("ViewPoint Bank"), Plano, Texas, with LegacyTexas Bank as the surviving entity.[3] LegacyTexas Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the locations of the main office and the branches of ViewPoint Bank.[4]

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (79 *Federal Register* 44773 (August 1, 2014)) and in local newspapers in accordance with relevant statutes and the Board's Rules of Procedure.[5] As required by the Bank Merger Act, a report on the competitive effects of the bank merger was requested from the United States Attorney General, and a copy of the request was provided to the appropriate banking agency. The time for submitting comments has

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1 12 U.S.C.§ 1842.

2 12 U.S.C. § 1828(c).

3 Although LegacyTexas Bank filed under the Bank Merger Act and FRA because its name and charter will survive the merger, ViewPoint Bank is the acquirer for substantive purposes of this proposal and would implement its management, policies, procedures, and controls at the combined organization.

4 12 U.S.C. § 321. These locations are listed in the appendix.

5 12 CFR 262.3(b).

expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.

ViewPoint, with consolidated assets of approximately $4.0 billion, is the 210th largest insured depository organization in the United States.[6] ViewPoint controls ViewPoint Bank, which operates only in Texas. ViewPoint Bank is the 24th largest depository institution in Texas, controlling deposits of approximately $2.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the state.[7]

LegacyTexas, with total consolidated assets of $1.8 billion, is the 391st largest insured depository organization in the United States. LegacyTexas controls LegacyTexas Bank, which operates only in Texas. LegacyTexas Bank is the 37th largest insured depository institution in Texas, controlling deposits of approximately $1.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, ViewPoint would become the 162nd largest insured depository organization in the United States, with total consolidated assets of approximately $5.8 billion. ViewPoint would have total consolidated deposits of approximately $4.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Texas, ViewPoint would become the 16th largest depository organization, controlling deposits of approximately $4.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market. Both statutes also prohibit the Board from approving a proposal 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.[8]

ViewPoint and LegacyTexas have subsidiary depository institutions that compete directly in the Dallas and Fort Worth banking markets, both in Texas.[9]The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") controlled by ViewPoint and LegacyTexas;[10] the concentration levels of market deposits and the increase in those levels, as

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[6] Asset and nationwide deposit-ranking data are as of June 30, 2014, unless otherwise noted.

[7] State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[8] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[9] The Dallas banking market is defined as Dallas and Rockwall counties; the southeastern quadrant of Denton County, including Denton and Lewisville; the southwestern quadrant of Collin County, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County; and Midlothian, Waxahachie, and Ferris in Ellis County, all in Texas (the "Dallas banking market"). The Fort Worth banking market is defined as Tarrant, Johnson, and Wise counties; Parker County (minus Mineral Wells); and the southwestern quadrant of Denton County, including Roanoke, all in Texas (the "Fort Worth banking market").

[10] Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Finan-*

measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[11] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the markets. On consummation of the proposal, the Dallas banking market would remain highly concentrated and the Fort Worth banking market would remain unconcentrated, as measured by the HHI. The HHI change in each market would be minimal, and numerous competitors would remain in both markets.[12]

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which ViewPoint and LegacyTexas compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of

cial Group, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 52 (1991).

[11] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

[12] ViewPoint operates the ninth largest depository institution in the Dallas banking market, with approximately $2.1 billion in deposits, which represent 1.4 percent of market deposits. LegacyTexas operates the 15th largest depository institution in the same market, controlling deposits of approximately $1.2 billion, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, ViewPoint would operate the seventh largest depository institution in the market, controlling weighted deposits of approximately $3.3 billion, which represent 2.2 percent of market deposits. The HHI would increase by three points to 1811, and 126 competitors would remain in the market.

ViewPoint operates the 51st largest depository institution in the Fort Worth banking market with approximately $57 million in deposits, which represent less than 1 percent of market deposits. LegacyTexas operates the 20th largest depository institution in the same market, controlling deposits of approximately $242 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, ViewPoint would operate the 17th largest depository institution in the market, controlling weighted deposits of approximately $300 million, which represent less than 1 percent of market deposits. The HHI would increase by less than 1 point to 994, and 74 competitors would remain in the market.

the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions.

In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. ViewPoint Bank and LegacyTexas Bank are both well capitalized and the combined institution would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange and a subsequent bank merger of the subsidiary depository institutions.[13] The asset quality, earnings, and liquidity of both ViewPoint Bank and LegacyTexas Bank are consistent with approval, and ViewPoint appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of ViewPoint, LegacyTexas, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and the organizations' records of compliance with applicable banking and anti-money-laundering laws.

ViewPoint, LegacyTexas, and their subsidiary depository institutions are each considered to be well managed. ViewPoint's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of ViewPoint have substantial knowledge and experience in the banking and financial services sectors.[14]

The Board has also considered ViewPoint's plans for implementing the proposal. ViewPoint is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. ViewPoint would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, ViewPoint's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and ViewPoint plans to integrate LegacyTexas Bank's existing management and personnel in a manner that augments ViewPoint's management.

ViewPoint's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in

[13] As part of the proposed transaction, each share of LegacyTexas common stock would be converted into a right to receive cash and ViewPoint common stock, based on an exchange ratio.

[14] Both the chairman and chief executive officer of ViewPoint would continue in their roles following consummation of the proposed transaction. In addition, two current members of the board of directors of LegacyTexas would become directors of ViewPoint, with one being elected as Vice Chairman of the board.

the proposal, as well as the records of effectiveness of ViewPoint and LegacyTexas in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and under the Bank Merger 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 Community Reinvestment Act ("CRA").[15] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation.[16] In addition, the CRA requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[17]

The Board has considered all the facts of record, including reports of examination of the CRA performance of ViewPoint Bank and LegacyTexas Bank, other information provided by ViewPoint and LegacyTexas, confidential supervisory information, and the public comment received on the proposal. The commenter objected to the proposal and alleged that LegacyTexas Bank had engaged in discriminatory lending practices in the Dallas, Texas area.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of that institution.[18] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[19] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of ViewPoint Bank. ViewPoint Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC") as of January 14, 2013 ("ViewPoint Bank Evaluation").[20] ViewPoint Bank received an "outstanding" rating on the Investment Test and a "high satisfactory" rating on both the Lending Test and the Service Test.[21]

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[15] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5); 12 U.S.C. § 2901 *et seq*.

[16] 12 U.S.C. § 2901(b).

[17] 12 U.S.C.§ 2903.

[18] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (March 11, 2010).

[19] 12 U.S.C. § 2906.

[20] The ViewPoint Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from April 1, 2008, through September 30, 2012, except for community development loans. The evaluation period for community development loans and for the Investment Test and the Service Test was from May 12, 2008, through January 14, 2013.

[21] The ViewPoint Bank Evaluation included a full-scope review of the Dallas, Texas, Assessment Area ("Dallas AA") and a limited scope review of the Fort Worth, Texas, Assessment Area and the Jack County, Texas, Assessment Area. Examiners placed greater weight on the bank's performance in the Dallas AA because this area represented the bank's most significant market in terms of deposit concentrations, branch distributions, and CRA-reportable loans.

In evaluating the Lending Test, examiners observed in the Dallas AA that the bank's overall lending and home mortgage lending activity was adequate, and its small business lending was good.[22] Examiners noted that ViewPoint Bank's distribution of loans to borrowers of different income levels and businesses of different sizes was good. In particular, the bank's borrower distribution of home purchase loans was found to be excellent, while the distribution of home mortgage improvement loans and home mortgage refinance loans was adequate. Overall, the geographic distribution of loans was found to be adequate.

Examiners found that ViewPoint Bank's community development lending in the Dallas AA was significant and that the bank originated an excellent level of community development loans during the evaluation period. Examiners noted that the bank is a participant in a number of governmental and privately sponsored programs that are designed to assist LMI individuals and to small businesses.

In evaluating the Investment Test, examiners found that ViewPoint Bank's level of community development investments and grants in the Dallas AA was excellent and that the bank exhibited good responsiveness to the community development needs in the Dallas AA. Examiners noted that these investments helped fund several projects, including a multi-family housing complex and a senior-living retirement community.

For the Service Test, examiners found that ViewPoint Bank's performance in the Dallas AA was good. Examiners noted that ViewPoint Bank's retail services and delivery systems were reasonably accessible to essentially all portions of the Dallas AA and that the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners found ViewPoint Bank to be a leader in providing community development services that were highly responsive to community needs.

Examiners reported that they did not find any evidence during the course of the ViewPoint Bank Evaluation that ViewPoint Bank engaged in discriminatory or other illegal credit practices.

CRA Performance of LegacyTexas Bank. LegacyTexas Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Dallas ("Reserve Bank") as of January 6, 2014 ("LegacyTexas Bank Evaluation"). Examiners noted that LegacyTexas Bank's lending levels reflected reasonable responsiveness to assessment area credit needs and that the bank was a leader in making community development loans and providing community development services.[23] LegacyTexas Bank received a "high satisfactory" rating for the Lending Test, the Investment Test, and the Service Test.[24]

For the Lending Test, examiners noted that LegacyTexas Bank's level of home mortgage, small business, and consumer lending activity reflected good responsiveness to assessment

[22] Examiners placed more emphasis on the bank's home mortgage loans than the distribution of small business loans because of the larger number of home mortgage loans over the review period. Within the home mortgage loan category, greater weight was placed on home purchase and home refinance loans.

[23] The LegacyTexas Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2011, through December 31, 2012. The evaluation period for community development loans and the Investment Test and Service Test was from January 1, 2010 to December 31, 2013.

[24] The LegacyTexas Bank Evaluation included a full-scope review of the bank's performance within its assessment area located in Collin, Dallas, and Denton Counties in Texas ("Collin-Denton-Dallas AA") and within its assessment area located in Parker and Tarrant Counties in Texas. Examiners placed greater weight on the bank's performance in the Collin-Denton-Dallas AA because this area represented the bank's most significant market in terms of deposit concentrations, branch distributions, and CRA-reportable loans.

area credit needs considering the bank's resources, business strategy, community needs, and opportunities during the evaluation period.[25] Examiners found that the bank's geographic distribution of loans reflected good penetration throughout the assessment area, and the borrower distribution reflected good penetration among borrowers of different income levels and businesses of different revenue sizes. Examiners further noted that LegacyTexas Bank participated in a relatively high level of community development loans.

In evaluating the Investment Test, examiners observed that the bank made a significant level of qualified community development investments and donations. Examiners found that LegacyTexas Bank exhibited excellent responsiveness to credit and community development needs by supporting organizations that provide financing to small businesses and affordable housing for LMI individuals.

In evaluating the Service Test, examiners found that the bank's delivery systems were accessible to the bank's geographies and individuals of different income levels. LegacyTexas Bank's record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and individuals. Examiners observed that LegacyTexas Bank was a leader in providing community development services, especially within the Collin-Dallas-Denton AA.Examiners did not find any evidence during the course of the LegacyTexas Evaluation that LegacyTexas Bank engaged in discriminatory or other illegal credit practices.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of ViewPoint Bank and LegacyTexas Bank in complying with fair lending and other consumer protection laws. As part of this evaluation, the Board reviewed the ViewPoint Bank Evaluation, the LegacyTexas Bank Evaluation, and a comprehensive fair lending and redlining review of LegacyTexas Bank completed by examiners with the Reserve Bank. The Board also assessed ViewPoint Bank's and LegacyTexas Bank's fair lending policies and procedures, and considered confidential supervisory information, other information, the comment on the applications, and ViewPoint Bank's response to the comment.

Fair Lending Analysis. A commenter alleged that LegacyTexas Bank disfavors African American neighborhoods in the Dallas assessment area with respect to access to its banking products and services and that the bank has engaged in redlining. The Reserve Bank recently conducted a comprehensive fair lending and redlining review of LegacyTexas in Dallas and Tarrant counties, Texas, and the Board has relied on the examination findings in this case. Examiners analyzed LegacyTexas Bank's CRA assessment area, lending record, geographic distribution of branches, and marketing and outreach efforts, and did not find illegal credit discrimination.

The Reserve Bank found that the LegacyTexas Bank's assessment area designations met the requirements of the CRA. Examiners also found that LegacyTexas Bank had service area boundaries around each branch that were narrower than the CRA assessment area. This led examiners to review these boundaries to determine if LegacyTexas Bank was relying on them to avoid lending and marketing in minority areas within the bank's CRA assessment area. On review, examiners found no evidence that LegacyTexas Bank was relying on these service area designations in a discriminatory fashion. In addition, LegacyTexas Bank has taken steps to eliminate its use of these service area boundaries.

[25] Examiners placed equal weight on home mortgage and small business loans due to comparable lending volume.

The Reserve Bank also reviewed the geographic distribution of LegacyTexas Bank's branches, the bank's marketing activities, and other community outreach efforts. LegacyTexas Bank operates five full-service branches in Tarrant County, with one located in a majority-minority tract and four located in integrated tracts. LegacyTexas Bank operates four full service branches in Dallas County with three located in integrated tracts and one located in a non-minority tract. Examiners found no differences between the lending policy at LegacyTexas Bank branch offices located in areas with concentrations of minority residents and other areas.[26] The Reserve Bank also found that LegacyTexas Bank's marketing activities and community outreach efforts included partnering with local nonprofit organizations to provide outreach to LMI communities and providing financial education to individuals and small businesses.

Examiners also reviewed LegacyTexas Bank's lending policies and procedures, including the fair lending policy. LegacyTexas Bank has instituted policies and procedures that cover all relevant fair lending laws to help ensure compliance with fair lending and other consumer protection laws and regulations. This includes a formal fair lending compliance program and an annual training program for employees. LegacyTexas Bank also performs both internal and external reviews for accuracy of HMDA, CRA reporting and fair lending risk, including annual testing of fair lending compliance by independent consultants.

ViewPoint's Fair Lending Program. ViewPoint Bank's risk-management systems and its policies and procedures for ensuring compliance with fair lending laws would be implemented at the combined organization immediately upon consummation of the proposed transactions.

ViewPoint indicated that ViewPoint Bank has detailed, comprehensive CRA, fair lending, and consumer compliance programs as part of its overall risk-management program, which applies across all aspects of the bank's operations, including marketing, loan origination, processing, underwriting, servicing, and collection activities. All extensions of credit, including loans to minority and LMI individuals, are subject to a separate second-review process by senior lending staff in the case of a potential denial. In addition, a fair lending officer monitors all HMDA loans and conducts a quarterly review to ensure full compliance with all policies, procedures, and fair lending law requirements. ViewPoint Bank also has a CRA Advisory Committee, which exercises direct oversight over the CRA compliance program and reviews quarterly assessments of performance.

Additionally, ViewPoint Bank's lending compliance function is subject to both internal audit policies established by the board of directors and an independent external audit by a third party, which conducts quarterly reviews of fair lending analyses of HMDA data, consumer compliance, and related internal audit activities. ViewPoint Bank also conducts a comprehensive risk assessment and provides compliance training for applicable employees annually.

The OCC, which is the primary supervisor for ViewPoint Bank, has indicated that it did not find evidence of discriminatory or other illegal credit practices in its review of ViewPoint Bank's fair lending policies and procedures.

[26] ViewPoint has represented that CRA products were not available at every LegacyTexas Branch location. Upon consummation of the proposed merger, ViewPoint has represented that CRA products will be available at every branch of the combined institution.

C. Additional Information on Convenience and Needs to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. The commenter alleged that the proposal would not provide a clear or significant public benefit.

ViewPoint indicated that it does not intend to discontinue or significantly change any services or products offered by either institution as a result of the proposed transaction, other than consolidate like product types. ViewPoint also indicated that the convenience and needs of the community would be enhanced by the increased size and strength of the combined institution, which would increase the bank's lending limit. ViewPoint notes that the combined organization would be able to provide customers with benefits through more efficient and cost-effective provision of banking services and would be able to dedicate additional resources to meeting the banking needs of its customers.

ViewPoint represents that the proposal would offer customers convenience through a broader range of financial products. For example, ViewPoint indicates that as a result of the merger, customers of LegacyTexas Bank would have access to home equity lines of credit and each of its branches would be able to take and submit home improvement loan applications. Additionally, ViewPoint has represented that customers of ViewPoint Bank would be able to access home purchase mortgages and refinancing products and that all CRA loan products would be available at all branch locations of the combined organization.

ViewPoint represents that the merger would benefit current customers of LegacyTexas Bank through access to a larger branch network. The branch network available to ViewPoint and LegacyTexas customers would increase to 51 branches, including several LMI branches. ViewPoint also has indicated that customers of LegacyTexas Bank would also gain access to ViewPoint's network of bank-owned ATMs and to extended call center hours.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by ViewPoint and LegacyTexas, confidential supervisory information, and the public comment on the proposal. Based on the above, the Board believes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the applications.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[27] The Dodd-

[27] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

Frank Act also amended the Bank Merger Act to require the Board to consider "the risk to the stability of the United States banking or financial system."[28]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[29] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[30]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, ViewPoint would have approximately $5.8 billion in consolidated assets and, by any of a number of alternative measures of firm size, would not be among the 100 largest U.S. financial institutions. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, ViewPoint's intrafinancial assets and liabilities would constitute a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities or provide critical services in such volume that disruption in such services would have a great impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Other Considerations

LegacyTexas Bank also has applied under section 9 of the FRA to establish and operate branches at the locations of the main office and branches of ViewPoint Bank. The Board

[28] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1602, codified at 12 U.S.C. § 1828(c)(5).

[29] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[30] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and finds those factors to be consistent with approval.[31]

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by ViewPoint with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law. The proposal may not be consummated before the fifteenth calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective December 9, 2014.

Voting for this action: Chair Yellen and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Branches in Texas to Be Established by LegacyTexas Bank

Addison
1. 4560 Beltline Road

West Allen
2. 225 Custer Road

Allen
3. 321 East McDermott

Carrollton
4. 1801 Keller Springs

North Carrollton
5. 4037 Old Denton Road

Coppell
6. 687 North Denton Tap Road

Preston Royal
7. 10720 Preston Road

[31] 12 U.S.C. § 322; 12 CFR 208.6(b).

Oak Cliff
8. 2498 West Illinois

Preston-Forrest
9. 5941 Forest Lane

Preston Motor
10. 6801 Preston Road

Preston Center
11. 8411 Preston Road

Lake Highlands
12. 9625 Audelia Road

N.E. Tarrant County
13. 3040 State Highway 121

West Frisco
14. 2975 Main Street

Frisco
15. 3833 Preston Road

Garland
16. 2218 North Jupiter Road

Grand Prairie
17. 215 North Carrier Parkway

Jacksboro
18. 201 South Main Street

McKinney
19. 2500 West Virginia Parkway

Resulting Institutions' Main Office
20. 1309 West 15th Street, Suite 400

East Plano
21. 2501 East Plano Parkway

West Plano
22. 5400 Independence Parkway

Tollroad
23. 5900 West Park Boulevard

West Richardson
24. 1280 West Campbell Road

Richardson Motor
25. 1775 North Plano Road

Runaway Bay
26. 1055 Highway 380 West

Wylie
27. 3490 FM 544

Flower Mound
28. 1201 Flower Mound

Grapevine
29. 301 South Park Boulevard

Plano Central
30. 1201 West 15th Street

Richardson
31. 720 East Arapaho

McKinney Motor
32. 231 North Chestnut

Orders Issued Under Section 4 of the Bank Holding Company Act

Midland States Bancorp, Inc.

Effingham, Illinois

Order Approving the Acquisition of a Savings and Loan Holding Company, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2014–22 (December 11, 2014)

Midland States Bancorp, Inc. ("Midland"), Effingham, Illinois, a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act[1] to acquire by merger Love Savings Holding Company ("LSHC") and its wholly owned subsidiary, Heartland Bank, FSB ("Heartland Bank"), both of St. Louis, Missouri.[2]

In addition, Midland's subsidiary state member bank, Midland States Bank ("Midland Bank"), Effingham, Illinois, has requested the Board's approval to merge with Heartland Bank pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"), with Midland Bank as the surviving entity (the "Merger").[3] Midland Bank has also applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the locations of Heartland Bank's main office and branches.[4]

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1 12 U.S.C.§§ 1843(c)(8) and (j).

2 LSHC is currently controlled by members of the Love family. The Love family controls Heartland Bank through direct ownership and controlled entities. Five of these vehicles are registered savings and loan holding companies: The Love Family 1941 Trust, The Love Family Charitable Trust, The Love Family Testamentary Trust, The Love Group Joint Venture, and The Love Real Estate Company.

3 12 U.S.C. § 1828(c).

4 12 U.S.C. § 321. These locations are listed in the appendix to this order.

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Fed. Reg*. 61845 (October 4, 2013)) in accordance with the Bank Merger Act and the Board's Rules of Procedure.[5] As required by the Bank Merger Act, a report on the competitive effects of the Merger was requested from the United States Attorney General. The time for filing comments has expired, and the Board has considered the proposals and all comments received in light of the factors set forth in section 4 of the BHC Act, the Bank Merger Act, and the FRA.

Midland, with total consolidated assets of approximately $1.7 billion, is the 408th largest depository organization in the United States, controlling deposits of approximately $1.4 billion, which represent less than 0.1 percent of the total amount of deposits of insured depository institutions in the United States ("national deposits").[6] Midland Bank operates branches in Illinois and Missouri. Midland Bank is the 32nd largest insured depository institution in Illinois, with deposits representing less than one percent of total deposits of insured depository institutions in that state. Midland Bank is the 296th largest insured depository institution in Missouri, with deposits representing less than 0.1 percent of total deposits of insured depository institutions in that state ("state deposits").[7]

LSHC, with total consolidated assets of approximately $845.0 million, controls deposits of approximately $662.5 million. Heartland Bank operates branches in Missouri and Colorado and is the 33rd largest insured depository institution in Missouri, with deposits representing 0.4 percent of the total amount of state deposits.

On consummation of the proposed transactions, Midland would become the 281st largest depository organization in the United States and would become the 32nd largest depository organization in Missouri. Midland would control deposits of approximately $2.1 billion nationwide and approximately $678.1 million in Missouri, representing less than 0.1 percent of national deposits and 0.5 percent of state deposits.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[8] The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act.[9] Midland has represented that all activities of LSHC will, upon consummation, be permissible for a bank holding company to conduct.

Interstate and Deposit Cap Analyses

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 4 of the BHC Act[10] and the Bank Merger Act[11] to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution, or an application by one insured depository institution to acquire another insured depository institution, if the home state of the target insured depository institution is a state other than the home state of the applicant and the applicant controls or would control more than 10 percent of the total amount of deposits of

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5 12 CFR 262.3(b).

6 Asset and nationwide deposit ranking data are as of December 31, 2013. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

7 State market share and ranking data are as of June 30, 2013.

8 12 CFR 225.28(b)(4)(ii).

9 12 CFR 225.28(b)(4)(ii).

10 Dodd-Frank Act § 623(b), codified at 12 U.S.C. § 1843(i)(8).

11 Dodd-Frank Act § 623(a), codified at 12 U.S.C. § 1828(c)(13).

insured depository institutions in the United States (collectively, "nationwide deposit caps").[12] The intended purpose of the nationwide deposit caps was to help guard against undue concentrations of economic power.[13] For purposes of the BHC Act and the Bank Merger Act, the home state of Midland is Illinois and the home state of Heartland Bank is Missouri.[14]

Based on the latest available data reported by all insured depository institutions in the United States, the total amount of deposits of insured depository institutions is $11.0 trillion.[15] On consummation of the proposed transaction, Midland would control less than 0.1 percent of the total amount of deposits in insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposals under section 4(i) of the BHC Act or under the Bank Merger Act.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[16] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.[17] In addition, the Board must consider the competitive effects of a proposal to acquire a savings association under the public benefits factor of section 4(j) of the BHC Act.[18]

Midland Bank and Heartland Bank compete directly in the St. Louis, Missouri, banking market.[19] The Board has reviewed the competitive effects of the proposals in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of the

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[12] For a detailed discussion of the nationwide deposit cap, see *Bank of America Corporation/LaSalle*, 93 *Federal Reserve Bulletin* C109, C109-C110 (2007); *Bank of America Corporation/Fleet*, 90 *Federal Reserve Bulletin* 217, 219-220 (2004) ("Fleet Order").

[13] Fleet Order at 219.

[14] A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C). For a state bank, the home state is the state by which the bank is chartered. 12 U.S.C.§ 1828(c)(13)(C)(ii)(II). For a federal savings association, the home state is the state in which the home office of the savings association is located. 12 U.S.C. § 1828(c)(13)(C)(ii)(III); 12 U.S.C. § 1841(o) (4)(E).

[15] *See* Fleet Order at 219. Deposit data are calculated based on reports filed by insured depository institutions and are as of December 31, 2013. Each bank and savings association insured by the Federal Deposit Insurance Corporation ("FDIC") in the United States must report data regarding its total deposits in accordance with the definition of "deposit" under the Federal Deposit Insurance Act, 12 U.S.C. § 1813(l), on the institution's Consolidated Report of Condition and Income. Deposit data for FDIC-insured U.S. branches of foreign banks and federal branches of foreign banks are obtained from the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. These data are reported quarterly to the FDIC and are publicly available.

[16] 12 U.S.C. § 1828(c)(5).

[17] 12 U.S.C. § 1828(c)(5)(B).

[18] 12 U.S.C. § 1843(j)(2)(A).

[19] The St. Louis, Missouri, banking market consists of the city of Saint Louis; Franklin, Jefferson, Lincoln, Saint Charles, Saint Louis, Warren and Washington counties; Roark, Boeuf, Canaan and Brush Creek townships, including the cities of Hermann and Owensville, in Gasconade County; Boone township in Crawford County; Loutre township in Montgomery County, all in Missouri; also Bond, Calhoun, Clinton, Jersey, Macoupin, Madison, Monroe and St. Clair counties; the western part of Randolph County, defined by Route 3 on the east and the Kaskaskia River on the south, including the cities of Red Bud, Ruma and Evansville; Washington County (minus Ashley and Du Bois townships); and the entire city of Centralia, all in Illinois.

total deposits in insured depository institutions in the market ("market deposits") that Midland Bank would control,[20] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[21] and other characteristics of the market.

Consummation of the proposed transactions would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the banking market. On consummation of the proposal, the St. Louis, Missouri, banking market would remain unconcentrated, as measured by the HHI. The changes in the HHI's measure of concentration would be minimal, and numerous competitors would remain in the banking market.[22]

The DOJ has conducted a review of the potential competitive effects of the proposed transactions and has advised the Board that consummation of the transactions would not be likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposals.

Based on all the facts of record, the Board concludes that consummation of the proposed transactions would not have a significantly adverse effect on competition or on the concentration of resources in the St. Louis, Missouri banking market or any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Factors

In addition to assessing competitive effects of the merger, in every case under the Bank Merger Act, the Board must take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the communities to be served, records of compliance with anti-money-laundering laws, and the risk to the stability of the United States banking or financial system.[23] The Board

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[20] Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 53 (1991).

[21] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission have issued revised Horizontal Merger Guidelines, the DOJ has confirmed that the DOJ Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[22] The HHI would decrease in the market by 5 points. This decrease results from a pre-merger weighting of Heartland Bank's market deposits at 50 percent and a post-merger weighting at 100 percent. *See Norwest Corporation*, 78 *Federal Reserve Bulletin* 452 (1992); *First Banks, Inc.*, 76 *Federal Reserve Bulletin* 669 (1990) (deposits of thrifts are included in pre-merger market share calculations on a 50 percent weighted basis but included at 100 percent in the calculation of pro forma market share because the deposits would be acquired by a commercial banking organization). The pro forma market share of Midland Bank would be 1.11 percent, and 142 competitors would remain.

[23] 12 U.S.C. § 1828(c)(5).

also considers these factors in weighing the possible adverse effects against the public benefits of the transaction, as required by section 4(j) of the BHC Act.[24]

In evaluating financial condition and future prospects of the proposal, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transactions. The Board considers the future prospects of the organizations involved in the proposals in light of their financial and managerial resources and the proposed business plan. The Board also considers the ability of the organization to absorb the costs of the proposals and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

Midland and Midland Bank are well capitalized and would remain so on consummation of the proposed transactions. Midland would acquire LSHC in exchange for a combination of cash and Midland common shares.[25] Midland would fund the transaction through a combination of cash on hand and additional fundraising. The asset quality, earnings prospects, and liquidity of Midland are considered consistent with approval. Midland appears to have adequate resources to absorb the costs of the proposal and to complete the integration of Midland Bank's and Heartland Bank's operations. Future prospects also are considered consistent with approval. Based on its review of the record, the Board finds that Midland has sufficient financial resources to effect the proposed transactions.

The Board also has considered the managerial resources of the organizations involved and has reviewed supervisory information and the examination records of Midland and Midland Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Midland's plans for implementing the proposed transactions. In addition, the Board has considered comments submitted as part of the public comment process. These comments allege weaknesses in Midland's compliance management as it relates to consumer protection practices. Commenters criticized Midland's consumer compliance practices, particularly related to fair lending laws and the CRA.

Midland and Midland Bank are considered to be well managed, and their boards of directors and senior management have significant banking experience. Midland has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions, having successfully completed several acquisitions

[24] Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of LSHC "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system." 12 U.S.C. § 1843(j)(2)(A). As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, records of compliance with anti-money-laundering laws, and the public benefits of the proposal. *See* 12 CFR 225.26; *see, e.g., Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012) ("Capital One Order"); *Bank of America Corporation/ Countrywide*, 94 *Federal Reserve Bulletin* C81 (2008); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138 (2006); *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997). In acting on a notice to acquire a savings association, the Board reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA"). 12 U.S.C. § 2901 *et seq*.

[25] Upon consummation, shareholders of LSHC would acquire a significant number of Midland common shares. The Love family has filed a notice under the Change in Bank Control Act of 1978, as amended, 12 U.S.C. 1817(j), with respect to this share acquisition. The Board is acting separately on this notice.

of banking organizations since 2007. Midland would implement at the combined organization its existing policies, procedures, and controls, which are considered to be satisfactory. Midland's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner. The Board expects that Midland will ensure that its risk management framework and methodologies, including its compliance functions, are commensurate with its new size and complexity.

Based on all the facts of record, including a review of the comments received, the Board has concluded that considerations relating to the financial and managerial resources of the organizations involved, as well as the records of effectiveness of Midland and Midland Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the CRA.[26]As noted, the Board also must review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire a savings association. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[27]and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[28]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Midland Bank and Heartland Bank, data reported by Midland Bank and Heartland Bank under the Home Mortgage Disclosure Act of 1975, as amended ("HMDA"),[29] other information provided by Midland, confidential supervisory information, and the public comments received on the proposals. Two commenters expressed concern over levels of lending based on data released under the HMDA or the CRA. They also asserted that the record failed to establish sufficient public benefit to warrant approval. Each commenter requested that the Board require specific commitments from Midland to improve services to underserved communities. A third commenter withdrew its initial opposition to the proposal and urged approval of the proposed transactions after an affiliate of the commenter reached an agreement with Midland to enhance its community development activities and services to predominantly minority communities in specific ways over the next few years.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisor of the CRA performance of the relevant institution.[30] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting

[26] 12 U.S.C. § 2901 *et seq*.

[27] 1 2 U.S.C. § 2901(b).

[28] 12 U.S.C. § 2903.

[29] 12 U.S.C. 2801 *et seq*.

[30] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

the credit needs of its entire community, including LMI neighborhoods.[31] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Midland Bank. Midland Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of St. Louis ("Reserve Bank") following an examination that commenced in October 2013 and was delivered to Midland Bank in July 2014 ("Midland Bank Evaluation").[32] This was the first CRA examination for Midland Bank conducted under the Interagency Procedures for Large Institutions; the previous CRA examination was conducted under procedures for intermediate small institutions. Because the operations of Midland Bank are concentrated in Illinois, with a relatively small presence in the St. Louis Metropolitan Statistical Area ("MSA"), examiners gave primary consideration to Midland Bank's performance in Illinois. The CRA examination was conducted during the pendency of this application and was informed by the public comments on the proposal.

Examiners assigned Midland Bank overall component ratings of "high satisfactory" on the Lending Test, "low satisfactory" on the Investment Test, and "low satisfactory" on the Service Test. Examiners described Midland Bank's record of lending as adequate but with opportunities for improvement in certain areas. Midland Bank was described as having a lending record that reflected good responsiveness to assessment area credit needs and a geographically adequate distribution of loans among customers of different income levels and among businesses of different sizes. Examiners identified Midland Bank as a leader in making community development loans in the St. Louis MSA assessment area, with an overall adequate level of community development lending due to low levels in Illinois. Examiners described the bank as maintaining a significant level of community development investments and grants, and making numerous grants to, community development organizations in certain assessment areas, but no community development investments in one assessment area in Illinois.

Examiners found that Midland Bank's record of opening and closing branches in its assessment areas had not adversely affected the accessibility of its delivery systems, but noted that branch hours and services generally did not vary to accommodate customers with variable work schedules. Examiners praised Midland Bank's community development services and systems accessibility in Illinois, while stating that its delivery systems, including branches, in the St. Louis MSA assessment area were located principally outside the St. Louis Missouri-Illinois urban area (as determined by the 2010 United States Census), making it difficult to serve the urban areas of the assessment area where the majority of LMI census tracts are located. Examiners also found that Midland Bank made use of innovative and/or flexible products in its assessment areas.

Thus, Midland Bank received a mixture of praise and suggestions for improvement from examiners in connection with the determination by examiners that its overall performance was "satisfactory." During the course of the Midland Bank Evaluation, examiners did not find any evidence that Midland Bank engaged in discriminatory or other illegal credit practices.

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[31] 12 U.S.C. § 2906.

[32] The evaluation periods for the Midland Bank Evaluation were January 1, 2011, to December 31, 2012, for HMDA and small farm lending; June 4, 2011, to December 31, 2012, for small business lending; and August 22, 2011, to October 15, 2013, for community development loans, investment, and service activities.

CRA Performance of Heartland Bank. Heartland Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC") following an examination that commenced in August 2013 ("Heartland Bank Evaluation"). Heartland Bank received a "satisfactory" rating for the Lending Test and an "outstanding" rating for the Community Development Test.[33] In evaluating the Lending Test in the St. Louis assessment area, OCC examiners concluded that Heartland Bank's lending to individuals with different income levels was excellent and that lending to businesses of different sizes was reasonable. Examiners found that the geographic distribution of loans in the St. Louis assessment area reflected reasonable dispersion. Examiners also found that Heartland Bank made a high level of community development loans that reflected excellent responsiveness to the need for affordable housing in the assessment area. Examiners found that Heartland Bank's community development investments reflected adequate responsiveness, while its community development services reflected reasonable responsiveness to the needs of the assessment area. In particular, examiners noted that Heartland Bank's branch and ATM network, along with online and mobile banking, made it reasonably accessible to geographies and individuals with different income levels.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Midland Bank and Heartland Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Midland Bank Evaluation and the Heartland Bank Evaluation, assessed the records of Midland Bank and Heartland Bank in helping to meet the credit needs of their communities, and considered the comments received on the proposals as well as other agencies' views on the records of performance of Midland Bank and Heartland Bank under fair lending laws. The Board also considered Midland Bank's fair lending policies and procedures. As noted, the Midland Bank Evaluation was conducted during the pendency of this application and was informed by the public comments on the proposals. In addition, in response to the public comments on the proposal, the Reserve Bank conducted a fair lending examination during the pendency of this application, including a redlining review across Midland Bank's assessment areas. The Board has relied on the findings of that examination as part of its analysis.

HMDA Data and Fair Lending Analysis. The commenters criticized Midland Bank's record of mortgage lending to minority individuals based generally on their review of 2011 and 2012 HMDA data for the bank's five CRA assessment areas, with emphasis on the bank's St. Louis MSA assessment area.[34] The commenters asserted that Midland Bank's volume of mortgage loans to African American, Hispanic, and Asian individuals and to minority communities has been extremely low compared to the volume of loans originated to these populations and communities by the aggregate of all lenders and compared to the demographics of those areas.[35]

Midland Bank's branches in the St. Louis MSA assessment area are in suburban or rural areas on the outskirts of the MSA. Midland Bank argued that its lending activities in

[33] The Heartland Bank Evaluation was conducted using Small Bank CRA evaluation procedures in Heartland Bank's two assessment areas of St. Louis, Missouri, and Denver, Colorado. For the Lending Test, examiners reviewed data from January 1, 2011, to December 31, 2012. For the Community Development Test, examiners reviewed data from June 17, 2008, to August 29, 2013.

[34] One commenter's discussion of Midland Bank's HMDA data covered the years 2009 through 2012.

[35] Aggregate lending is defined as the number of loans originated and purchased by all reporting lenders as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan or assessment area. In this context, aggregate lending is considered an indicator of the lending opportunities in the geographic area in which the bank is located.

the St. Louis MSA assessment area were appropriate given its relatively small economic presence in the market. Midland Bank identified community development organizations and projects with which it was involved, as well as organizations and projects with which Heartland was involved. Midland has stated that it expects to continue Heartland Bank's participation in community-based programs.

The Board analyzed Midland Bank's HMDA data for 2011, 2012, and 2013 in the St. Louis MSA, Champaign-Urbana MSA, Chicago-Naperville-Michigan City CSA, Central Illinois, and Northern Illinois assessment areas. The Board analyzed data related to HMDA-reportable loans to develop a view of Midland Bank's overall lending patterns, as well as the subsets of those data related specifically to the public comments received on the proposed transactions. The Board analyzed each bank's combined assessment areas and the specific market areas addressed in the public comments. Within those data sets, the Board focused its review on data related to concerns highlighted by the public comments, including lending to minority individuals and communities and to LMI individuals and communities.

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether the bank excluded or denied credit to any group on a prohibited basis.[36] Fully evaluating a bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The Board's review generally confirmed the levels of lending by Midland Bank to African American, Hispanic, Asian, and LMI borrowers and the denial disparity ratios noted by the commenters. The Board notes that Midland Bank's record of lending to LMI tracts and to majority-minority tracts generally exceeds that of the aggregate, but that the volume of applications is low compared to the aggregate. As part of the Midland Bank Evaluation, examiners found that Midland Bank had good lending activity and a high percentage of loans in its assessment areas, and that it makes use of innovative and/or flexible products throughout its assessment areas. Midland Bank's percentage of applications from and loans to LMI borrowers for these loan types generally exceeded the aggregate in the St. Louis MSA assessment area. However, with respect to conventional home purchase, refinancing, and home improvement loans, Midland Bank's lending data in the St. Louis MSA assessment area showed low levels of applications from minority individuals, as well as a low level of loans to those in predominantly minority and LMI census tracts.[37]

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[36] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, information on credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) is not always available from HMDA data.

[37] The Board analyzed Heartland Bank's 2011, 2012, and 2013 HMDA data in its primary market, the St. Louis MSA assessment area. Commenters focused on the St. Louis MSA assessment area and were generally favorable when discussing Heartland Bank's mortgage lending record relative to the aggregate. Commenters expressed concern that the acquisition of Heartland Bank by Midland would remove an above average lender from the market while increasing the presence of a lender with an inferior record of serving the needs of the community. The Board reviewed Heartland Bank's HMDA data and confirmed that in 2011, 2012, and 2013,

The Board considered and placed great emphasis on information collected by, and on the assessment of, the Reserve Bank's fair lending examiners. As noted, contemporaneously with the Midland Bank Evaluation, Reserve Bank examiners conducted a fair lending and redlining review at Midland Bank, including a review of matters related to the concerns raised by the commenters. While examiners noted a low volume of applications from minority individuals, examiners found no significant disparities in denials in areas with high minority populations.

Examiners focused their review on Midland Bank's branching and marketing practices in each of Midland Bank's assessment areas. Commenters expressed concerns over Midland Bank's branch locations, currently and when combined with Heartland Bank's branches. Specifically, commenters stated that none of Midland Bank's 32 branches is in a majority-minority tract or a low-income tract, while two are in moderate-income tracts. For the St. Louis MSA assessment area, commenters observed that none of Midland Bank's 11 current branches is located in the city of St. Louis, which contains a high percentage of the assessment area's LMI tracts and majority-minority tracts, and that none of Heartland Bank's 11 Missouri branches is located in majority-minority tracts. Examiners generally observed that Midland Bank has expanded its geographic reach outward from a small core presence in Illinois, primarily through a series of acquisitions. Examiners found that the geographic expansion appeared to have been undertaken without deliberate avoidance of majority-minority census tracts.

For instance, in the St. Louis MSA, most of Midland Bank's branches are located in southwestern Illinois, technically within the MSA but on its suburban and rural outskirts. The acquisition of these branches was part of an outward accretion of Midland's presence in that area. One branch currently within the St. Louis MSA was not in the MSA when Midland Bank acquired the branch, but the MSA was later expanded. Midland Bank's two branches within the urban portions of the St. Louis MSA are on the outer edges of the urban area. Examiners further noted that, although its branches were generally in rural or suburban areas, Midland Bank's pattern of branching suggests movement towards the majority-minority census tracts at the core of the St. Louis MSA. Branching patterns in Midland Bank's other assessment areas, including the Joliet-Kankakee and Champaign MSAs, were similar to Midland Bank's expansion in the St. Louis MSA.

Examiners concluded that Midland Bank's policies and procedures to address fair lending risks, and the implementation of those policies and procedures, were satisfactory. Examiners identified several areas for improvement, including opportunities to expand marketing; to enhance fair lending compliance management and monitoring; and to evaluate its marketing, outreach, and branching practices to ensure that majority-minority areas and customers are being adequately served.

Midland Bank is addressing the identified areas for improvement and, in connection with this transaction, has committed to continue doing so. For example, Midland Bank recently hired a Community Development and CRA Officer with experience in the St. Louis area, has begun working more closely with community groups in its assessment areas, and has enhanced its fair lending policies and procedures as directed. Midland Bank has also developed a community development plan and begun its implementation, including updating products and services to better serve low- and moderate-income borrowers and preparing to open a branch in a majority-minority, low-income census tract in Joliet, Illinois.

Heartland Bank's percentages of loans to African Americans exceeded those of the aggregate and, for Hispanics, generally exceeded those of the aggregate. In addition, Heartland Bank's percentages of loans to LMI borrowers consistently exceeded those of the aggregate. As discussed above, Midland Bank has stated that it will continue Heartland Bank's participation in community-based programs.

Midland Bank's Small Business Lending Record. Commenters generally noted that Midland Bank's record of originating small business loans in LMI tracts improved significantly from 2011 to 2012. However, commenters argued that the bank's lending volume could be improved in LMI areas, particularly in the St. Louis MSA assessment area. The Midland Bank Evaluation found Midland Bank's record of lending to businesses of different sizes to be adequate or good in its assessment areas. In addition, Midland Bank's volume of loans to LMI tracts generally met or exceeded the aggregate for the periods reviewed.

Midland Bank's Fair Lending Program. Midland Bank has established policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations, and these are considered satisfactory from a supervisory perspective. Midland Bank's compliance program is included as part of its overall risk management and involves participation of the compliance department, committees of the board of directors, senior management, and employees. Midland Bank's public community development plan states that it will continue to maintain fair lending policies and practices that meet all legal requirements, including continuing to conduct a second review of all loans initially denied, continuing to require all employees and directors involved in lending to complete annual fair lending training, and seeking to ensure that third-party agents involved in Midland Bank's lending activities receive appropriate fair lending training.

Senior staff at Midland Bank conduct quarterly compliance testing, and Midland Bank has retained an independent third-party vendor to conduct annual compliance testing. Midland Bank also periodically retains third parties to conduct comprehensive reviews of its loan operations. As noted, Midland Bank has hired a new Community Development and CRA Officer and is in the process of adding personnel to its compliance staff and considering enhancements to its compliance systems.

Certain lines of business have enhanced compliance oversight. Underwriting, pricing, and policy exceptions for residential mortgages are reviewed by senior staff, with denials subjected to a second review. Midland Bank's Loan Committee receives reports on exceptions on a monthly basis. Similarly, Midland Bank has taken steps to more closely monitor dealers involved in its indirect auto lending program. Midland Bank's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization, with modifications Midland Bank has been making in anticipation of the proposed transactions.

C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. As noted, commenters asserted that the proposed transactions would not product sufficient public benefits to warrant approval of the proposed transactions.

The Board has considered that the proposed transactions would allow Midland to expand the range of financial products and services available to existing customers of Heartland Bank. Following consummation of the proposed transactions, Heartland Bank's customers would gain access to additional services provided by Midland Bank, such as investment management, trust services, private banking, brokerage services, and expanded card products. In addition, customers of both institutions would benefit from a more expansive branch and ATM network. The proposed transactions would provide the opportunity for operational efficiencies, cost savings, and revenue enhancement for the combined organization.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Midland, confidential supervisory information, the public comments on the proposals, and commitments made by Midland. Based on the Board's assessment of the CRA performance and consumer compliance programs of Midland Bank and Heartland Bank, its review of examination reports, its analysis of the HMDA data, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in the proposed transactions, is consistent with approval of the proposals.

The Board expects Midland to continue to make progress in addressing areas identified for improvement. In order to ensure that Midland continues to do so, Midland has committed to the Board that it will make specific enhancements related to its marketing and outreach, compliance management and monitoring, and branching before undertaking any future expansion.

Financial Stability

The Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering proposals under section 4(j) of the BHC Act, and as a factor that must be considered under the Bank Merger Act.[38]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the merged firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[39] In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[40]

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation of the proposed transactions, Midland would have approximately $2.6 billion in consolidated assets and would be outside the largest 100 financial institutions in the United States. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a

[38] Dodd-Frank Act,§ 604(e) and (f), codified at 12 U.S.C.§§ 1843(j)(2)(A) and 1828(c)(5). Other provisions of the Dodd-Frank Act impose a similar requirement that the Board consider or weigh the risks to financial stability posed by a merger, acquisition, or expansion proposal by a financial institution. *See* sections 163, 173, and 604(d) of the Dodd-Frank Act.

[39] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[40] For further discussion of the financial stability standard, *see Capital One Order* at 28.

significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in the proposed transactions. The companies engage, and Midland would continue to engage, in traditional banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, Midland's intrafinancial assets and liabilities would constitute a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities or provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, the proposed transactions would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Additional Public Benefits of the Proposals

As noted above, in connection with a notice under section 4(c)(8) of the BHC Act, section 4(j) of the Act requires the Board to "consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[41] As noted, commenters asserted that the proposed transactions would not produce sufficient public benefits to warrant approval of the proposed transactions. As discussed above, the Board has considered that the proposed transactions would allow Midland Bank to expand the range of financial products and services available to existing customers of Heartland Bank. The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.

On the basis of the entire record, including commitments made in this case and conditions noted in this order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weigh in favor of approval of these proposals. Accordingly, the Board has determined that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Establishment of Branches

As noted, Midland Bank has applied under section 9 of the FRA to establish branches at the current locations of Heartland Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.[42] Specifically, the

[41] 12 U.S.C. § 1843(j)(2).
[42] 12 U.S.C. § 322; 12 CFR 208.6.

Board has considered Midland Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.[43]

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposals should be, and hereby are, approved.[44] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. Approval of the proposals is specifically conditioned on compliance by Midland with all commitments made in connection with these proposals and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

The proposed transactions may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months after the date of this order unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 11, 2014.

Voting for this action: Chair Yellen and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Branches in Missouri to Be Established by Midland Bank

St. Louis
1. 7818 Bonhomme Avenue
2. 1 McKnight Place
3. 9925 Clayton Road
4. 9877 Manchester and Berry Roads

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[43] Under section 9 of the Federal Reserve Act, state member banks are subject to the branching restrictions that apply to national banks. Thus, state member banks are permitted to establish branches at locations acquired through acquisition if the branches are located in states where the state member bank had a presence prior to the acquisition. 12 U.S.C. § 36(e). In addition, Dodd-Frank Act section 341 provides authority for savings associations that become banks to continue to operate branches that they operated immediately before becoming banks. Dodd-Frank Act § 341, codified at 12 U.S.C. § 5451.

[44] Several commenters requested that the Board hold a public hearing on the proposed transactions. The Board's regulations provide for a hearing on a notice filed 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 rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposals and, in fact, submitted written comments that the Board has considered in acting on the proposals. The commenters' requests fail to identify disputed issues of fact that are material to the Board's decision and would be clarified by a public hearing. In addition, the requests fail to demonstrate why the written comments do not present the commenters' views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposals are denied.

5. 11670 Gravois Road
6. 13402 Clayton Road
7. 212 South Central Avenue

Arnold
8. 1920 Richardson Road

Chesterfield
9. 14125 Clayton Road

O'Fallon
10. 2341 Highway K

St. Charles
11. 5991 South Highway 94

St. Clair
12. 815 North Commercial Avenue

Branch in Colorado to Be Established by Midland Bank

Denver
13. 100 Garfield Street, Suite 100

Southside Bancshares, Inc.
Tyler, Texas

Order Approving the Acquisition of a Savings and Loan Holding Company
FRB Order No. 2014–21 (December 10, 2014)

Southside Bancshares, Inc. ("Southside"), Tyler, Texas, a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y[1] to acquire OmniAmerican Bancorp, Inc. ("OmniAmerican"), and thereby indirectly acquire its subsidiary savings association, OmniAmerican Bank, both of Fort Worth, Texas. Immediately following the proposed acquisition, OmniAmerican Bank would be merged into Southside's subsidiary bank, Southside Bank, Tyler, Texas.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (79 *Fed. Reg*. 33918 (June 13, 2014)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 4 of the BHC Act.

Southside, with total consolidated assets of approximately $3.5 billion, is the 230th largest insured depository organization in the United States, controlling approximately $2.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits in the United States. Southside Bank operates branches only in Texas. Southside Bank is the 22nd largest depository institution in Texas, controlling deposits of approximately

[1] 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

[2] The merger of OmniAmerican Bank into Southside Bank is subject to approval by the Federal Deposit Insurance Corporation ("FDIC") under the Federal Deposit Insurance Act and by the Texas Department of Banking ("State") under state law. The FDIC approved the merger on November 7, 2014, and State approved the merger on December 5, 2014.

$2.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.[3]

OmniAmerican, with total consolidated assets of approximately $1.3 billion, is the 502nd largest insured depository organization in the United States, controlling approximately $837 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits in the United States. OmniAmerican Bank is a savings association that operates branches only in Texas. OmniAmerican Bank is the 67th largest insured depository institution in Texas, controlling deposits of approximately $837 million, which represent less than 1 percent of the total deposits of insured depository institutions in the state.

On consummation of the proposal, Southside would become the 18th largest depository organization in Texas, with total consolidated assets of approximately $4.8 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. In Texas, Southside Bank would control total consolidated deposits of approximately $3.6 billion, which would represent less than 1 percent of the total deposits of insured depository institutions in the state.

Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[4] The Board requires that savings associations acquired by bank holding companies or financial holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4(c)(8) of the BHC Act.[5] Southside has committed that all the activities of OmniAmerican and the nonbanking subsidiaries of OmniAmerican that it proposes to acquire engage in activities that will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of OmniAmerican "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[6]As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the proposal.[7] In acting on a notice to acquire a savings association, the Board reviews the records of perfor-

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[3] Deposit data are as of June 30, 2014. Asset data are as of June 30, 2014. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[4] 12 CFR 225.28(b)(4)(ii).

[5] A savings association operated by a bank holding company may engage only in activities that are permissible for bank holding companies under section 4(c)(8) of the BHC Act. 12 CFR 225.28(b)(4). In this instance, Southside will immediately merge OmniAmerican Bank into Southside Bank and will not operate the savings association independently.

[6] 12 U.S.C.§ 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1601 (2010), added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects.

[7] *See* 12 CFR 225.26; *see, e.g., Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012) ("Capital One Order"); *Bank of America Corporation*/*Countrywide* , 94 *Federal Reserve Bulletin* C81 (2008); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138 (2006); *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

mance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[8]

Competitive Considerations

As part of the Board's consideration of the factors under section 4 of the BHC Act, the Board has evaluated the competitive effects of Southside's acquisition of OmniAmerican in light of all the facts of record. Southside and OmniAmerican compete directly in the Dallas and Fort Worth banking markets, both in Texas.[9] The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in insured depository institutions in the markets ("market deposits") controlled by Southside and OmniAmerican,[10] the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[11]and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in both the Dallas and Fort Worth banking markets. On consummation of the proposal, the Dallas banking market would remain highly concentrated and the Fort Worth banking market would remain unconcentrated. The HHI change would be minimal and would decrease in both markets. Numerous competitors would remain in both markets.[12]

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[8] The Dodd-Frank Act amended section 4 of the BHC Act to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of the target insured depository institution is a state other than the home state of the bank holding company and the applicant controls, or would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Dodd-Frank Act § 623(b), codified at 12 U.S.C. § 1843(i)(8).

For purposes of the BHC Act, the home state of both Southside and OmniAmerican is Texas and, therefore, section 4(i)(8) of the BHC Act does not apply to this transaction.

Also, as noted, consummation of the proposal would result in Southside controlling less than 1 percent of the deposits of U.S. insured depository institutions.

[9] The Dallas banking market is defined as Dallas and Rockwall counties; the southeastern quadrant of Denton County, including Denton and Lewisville; the southwestern quadrant of Collin County, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County; and Midlothian, Waxahachie, and Ferris in Ellis County, all in Texas (the "Dallas banking market"). The Fort Worth banking market is defined as Tarrant, Johnson, and Wise counties; Parker County (minus Mineral Wells); and the southwestern quadrant of Denton County, including Roanoke, all in Texas (the "Fort Worth banking market").

[10] Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989), and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 52 (1991).

[11] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

[12] The HHI would decrease in each market as follows: 1 point to 1807 in the Dallas banking market and 15 points to 929 in the Fort Worth banking market. Those decreases result from a pre-merger weighting of OmniAmerican's market deposits at 50 percent and a post-merger weighting at 100 percent. *See Norwest Corporation*, 78 *Federal Reserve Bulletin* 452 (1992); *First Banks, Inc.*, 76 *Federal Reserve Bulletin* 669 (1990) (deposits of thrifts are included in pre-merger market share calculations on a 50 percent weighted basis but included at 100 percent

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposed transaction would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which Southside and OmniAmerican compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations weigh in favor of approval.

Financial and Managerial Resources

The Board considered the financial and managerial resources of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. Southside and Southside Bank are well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a cash and share exchange, and total consideration for the transaction would be approximately $307 million. Southside has the resources to fund the proposed transaction. Southside is in satisfactory condition, and the asset quality, earnings, and liquidity of Southside Bank and OmniAmerican Bank weigh in favor of approval. Based on its review of the record, the Board finds that the organizations have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Southside, Southside Bank, OmniAmerican, and OmniAmerican Bank, including assessments of their management expertise, internal controls, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and the organizations' records of compliance with applicable banking laws and with anti-money-laundering laws.

Southside and Southside Bank are considered to be well managed. Southside's existing risk-management program and its directorate and senior management are considered satisfactory. The current and proposed directors and senior executive officers of Southside have substantial knowledge of, and experience in, the banking and financial services sectors. There will be no changes in the senior management of Southside following consummation of the proposal.[13]

in the calculation of pro forma market share because the deposits would be acquired by a commercial banking organization). The resulting pro forma shares of Southside's market deposits would be as follows: less than 1 percent in the Dallas banking market and 2.75 percent in the Fort Worth banking market.

[13] On consummation, Southside's board of directors will include two additional directors from OmniAmerican's current board of directors.

The Board also has considered Southside's plans for implementing the proposal. Southside is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Southside would implement its risk-management policies, procedures, and controls at the combined organization. Southside's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Southside plans to integrate OmniAmerican's existing management and personnel in a manner that augments Southside Bank's management team.

Southside's integration record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors weigh in favor of approval. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the record of effectiveness of the organizations in combatting money-laundering activities, on balance weigh in favor of approval.

Record of Performance under the CRA

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation.[14] The CRA requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the convenience and needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[15]

The Board has considered all the facts of record, including reports of examination of the CRA performance records of Southside Bank and OmniAmerican Bank, data reported by Southside Bank and OmniAmerican Bank under the Home Mortgage Disclosure Act ("HMDA"),[16] other information provided by Southside, confidential supervisory information, and the public comment received on the proposal. The commenter objected to the proposal on the basis of the mortgage lending records of Southside Bank and OmniAmerican Bank as reflected in 2012 HMDA data.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the proposal in light of the examinations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions.[17] The CRA requires that the appropriate federal financial supervisory agency for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[18] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

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[14] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[15] 12 U.S.C. § 2903.

[16] 12 U.S.C. § 2801 *et seq*.

[17] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Fed. Reg*. 11642 at 11665 (March 11, 2010).

[18] 12 U.S.C. § 2906.

CRA Performance of Southside Bank. Southside Bank was assigned an "outstanding" rating at its most recent CRA performance evaluation by the FDIC, in July 2013 ("Southside Evaluation"). Examiners concluded that Southside Bank demonstrated an excellent responsiveness to the credit needs of its assessment areas.[19] Southside Bank received a "high satisfactory" rating on the Lending Test, and an "outstanding" rating on the Investment Test and the Service Test.[20] For the Lending Test, the FDIC noted that the bank's lending activity level and geographic distribution of loans were good. Southside Bank ranked as the largest small business lender and third largest mortgage lender in the Tyler MSA, which had the greatest weight of all areas in the analysis. Examiners also noted that the institution displayed extensive use of innovative and flexible lending practices. Examiners noted that Southside Bank was a leader in making community development loans. Examiners further highlighted Southside Bank's issuance of community development loans in the Tyler MSA. Examiners noted that Southside Bank had actively participated in an Economic Development Program sponsored by the Federal Home Loan Bank of Dallas, funded FHA and VA loans, and participated in several affordable housing programs.

Concerning the Investment Test, examiners highlighted Southside Bank's significant level of qualified community development investments and grants in its assessment areas. Southside Bank also was noted as being excellent in responding to the community needs both in its assessment area and statewide. In addition, Southside Bank had a significant record of participating in investments not routinely provided by private investors.

For the Service Test, examiners noted Southside Bank's strong performance, from its readily accessible delivery systems to its tailored retail banking services. The accessibility of retail banking services has improved within the Tyler MSA. Examiners further emphasized that Southside Bank provided a relatively high level of community development services that were responsive to a variety of community development needs.

The FDIC reviewed Southside Bank's CRA performance in its review of the related Bank Merger Act application, including public comments similar to those submitted to the Board, and, in approving the application under the Bank Merger Act, found the proposal consistent with the purposes of the CRA.

CRA Performance of OmniAmerican Bank. The Office of the Comptroller of the Currency ("OCC") assigned OmniAmerican Bank an overall CRA rating of "satisfactory" at its most recent CRA examination on April 2, 2012 ("OmniAmerican Evaluation").[21] Examiners concluded that OmniAmerican Bank demonstrated a good responsiveness to the credit needs of its assessment areas.[22] OmniAmerican Bank received ratings of "high satisfactory" for the Lending Test and the Service Test and "low satisfactory" for the Investment Test. With respect to the Lending Test, examiners noted that OmniAmerican Bank's lending activity reflected good responsiveness, and a majority of home mortgage loans, OmniAmerican Bank's primary loan product, were made within its assessment area. The

[19] Examiners focused on small business and home mortgage loans, given these are a majority of Southside Bank's loans, and put marginally more weight on Southside Bank's small business loans. In addition, examiners focused on the Tyler Metropolitan Statistical Area assessment area ("Tyler MSA") because of Southside Bank's significant presence in that area.

[20] The evaluation period for the Lending, Investment, and Service Tests in the Southside Evaluation was April 26, 2010, to July 29, 2013, except for community development loans, for which the evaluation period was from January 1, 2012, through December 31, 2012.

[21] The evaluation period for the Lending, Investment, and Service Tests in the OmniAmerican Evaluation was from January 1, 2009, through December 31, 2011, except for community development loans, for which the evaluation period was from May 13, 2008, through April 1, 2012.

[22] Examiners focused on home mortgage loans, given that these comprise a majority of OmniAmerican Bank's loans. In addition, examiners focused on the Fort Worth Metropolitan Statistical Area assessment area ("Fort Worth MSA") because of OmniAmerican Bank's significant presence in that area.

geographic distribution of home mortgage products was good and the distribution of loans to small businesses was excellent. The borrower distribution of such loans among borrowers of different incomes was adequate. The examiners noted that they did not detect any conspicuous or unexplained gaps in the bank's lending patterns.

Concerning community development lending, examiners found that OmniAmerican Bank's level of community development activities was adequate given its size, capacity, and the community development needs and opportunities of its assessment areas. Examiners highlighted OmniAmerican Bank's participation in specialized loan programs sponsored by the City of Arlington, Texas, including homebuyer assistance and neighborhood stabilization programs. These are assistance programs for first-time or LMI borrowers.

With respect to the Investment Test, examiners noted that although OmniAmerican Bank's qualified investments were not particularly innovative or complex, they were responsive to the community development needs in the Fort Worth MSA. OmniAmerican Bank's investments were focused in a Community Capital CRA qualified Investment Fund, which consists of various mortgage-backed securities that are fully allocated to loans benefitting LMI neighborhoods within the bank's assessment areas and small businesses by way of SBA loans.

Examiners also reviewed the bank's lending policies and procedures, including the fair lending policy. Veritex Bank has instituted policies and procedures to help ensure compliance with fair lending and other consumer protection laws and regulations. Veritex Bank has a formal fair lending compliance program, which includes a training program and a fair lending compliance webinar for all employees. Veritex Bank also has a centralized consumer complaints process for resolving any complaints. Veritex bank completes internal fair lending audits and contracts with an external firm to perform semi-annual audits.

Fair Lending Record, HMDA Analysis, and Public Comment on the Proposal

The Board has also considered the records of Southside Bank and OmniAmerican Bank in complying with fair lending and other consumer protection laws. This includes a review of their performance as detailed in the Southside Evaluation and the OmniAmerican Evaluation. This also includes an evaluation of Southside Bank's and OmniAmerican Bank's fair lending policies and procedures and consideration of other agencies' views on Southside Bank's and OmniAmerican Bank's record of performance under fair lending laws. The Board also has taken into account the comment on the proposal.

The commenter alleged that 2012 HMDA data indicate that, in the Tyler MSA, Southside Bank made fewer conventional home purchase loans to African American than to white applicants, fewer refinancing loans to African American and Hispanic applicants than to white applicants, and fewer home improvement loans to African American than to white applicants. The commenter also asserted that, in the Tyler MSA, Southside Bank disproportionately denied applications by African American applicants for conventional home purchase loans and refinancing loans and by Hispanic applicants for refinancing loans. In addition, the commenter alleged that OmniAmerican Bank made fewer conventional home purchase and refinancing loans to African American applicants in the Fort Worth MSA. The commenter also asserted that OmniAmerican Bank disproportionately denied applications by African American applicants for conventional home purchase loans and refinancing loans and by Hispanic applicants for refinancing loans.

The Board has reviewed HMDA data from 2012 and 2013 reported by Southside Bank and OmniAmerican Bank, the most recent publicly available data. The Board analyzed data related to all HMDA-reportable loans in the Tyler and Fort Worth markets to develop a

view of overall lending patterns, as well as the subset of that data related specifically to conventional home purchase, home improvement, and refinancing loans, which were the subjects of the public comment received on the proposal. Within those data sets, the Board focused its review on data related to loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, i.e., African Americans and Hispanics.

With respect to Southside Bank and OmniAmerican Bank, the Board generally confirmed the HMDA data regarding levels of loans and the denial disparity ratios associated with conventional home purchase, home improvement, and refinance loans noted by the commenter. The Board is concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Southside Bank or OmniAmerican Bank has excluded or denied credit to any group on a prohibited basis.[23]

Because of the limitations of HMDA data, the Board also has considered other information, including examination reports that provide on-site evaluations of compliance by Southside Bank and OmniAmerican Bank with fair lending laws and regulations. The Board has considered that Southside Bank's 2012 HMDA data were reviewed and considered by examiners in the FDIC's July 2013 CRA performance evaluation. This review allowed examiners to consider specific lending information beyond the data reported in HMDA. This evaluation by examiners found no evidence of discriminatory lending practices and resulted in an "outstanding" rating. The Board also consulted with the FDIC with respect to Southside Bank's record of fair lending performance since the Southside Evaluation, including its operations and compliance program, policies and procedures, training efforts, monitoring practices, underwriting guidelines, and responses to consumer complaints. The Board also considered the FDIC's analysis of the comments against Southside Bank's bank merger filing, which was reviewed and approved by the FDIC.

With respect to OmniAmerican Bank HMDA data on conventional home purchase or refinance loans cited by the commenter, the Board consulted with the OCC, which found no evidence of disparate treatment in its review of OmniAmerican Bank's actual lending practices. The lending policies, processes, and practices were found by the OCC to support a lending culture wherein OmniAmerican Bank was ensuring fair treatment to all applicants.

Southside's Fair Lending Program. Southside Bank's risk-management systems, policies, and procedures for assuring compliance with fair lending laws would be implemented at the combined organization, and these are considered to be satisfactory from a supervisory perspective. Southside has represented that it has a detailed and comprehensive consumer compliance and fair lending program. This includes a secondary review of all denied loan applications to ensure that the reasons for denial are well documented, supported by the applicant's application data, and outside of Southside's underwriting guidelines. Southside has also indicated that it performs a monthly analysis to help identify any patterns of dis-

[23] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

crimination and that it conducts weekly tracking of pricing exceptions for all consumer loans and daily tracking for all mortgage loans. In addition, Southside has indicated that it performs an annual fair lending risk assessment, the results of which are presented to its board of directors, and that all Southside employees who accept loan applications or answer loan questions are required to participate in fair lending training annually.

A. Conclusion on CRA, Fair Lending, and HMDA Review

The Board has considered all of the facts of record, information provided by Southside, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of Southside Bank's and OmniAmerican Bank's mortgage lending operations and compliance programs, its review of examination reports, the CRA records of the institutions involved, and its consultations with the FDIC and OCC, the Board concludes that the CRA and fair lending records of Southside Bank and OmniAmerican Bank on balance weigh in favor of approval.

Financial Stability

The Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering proposals under section 4(j) of the BHC Act.[24] To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the merged firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[25] In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, which are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[26]

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation, Southside would have approximately $4.8 billion in total consolidated assets, and by any of a number of alternative measures of firm size, Southside would be outside the 100 largest U.S. financial institutions. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The Board, therefore, concludes that financial stability considerations relating to this proposal weigh in favor of approval.

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[24] Dodd-Frank Act, § 604(e), codified at 12 U.S.C. § 1843(j)(2)(A). Other provisions of the Dodd-Frank Act impose a similar requirement, that the Board consider or weigh the risks to financial stability posed by a merger, acquisition, or expansion proposal by a financial institution. *See* sections 163, 173, and 604(d) and (f) of the Dodd-Frank Act.

[25] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[26] For further discussion of the financial stability standard, *see Capital One Order* at 28.

Additional Public Benefits of the Proposal

As noted above, in connection with a notice under section 4(c)(8) of the BHC Act, section 4(j) of the Act requires the Board to "consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[27]

The Board has also considered the extent to which the proposal would benefit the customers of Southside Bank and OmniAmerican Bank. Among other things, such benefits can include merger-related cost savings, improvements in the quality of existing product offerings, and the availability of products that were not previously available to customers of any of the parties.

Southside expects that, as a result of the merger, Southside Bank's customers would have access to a variety of consumer and business services. The merger would extend the branch and ATM footprints of Southside Bank within the Dallas and Fort Worth banking markets. This would include full-service branches in five counties, allowing customers greater geographic flexibility in accessing banking services. Southside Bank will continue to offer its products and services, which are substantially the same as, and in many cases broader than, products and services offered by OmniAmerican Bank.

The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this Order are not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, including the commitments made in this case and conditions noted in this Order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weighs in favor of approval of this proposal. Accordingly, the Board has determined that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.[28] In reaching its conclusion, the Board has con-

[27] 12 U.S.C. § 1843(j)(2).

[28] The public commenter requested that the Board hold a public hearing on the proposal. The Board's regulations provide for a hearing on a notice filed 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 rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

sidered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Southside with the conditions imposed in this Order and the commitments made to the Board in connection with the notice. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[29] and to the Board's authority to require such modification or termination of the activities of a bank holding company or 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. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal 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 Dallas acting pursuant to delegated authority.

By order of the Board of Governors, effective December 10, 2014.

Voting for this action: Chair Yellen and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Orders Issued Under Federal Reserve Act

Central Bank of Audrain County
Mexico, Missouri

Order Approving the Acquisition of Assets, Assumption of Liabilities, and the Establishment of a Branch
FRB Order No. 2014–17 (October 17, 2014)

Central Bank of Audrain County ("Audrain Bank"), Mexico, Missouri,[1] a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[2] ("Bank Merger Act") to acquire certain assets and assume certain liabilities of First State Community Bank ("First State"), Farmington, Missouri, a state nonmember bank.[3] In addition, Audrain Bank has applied under section 9 of the Federal Reserve Act ("FRA")[4] to establish and operate a branch at the location of the acquired branch of First State.

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[29] 12 CFR 225.7 and 225.25(c).

[1] Audrain Bank is a wholly owned subsidiary of Central Bancompany, Inc. ("Central BHC"), of Jefferson City, Missouri, a bank holding company with total consolidated assets of approximately $10.8 billion (as of June 30, 2014) that has operations in Missouri and Oklahoma. On July 16, 2014, the Federal Reserve Bank of St. Louis approved Audrain Bank's application to convert to a state member bank, and Audrain Bank changed its name from First National Bank of Audrain County.

[2] 12 U.S.C. § 1828(c).

[3] In particular, Audrain Bank seeks to acquire the Vandalia, Missouri, branch of First State located at 1000 West Highway 54, Vandalia, Missouri 63382. First State is a subsidiary of Cooper Investments, Inc., Farmington, Missouri.

[4] 12 U.S.C. § 321.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[5] The time for filing comments has expired. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The Board has considered the application and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

Audrain Bank's holding company, Central BHC, is the sixth largest depository organization in Missouri, controlling deposits of approximately $7.0 billion, which represent approximately 4.6 percent of the total amount of deposits in insured depository institutions in Missouri ("state deposits").[6]Audrain Bank proposes to acquire approximately all of the deposits from the Vandalia branch of First State, which total approximately $13.7 million. On consummation of the proposal, Central BHC would remain the sixth largest depository organization in Missouri, controlling deposits of approximately $7.0 billion, which represent approximately 4.6 percent of the total amount of state deposits.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[7] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the communities to be served.[8]

Audrain Bank and First State compete directly in the Mexico, Missouri, banking market (the "Mexico banking market"), and the branch that Audrain Bank proposes to acquire is located in that market.[9] The Board has reviewed the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative share of the total deposits in insured depository institutions in the market ("market deposits") that Audrain Bank would control,[10] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[11]and other characteristics of the market.

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[5] 12 CFR 262.3(b).

[6] Data are as of June 30, 2013. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

[7] 12 U.S.C. § 1828(c)(5)(A).

[8] 12 U.S.C. § 1828(c)(5)(B).

[9] The Mexico, Missouri, banking market is defined as Audrain County, Missouri.

[10] Deposit and market share data are as of June 30, 2013, and are based on data reported by insured depository institutions in the Federal Deposit Insurance Corporation's Summary of Deposits data.

[11] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its DOJ Bank Merger Guidelines, which were issued in 1995, were not modified.

In the Mexico banking market, Audrain Bank is the second largest insured depository institution, controlling deposits of approximately $123.9 million, which represent approximately 32.6 percent of market deposits. The branch that Audrain Bank proposes to acquire currently controls approximately $13.7 million in market deposits. On consummation of the proposal, Audrain Bank would become the largest insured depository institution in the Mexico banking market, controlling deposits of approximately $137.6 million. When the initial competitive screening data are used, the combined entity would represent 36.2 percent of market deposits and the HHI would increase by 215 points, from 2777 to 2992.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Mexico banking market.[12] In particular, the Board considered the competitive influence of two active community credit unions in the Mexico banking market, United Credit Union and Show Me Credit Union. Each offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the Mexico banking market.[13] These credit unions control approximately $62.4 million in market deposits, which represent approximately 7.6 percent of market deposits on a 50 percent weighted basis. With these deposits weighted at 50 percent, after consummation, Audrain Bank would control approximately 33.5 percent of the market deposits, and the HHI would increase by 183 points, from 2402 to 2585. Furthermore, on consummation, a total of six competitors would continue to operate in the market, including the two credit unions and two banks that each control more than 20 percent of the market's deposits. The Board has concluded that these factors mitigate the potential competitive effects of the proposal.

The DOJ conducted a review of the competitive effects of the proposal and has advised the Board that consummation would not be likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal is unlikely to have a significantly adverse effect on competition or on the concentration of resources in the Mexico banking market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing this proposal under the Bank Merger Act, the Board has considered the financial and managerial resources and future prospects of the institutions involved and certain other supervisory factors. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of

[12] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. *See NationsBank Corp*., 84 *Federal Reserve Bulletin* 129 (1998).

[13] The Board previously has considered competition from certain active credit unions with those features as a mitigating factor. *See e.g., Mitsubishi UFJ Financial Group, Inc*., FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp,* FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc*., (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc*., 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc*., 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

the transaction. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan. The Board also considers the ability of the acquiring organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

Audrain Bank is well capitalized and would remain so on consummation of the proposal. The proposal would be funded by a capital contribution from Central BHC, and neither Audrain Bank nor Central BHC would incur any debt as a result of the transaction. The asset quality, earnings, liquidity, and future prospects of Audrain Bank are consistent with approval. Audrain Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the target branch into Audrain Bank's operations. Based on its review of the record, the Board finds that Audrain Bank has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of Audrain Bank and has reviewed the examination records of Audrain Bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and Audrain Bank's record of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Audrain Bank's plans for implementing the proposal.

Audrain Bank is considered to be well managed, and its board of directors and senior management have significant banking experience. Audrain Bank would operate the acquired branch of First State under Audrain Bank's existing policies and procedures, which are considered to be satisfactory. Audrain Bank's supervisory record, managerial and operational resources, and plans for operating the pro forma institution provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of Audrain Bank, as well as Audrain Bank's record of effectiveness in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[14] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank acquisition proposals.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Audrain Bank and First State, information provided by Audrain Bank, and confidential supervisory information.

[14] 12 U.S.C. § 2901 *et seq.*

A. Record of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.[15] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[16] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Audrain Bank. Audrain Bank received an overall rating of "satisfactory" at its most recent CRA performance examination by the Office of the Comptroller of the Currency, as of January 2010.[17] Examiners determined that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. In addition, examiners noted that the distribution of loans represented reasonable dispersion among borrowers of different income levels and to farms and businesses of different sizes. Examiners found no evidence of discriminatory or other illegal credit practices. In connection with Audrain Bank's application to convert to a state member bank, the Federal Reserve Bank of St. Louis in May 2014 conducted a limited, off-site review of its CRA performance and found no evidence of discriminatory or other illegal credit practices.

CRA Performance of First State. First State received an overall rating of "satisfactory" at its most recent CRA performance examination by the Federal Deposit Insurance Corporation ("FDIC"), as of February 2014.[18] First State received an "outstanding" rating for the Service Test and "high satisfactory" ratings for both the Investment Test and the Lending Test.

In evaluating the Service Test, FDIC examiners noted that First State's delivery systems are readily accessible to all portions of the bank's assessment areas and that services do not vary in a way that inconveniences certain portions of the assessment areas. The examiners concluded that First State could be considered a leader in community development services.

In evaluating the Investment Test, examiners found that First State exhibited good responsiveness to credit and community economic development needs and occasionally used complex or innovative investments to support community development initiatives. The examiners noted that given the opportunities in First State's assessment areas, the bank has a significant level of qualified community development investments and grants in which it occasionally has a leadership position, and in particular, provides investments and grants that are not routinely provided by private investors.

In evaluating the Lending Test, examiners found that First State's overall lending activity reflected good responsiveness to the credit needs of its assessment areas and that First State originated a substantial majority of its loans, during the period reviewed, in its assessment areas. In addition, examiners noted that the geographic distribution of loans repre-

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[15] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11,642, 11,665 (2010).

[16] 12 U.S.C.§ 2906.

[17] Audrain Bank's CRA evaluation was conducted using Small Institution CRA Examination Procedures, and examiners reviewed the bank's lending activity from January 1, 2007, through December 31, 2009.

[18] First State's CRA evaluation was conducted using the Large Institution CRA Examination Procedures, and examiners reviewed the bank's lending activity from November 1, 2010, through February 24, 2014.

sented good penetration throughout the assessment areas and among retail customers of different income levels and among business and farm customers of different revenue sizes. The examiners concluded that First State exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, low-income individuals, and very small businesses and farms, consistent with safe and sound banking practices.

B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

Audrain Bank represents that this proposal would result in First State's current customers continuing to have access to banking services in their immediate communities. Moreover, Audrain Bank states that it would expand its services and grow its business in Audrain County. In particular, the acquired branch would be enhanced with a drive-up ATM, additional staff, and new on-site services, all of which would benefit First State's current customers. Audrain Bank plans to consolidate its existing branch in Vandalia into the branch acquired from First State, which is located one block away on the same street.[19]

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Audrain Bank, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Audrain Bank and First State, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stabiliy

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[20]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[21] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as

[19] Audrain Bank represents that the closing of its Vandalia branch will be completed in accordance with the bank's branch closing policy and applicable laws and regulations.

[20] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

[21] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[22]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Central BHC would have approximately $10.8 billion in consolidated assets and would be outside the top 100 largest financial institutions in the United States as measured by assets. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. Audrain Bank would continue to engage in traditional commercial banking activities. The resulting organization would only experience very small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, Audrain Bank's intrafinancial assets and liabilities would comprise a negligible share of the systemwide total, both before and after the transaction, and the resulting firm would control less than 0.1 percent of the assets of all U.S. depository institutions. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Establishment of Branch

Audrain Bank has applied under section 9 of the FRA to establish and operate a branch at the location of the acquired branch of First State, and the Board has considered the factors it is required to consider when reviewing an application under that section.[23] Specifically, the Board has considered Audrain Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by Audrain Bank with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are

[22] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

[23] 12 U.S.C. § 322; 12 CFR 208.6.

deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

The transaction may not be consummated before the 15th calendar day after the effective date of this order, or 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 St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors, effective October 17, 2014.

Voting for this action: Chair Yellen and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Veritex Community Bank
Dallas, Texas

Order Approving Establishment of a Branch
FRB Order No. 2014–9 (December 8, 2014)

Veritex Community Bank ("Veritex Bank"), a state member bank subsidiary of Veritex Holdings, Inc., both of Dallas, Texas, has requested the Board's approval under section 9 of the Federal Reserve Act ("Act")[1] and the Board's Regulation H[2] to establish a branch at 2700 Oak Lawn Avenue, Dallas, Texas (the "Oak Lawn branch").

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's Rules of Procedure.[3] The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors specified in the Act.

Veritex Bank is the 89th largest depository institution in Texas, controlling approximately $613 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.[4] Veritex Bank's main office is in Dallas, and the bank has eight additional branches throughout Dallas and Collin counties.

Under the Board's Regulation H, which implements section 9 of the Act,[5] the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank's capital and its future earnings prospects; 3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA");[6] and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.[7]

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1 12 U.S.C. § 321 *et seq*.
2 12 CFR part 208.
3 12 CFR 262.3(b).
4 Data are as of June 30, 2014, the most recent available, and are updated to reflect mergers through that date. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.
5 12 CFR 208.6(b).
6 12 U.S.C. § 2901 *et seq*.
7 12 CFR 208.6(b).

The Board has considered the application in light of these factors and public comment received on the proposal. A commenter objected to the proposal and alleged that Veritex Bank discriminates against African Americans and redlines African American neighborhoods, particularly in Dallas.[8]

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Veritex Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Veritex Bank, and the comment received. Veritex Bank is well capitalized and would remain so on consummation of the proposal. After carefully considering all the facts of record, the Board has concluded that the financial history and condition, capital adequacy, and future earnings prospects of Veritex Bank are consistent with approval of the proposal. The Board also has reviewed Veritex Bank's proposed investment in the Oak Lawn branch and concluded that its investment is consistent with regulatory limitations on investment in bank premises.[9]

In considering Veritex Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Veritex Bank and the bank's record of compliance with applicable banking laws, including anti-money-laundering laws. Veritex Bank is considered to be well managed. Based on this review and all the facts of record, the Board has concluded that the character of Veritex Bank's management, as well as the records of effectiveness of Veritex Bank in combatting money laundering activities, are consistent with approval of the proposal.

Convenience and Needs Considerations

The Board also has considered the convenience and needs of the community to be served, taking into account the comment received and the bank's performance under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation.[10] In addition, the CRA requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[11]

The Board has considered all the facts of record. The Oak Lawn branch would be located in an LMI area and an area where the majority of the residents are minority. The Board has also considered reports of examination of the CRA performance of Veritex Bank, data reported by Veritex Bank under the Home Mortgage Disclosure Act ("HMDA"),[12] other information provided by Veritex Bank, confidential supervisory information, the public comment received on the proposal, and other information. As noted above, a commenter objected to the proposal and alleged that Veritex Bank had engaged in discriminatory lending practices in the Dallas area.

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[8] Redlining is the practice of denying a creditworthy applicant a loan or service in a certain neighborhood even though the applicant may otherwise be eligible for the loan or service.

[9] 12 CFR 208.21(a).

[10] 12 U.S.C. § 2901(b).

[11] 12 U.S.C. § 2903.

[12] 12 U.S.C. § 2801 *et seq*.

A. Record of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of that institution.[13] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[14] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[15]

Veritex Bank received a "satisfactory" rating by the Federal Reserve Bank of Dallas ("Reserve Bank") at its most recent CRA performance evaluation, as of November 12, 2013 ("2013 CRA Evaluation"). Veritex Bank received "satisfactory" ratings for the Lending Test and the Community Development Test.[16] Examiners noted that Veritex Bank has been reasonably responsive to the credit needs and community development needs of its assessment areas. Examiners noted that Veritex Bank extended the majority of its loans inside its assessment area and that its distribution of loans to LMI borrowers and to businesses of different sizes was reasonable. More specifically, the examiners found that the geographic distribution of the bank's lending reflected excellent penetration throughout the assessment area, including LMI geographies, given the location of the bank's branches and the competitive local banking environment. In addition, examiners found no evidence of discriminatory or other illegal credit practices and found that the bank was in compliance with the substantive provisions of relevant anti-discrimination laws and regulations. The proposed branch would be located in an LMI area and is expected to provide a source of lending and other banking services to minorities and LMI residents in that area.

Examiners noted that the bank's responsiveness to community development needs was adequate considering its capacity, those needs, and available opportunities. According to examiners, Veritex Bank applied its community development resources to meet community needs, primarily through community development lending initiatives and social services targeted to LMI individuals in its community.

Veritex Bank represents that, since the 2013 CRA Evaluation, it has become a member of the Dallas Mortgage Assistance Program, which assists homebuyers with total household income of less than 80 percent of the Dallas Area median family income to purchase a home within the Dallas city limits. Veritex Bank represented that it is working to launch financial literacy and mortgage awareness programs in LMI areas. In addition, the bank represents that it is working to increase mortgage lending in LMI areas, particularly southern Dallas County, and is working toward developing relationships with non-profit and other small business assistance entities to develop potential loan relationships.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the record of Veritex Bank in complying with fair lending and other consumer protection laws. As part of this evaluation, the Board reviewed Veritex Bank's 2013 CRA Evaluation and a comprehensive fair lending and redlining review com-

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[13] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665.

[14] 12 U.S.C. § 2906.

[15] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 (2010).

[16] The 2013 CRA Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. For the Lending Test, a sample of small business loans originated from July 1, 2012, through December 31, 2012 was evaluated, as well as Veritex Bank's 2011 and 2012 HMDA data.

pleted by the Reserve Bank at Veritex Bank; assessed Veritex Bank's HMDA data and fair lending policies and procedures; and considered confidential supervisory information, other information, the comment on the application, and the bank's response to the comment.

The Board also considered that the location of the Oak Lawn branch is in an LMI area and an area where the majority of the residents are minority. The proposed branch will be located near West Dallas, a traditionally underserved community, and the bank intends to use the proposed branch's location to establish new deposit and lending relationships with customers in the area. Veritex Bank also represents that the Oak Lawn branch will benefit depositors by improving customer convenience, creating efficiency, and expanding the availability of products and services to banking customers within the underserved community of West Dallas.

Fair Lending Analysis. The Reserve Bank conducted a comprehensive fair lending and redlining review at Veritex Bank contemporaneously with the 2013 CRA Evaluation of Veritex Bank. Based on their entire review, examiners did not find evidence of illegal credit discrimination.

With respect to the bank's branching strategy, examiners found that the majority of Veritex Bank's branches were located in tracts in which 25-50 percent or a majority of the population is minority. Examiners noted that a number of the bank's branches were added as a result of recent acquisitions and that most of the de novo branches have stayed within the footprint established by the acquired banks, with half of such branches being in tracts where 25-50 percent of the population is minority at the time of the examination. Examiners did not find any disparity in access to products and services between branches in tracts that do not have a substantial population of minorities and those in which either 25-50 percent or a majority of the population is minority. Examiners further found the bank's branching locations to be reasonable.

Examiners also reviewed the bank's lending policies and procedures, including the fair lending policy. Veritex Bank has instituted policies and procedures to help ensure compliance with fair lending and other consumer protection laws and regulations. Veritex Bank has a formal fair lending compliance program, which includes a training program and a fair lending compliance webinar for all employees. Veritex Bank also has a centralized consumer complaints process for resolving any complaints. Veritex bank completes internal fair lending audits and contracts with an external firm to perform semi-annual audits.

HMDA Data. The Board analyzed Veritex Bank's HMDA data related to all HMDA-reportable loans from 2011, 2012, and 2013 for its assessment area to develop a view of the bank's overall lending patterns. In particular, as described further below, the Board reviewed the data developed by Reserve Bank examiners in their recent redlining review of the bank. Veritex Bank's assessment area, at the time of the 2013 CRA Evaluation, included portions of Dallas and Collin counties. The assessment area included substantially all of the census tracts in Collin County in which African Americans and/or Hispanic residents composed a majority of the population in those tracts. The assessment area also included nearly half of such tracts in Dallas County.[17]

The Board is concerned when HMDA data for an institution indicate lending disparities. The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending, but also to

[17] Following the 2013 CRA Evaluation Veritex Bank expanded the Dallas County portion of its assessment area to include all of Dallas County.

provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether a bank excludes or denies credit to any group on a prohibited basis.[18] Fully evaluating a bank's compliance with fair lending laws and regulations requires a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

In comparing the percentage of Veritex Bank's HMDA applications and originations in census tracts in which a majority of the population is African American and/or Hispanic to the aggregate of all lenders or the adjusted aggregate for 2011 and 2012, examiners did not find statistically significant disparities for the portion of the bank's assessment area located in Collin County in 2011 or 2012 or for the portion located in Dallas County in 2011. Examiners found some statistically significant disparities in the bank's percentage of applications from such tracts compared to the aggregate and the adjusted aggregate in 2012 in Dallas County. However, the bank's percentage of originations from census tracts in which a majority of the population is African American and/or Hispanic did not differ in a statistically significant way compared with the aggregate and adjusted aggregate in Dallas County in 2012.

C. Conclusion on Convenience and Needs Considerations

As noted, the Reserve Bank conducted a comprehensive fair lending and redlining review at Veritex Bank contemporaneously with the 2013 CRA Evaluation of Veritex Bank and, based on their entire review, did not find evidence of illegal credit discrimination. Moreover, the Oak Lawn branch would be located in an LMI area and an area where the majority of the residents are minority, which is expected to allow Veritex Bank to establish new deposit and lending relationships with, and better serve, customers in the area. Based on all the facts of record, and for the reasons described in this order, the Board concludes that the convenience and needs factor, including Veritex Bank's CRA record, is consistent with approval of the application.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. The Board's approval is specifically conditioned on Veritex Bank's compliance with all commitments made to the Board in connection with the proposal as well as all conditions imposed in this order. The commitments and conditions relied on by the Board are deemed to be conditions imposed in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

Approval of this application is also subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank, acting under authority delegated by the Board.

[18] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

By order of the Board of Governors, effective December 8, 2014.

Voting for this action: Chair Yellen and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

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Legal Developments: First Quarter, 2015

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

IBERIABANK Corporation
Lafayette, Louisiana

Order Approving the Acquisition of a Bank Holding Company, the Merger of Banks, and Establishment of Branches
FRB Order No. 2015–05 (February 13, 2015)

IBERIABANK Corporation ("IBKC"), Lafayette, Louisiana, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire Florida Bank Group, Inc. ("FBG"), and thereby indirectly acquire its subsidiary bank, Florida Bank, both of Tampa, Florida. In addition, IBKC's subsidiary state member bank, IBERIABANK, Lafayette, Louisiana, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Florida Bank, with IBERIABANK as the surviving entity.[2] IBERIABANK also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main office and branches of Florida Bank.[3]

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 65659-65660 (2014)).[4] As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.

IBKC, with consolidated assets of approximately $15.5 billion, is the 85th largest insured depository organization in the United States, controlling approximately $12.3 billion in deposits.[5] IBKC controls IBERIABANK, which operates in Florida, Alabama, Arkansas, Louisiana, Tennessee, and Texas. IBERIABANK is the 26th largest depository institution in Florida, controlling deposits of approximately $2.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[6]

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1 12 U.S.C. § 1842.
2 12 U.S.C. § 1828(c).
3 12 U.S.C. § 321. These branches are listed in the appendix.
4 12 CFR 262.3(b).
5 Asset and nationwide deposit-ranking data are as of September 30, 2014, unless otherwise noted.
6 State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and banks.

FBG, with consolidated assets of approximately $518 million, is the 1,289th largest insured depository organization in the United States, controlling approximately $394 million in deposits. FBG controls Florida Bank, which operates only in Florida. Florida Bank is the 81st largest insured depository institution in Florida, controlling deposits of approximately $406 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, IBKC would become the 83rd largest depository organization in the United States, with consolidated assets of approximately $16.0 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. IBKC would control total deposits of approximately $12.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Florida, IBKC would become the 25th largest depository organization, controlling deposits of approximately $2.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than its home state without regard to whether the transaction is prohibited under state law.[7] Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[8] In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[9]

For purposes of the BHC Act, the home state of IBKC is Louisiana, and FBG's home state is Florida.[10] IBKC is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA")[11] rating. Florida has no minimum age requirement, and Florida Bank has been in existence for more than five years.

On consummation of the proposed transaction, IBKC would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 1 percent of the total amount of deposits of insured depository institutions in FBG's home state of Florida, the only state in which IBKC and FBG have overlapping banking operations. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

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7 12 U.S.C. § 1842(d)(1)(A).

8 12 U.S.C. § 1842(d)(1)(B).

9 12 U.S.C. § 1842(d)(2)(A), (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

10 *See* 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

11 12 U.S.C. §§ 2901–2908.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market. Both statutes also prohibit the Board from approving a proposal 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.[12]

IBKC and FBG have subsidiary depository institutions that compete directly in the Sarasota area, Florida banking market ("Sarasota market").[13] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market ("market deposits") that IBKC would control;[14] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[15] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Sarasota market. On consummation of the proposal, the Sarasota market would remain unconcentrated, as measured by the HHI. The HHI change would be minimal, and numerous competitors would remain in the market.[16]

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking market in which IBKC and FBG compete or in any other rel-

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[12] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[13] The Sarasota market is defined as Manatee and Sarasota counties less that portion that is both east of the Myakka River and south of Interstate 75 (currently the towns of Northport and Port Charlotte) plus the peninsular portion of Charlotte County west of the Myakka River (currently the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West and Placida), plus Gasparilla Island (the town of Boca Grande) in Lee County, all within Florida.

[14] Deposit and market share data are as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc* ., 77 *Federal Reserve Bulletin* 52 (1991).

[15] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

[16] BKC operates the 9th largest depository institution in the Sarasota market, controlling approximately $467 million in deposits, which represent 2.7 percent of market deposits. FBG operates the 42nd largest depository institution in the same market, controlling deposits of approximately $12 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBKC would remain the 9th largest depository institution in the market, controlling deposits of approximately $480 million, which represent 2.8 percent of market deposits. The HHI for the Sarasota market would increase by one point to 908, and 42 competitors would remain in the market.

evant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

IBKC and IBERIABANK are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange and a subsequent merger of the subsidiary depository institutions.[17] The asset quality, earnings, and liquidity of IBERIABANK and Florida Bank are consistent with approval, and IBKC appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. A commenter objected to the proposal, alleging that both the chairman of FBG and the president and chief executive officer ("CEO") of FBG[18] mismanaged the organization and violated their fiduciary duties, and that the CEO received excessive compensation and incentives.[19] The Board has reviewed the examination records of IBKC, FBG, and their subsidiary depository institutions, including assessments of their management, risk management systems, and operations. In addition, the Board has considered information provided by IBKC, the Board's supervisory experiences with IBKC and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. Finally, the Board has considered examiners' views of the chairman of FBG and the CEO of FBG and Florida Bank.

IBKC, FBG, and their subsidiary depository institutions are each considered to be well managed. IBKC's existing risk management program, and its directorate and senior management, are considered to be satisfactory. The directors and senior executive officers of

[17] As part of the proposed transaction, each share of FBG common stock would be converted into a right to receive cash and IBKC common stock, based on an exchange ratio. IBKC has the financial resources to fund the exchange.

[18] The CEO of FBG is also the chairman, president, and chief executive officer of Florida Bank.

[19] The commenter, a shareholder of FBG, also alleged that the proposed transaction is fraudulent under state and federal corporate and securities laws. These allegations relate to a shareholder dispute and may be adjudicated by a court of competent jurisdiction. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (1973).

IBKC have substantial knowledge of and experience in the banking and financial services sectors.[20]

The Board also has considered IBKC's plans for implementing the proposal. IBKC is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. IBKC would implement its risk management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, IBKC's and FBG's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and IBKC plans to integrate FBG's existing management and personnel in a manner that augments IBKC's management.

Based on all the facts of record, including IBKC's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of IBKC and FBG in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger 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.[21] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[22] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[23]

The Board has considered all the facts of record, including reports of examination of the CRA performance of IBERIABANK and Florida Bank, data reported by IBERIABANK and Florida Bank under the Home Mortgage Disclosure Act ("HMDA"),[24] other information provided by IBERIABANK, confidential supervisory information, and the public comment received on the proposal. A commenter objected to the proposal on the basis of IBERIABANK's lending record to LMI borrowers and to minority individuals in the New Orleans, Louisiana, and Birmingham, Alabama, Metropolitan Statistical Areas ("MSAs"), as reflected in 2013 HMDA data.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of

[20] IBKC's and IBERIABANK's board of directors and senior management would remain the same after consummating the acquisition.

[21] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[22] 12 U.S.C. § 2901(b).

[23] 12 U.S.C. § 2903.

[24] 12 U.S.C. § 2801 *et seq*.

the relevant institutions.[25] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[26] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of IBERIABANK. IBERIABANK was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta ("Reserve Bank") as of August 2013 ("IBERIABANK Evaluation"), which included full-scope evaluations of the bank's performance in both the New Orleans and Birmingham assessment areas.[27] IBERIABANK received "high satisfactory" ratings for each of the Lending Test, Investment Test, and Service Test. Examiners found that IBERIABANK makes a relatively high level of community development loans, that it has a good level of qualified investments, and that the bank provides an excellent level of community development services.

In evaluating the Lending Test, examiners found that IBERIABANK originated a substantial majority of its loans within its assessment areas, reflecting excellent assessment area penetration. Examiners found that the bank's penetration of loans among borrowers of different income levels and businesses of different sizes was adequate. Examiners noted that the bank made a high level of community development loans during the review period. The community development loans were for a variety of purposes, including financing affordable housing for LMI individuals, promoting economic development by financing small businesses that resulted in job creation and/or retention, revitalizing and/or stabilizing targeted LMI census tracts or other qualified geographies, and community services targeted to LMI individuals.[28]

In the New Orleans assessment area, examiners noted that IBERIABANK's lending was good overall. The geographic distribution of the bank's loans reflected adequate penetration throughout the assessment area, and the distribution of loans by borrower income was considered to reflect adequate penetration among individuals of different income levels and businesses of different revenue sizes. In addition, examiners noted that the bank was a leader in making community development loans in the New Orleans assessment area, making loans and investments in support of LMI individuals and community development efforts, as well as providing grants to assist qualified LMI homebuyers with down payment and closing costs. IBERIABANK also made significant contributions to support entrepreneurship, youth workforce development, charter schools and financial education. Examiners noted that the bank's investments and contributions exhibited responsiveness to sev-

[25] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[26] 12 U.S.C. § 2906.

[27] The IBERIABANK Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and small business loans for the period January 1, 2011, through December 31, 2012. The evaluation period for community development loans and investments was June 1, 2011, through March 31, 2013. Due to IBERIABANK's significant expansion and growth during the review period, the bank's performance in 2012 was weighted slightly more than its performance in 2011 in determining the final rating for lending. The IBERIABANK Evaluation included a full-scope review of nine assessment areas: New Orleans-Metairie-Kenner MSA; Lafayette MSA; Little Rock-North Little Rock-Conway MSA; Fayetteville-Springdale-Rogers MSA; North Port-Bradenton-Sarasota MSA; Naples-Marco Island MSA; Birmingham-Hoover MSA; Houston-Sugar Land-Baytown MSA; Memphis-Forrest City Combined Statistical Area.

[28] Examiners found that IBERIABANK's community development lending was particularly strong in Louisiana, the bank's home state, noting that the bank partners with a community development financial institution to originate flexible mortgage products for LMI borrowers throughout the state.

eral identified needs, including the development of affordable housing and financial stability of LMI individuals.

In the Birmingham assessment area, examiners considered IBERIABANK's lending performance to be good. The geographic distribution of loans reflected good penetration throughout the assessment area and the distribution of borrowers reflected adequate penetration among individuals of different income levels and businesses of different revenue sizes. The bank was also considered a leader in making community development investments. Examiners noted that IBERIABANK provided a relatively high level of community development services in the Birmingham assessment area, in which bank employees provided service hours in various capacities for community development organizations.

Examiners found IBERIABANK's investment performance to be excellent in one state, good in three states, and adequate in two states.[29] Most of the bank's qualified investments supported affordable housing through the purchase of securities backed by government-guaranteed mortgages to qualified LMI borrowers. The bank invested in several Low-Income Housing Tax Credit projects that provide affordable rental housing to LMI individuals. Examiners also noted that the bank was very involved with recovery efforts in New Orleans and across the Gulf Coast after Hurricane Katrina, making investments through the New Market Tax Credit program to help stabilize and revitalize LMI and other communities that were affected by the hurricane. In addition, IBERIBANK made grants to provide down payment and closing cost assistance to LMI borrowers.

In evaluating the Service Test, examiners found that IBERIABANK's performance was good in four states and adequate in two states.[30] Examiners found the bank's retail delivery systems to be reasonably accessible to geographies and to individuals of different income levels. Examiners noted that the bank offers several retail products designed to meet the financial needs of lower-income customers and small businesses and that the bank participates in organized programs and other outreach efforts to expand banking access to LMI customers across its entire banking footprint. Examiners also found that the bank provided an excellent level of community development services throughout its assessment areas. During the review period, the bank and its employees provided over 10,000 hours of community development services through service activities aimed at promoting or facilitating affordable housing for LMI individuals, economic development, and the revitalization of LMI areas.

CRA Performance of Florida Bank. Florida Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank in October 2013 ("Florida Bank Evaluation").[31] The bank received a "satisfactory" rating for the Lending Test and Community Development Test.

In evaluating the Lending Test, examiners noted that a substantial majority of the bank's loans were made within its assessment areas, demonstrating the bank's willingness to meet the credit needs of its assessment areas. Examiners found that the bank's geographic distri-

[29] Examiners found that the bank's performance under the Investment Test was "excellent" in Louisiana, "good" in Alabama, Arkansas, and Texas, and "adequate" in Florida and Tennessee.

[30] Examiners found that the bank's performance under the Service Test was "good" in Arkansas, Florida, Louisiana, and Tennessee, and "adequate" in Alabama and Texas.

[31] The Florida Bank Evaluation was conducted using Intermediate Small Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and small business loans for the period January 1, 2012, through December 31, 2012. The evaluation period for community development loans, investments, and service activities was August 1, 2011, through August 1, 2013. The Florida Bank Evaluation included a full-scope evaluation of the Tampa-St. Petersburg-Clearwater MSA.

bution of loans and the distribution of loans by business income and borrower income were reasonable. Examiners also commented favorably on the bank's loan-to-deposit ratio.

Examiners found that Florida Bank demonstrated adequate responsiveness to community development needs in its assessment areas through a combination of community development loans, qualified investments, and community development services. The bank's community development lending was aimed at providing affordable housing and promoting economic development by financing small businesses.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of IBERIABANK and Florida Bank in complying with fair lending and other consumer protection laws. As part of its evaluation, the Board reviewed the IBERIABANK and Florida Bank Evaluations, assessed the records of IBERIABANK's HMDA data, and considered the comment received on the proposal as well as other agencies' views on the records of performance of IBERIABANK and Florida Bank under fair lending laws. The Board also considered IBERIABANK's fair lending policies and procedures. In addition, the Reserve Bank concluded a fair lending examination of IBERIABANK during the pendency of this application, including a redlining review across IBERIABANK's assessment areas.[32] The Board has considered the findings of that examination in its analysis.

HMDA Data and Fair Lending Analysis. The commenter criticized IBERIABANK's record of mortgage lending to minority individuals and to minority census tracts based on 2013 HMDA data for the bank's New Orleans and Birmingham assessment areas. The commenter asserted that IBERIABANK's volume of mortgage loans to minority communities, particularly African Americans, is low compared to the volume of loans originated to these populations and communities by the aggregate of all lenders and compared to the demographics of these areas.[33]

IBERIABANK responded by noting that in the New Orleans MSA, its 2013 HMDA lending levels generally exceeded or were comparable to those of aggregate lenders. Of the 25 branches IBERIABANK operates in the New Orleans assessment area, five are located in LMI tracts, and an additional 15 branches are within close proximity of LMI tracts. Four of those branches are located in tracts in which a majority of the population are minority individuals ("majority minority tracts"). The bank stated that it is serving the community reinvestment needs in New Orleans through community development lending, investments, and services, particularly in areas affected by Hurricane Katrina. The bank reported that it made community development-related loans in 2013 and 2014, such as to finance the acquisition and development of a former public school building in a low-income census tract into an affordable multi-family rental property for low-income senior citizens. The bank also reported that it made investments in CRA-eligible mortgage backed securities and tax credit qualifying investments. In addition, IBERIABANK stated that its employees donated time to community service organizations and charities that serve LMI and minority individuals and areas as board members, home buyer education counselors, and financial literacy instructors.

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[32] During a redlining review, examiners assess the risk that an institution is providing unequal access to credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which the property is located.

[33] Aggregate lending is defined as the number of loans originated and purchased by all reporting lenders as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan or assessment area. In this context, aggregate lending is considered an indicator of the lending opportunities in the geographic area in which the bank is located.

With respect to the Birmingham MSA, IBERIABANK stated that in 2013 its percentage of loans to minority individuals and majority minority census tracts exceeded those of the aggregate. Of the nine branches IBERIABANK operates in the Birmingham assessment area, two are in LMI tracts, and another two branches are within close proximity to LMI tracts. Two branches are located in majority minority tracts. IBERIABANK represents that, in the Birmingham assessment area, it funded community development loans to finance the construction of a low-income housing complex and to refinance an affordable multifamily rental property in a moderate-income census tract near downtown Birmingham. The bank also reported that its employees donated time to a variety of community organizations in the Birmingham area, including local housing authorities, public schools, United Way offices, and other service organizations.

IBERIABANK stated that it maintains an active outreach program for LMI and minority individuals and communities across all of its assessment areas. The bank has engaged in direct marketing campaigns to improve the volume of mortgage applications for LMI and minority individuals, and routinely places advertisements in local publications that serve minority communities. In addition, IBERIABANK employees donated time in 2014 to promote financial literacy in their communities. The bank has also joined the nationwide "Bank On" initiative in six of its banking markets, including Birmingham.[34] The bank has created a financial product in connection with its participation in Bank On initiatives, and anticipates expanding its involvement in the future. IBERIABANK also provides special loan programs that provide more flexible underwriting criteria for LMI borrowers, and loan closing assistance.

The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone does not provide a sufficient basis on which to conclude whether the bank excluded or denied credit to any group on a prohibited basis.[35] Fully evaluating a bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the loan application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The Board considered and placed great emphasis on information collected by, and on the assessment of, the Reserve Bank's fair lending examiners during their recent Fair Housing Act ("FHA") fair lending review at IBERIABANK. Examiners focused their review on IBERIABANK's residential mortgage lending practices, including a review of underwriting, pricing, redlining, and steering risks. Examiners determined that IBERIABANK has a satisfactory fair lending compliance management program that has sufficient policies and

[34] "Bank On" programs are voluntary partnerships between local or state government, financial institutions, and community-based organizations that provide low-income unbanked and under-banked individuals with free or low-cost starter or "second chance" bank accounts and access to financial education. In addition to the Birmingham market, IBERIABANK participates in the Bank On initiative in the Baton Rouge, Lafayette, Shreveport, Sarasota, and Southwest Florida banking markets.

[35] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, information on credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) is not always available from HMDA data.

procedures in place and is effectively overseen by the bank's board and senior management. The bank's internal control functions were considered independent from its business lines, with an appropriate separation of duties. The bank's fair lending training program was found to be effective, with procedures in place to identify, report, and resolve fair lending risks.

Examiners also conducted a redlining analysis, which considered the allegations made by the commenter, in nine of IBERIABANK's assessment areas, including New Orleans and Birmingham. Examiners conducted a four-pronged analysis for each assessment area, in which they considered the level of redlining risk based on a review of the appropriateness of the bank's CRA assessment area; the bank's lending record; the bank's branching pattern; and the bank's marketing and outreach efforts.

For the New Orleans assessment area, examiners reviewed the bank's 2011, 2012, and 2013 HMDA data. In majority minority census tracts, IBERIABANK's loan applications and loan originations generally exceeded or were comparable to the aggregate, confirming the information provided by the bank. Examiners also viewed favorably the bank's outreach efforts to majority minority areas in the market, and found that the bank's branching patterns exhibit low redlining risk. Overall, examiners concluded that the bank's redlining risk in the New Orleans assessment area is low.

For the Birmingham assessment area, examiners reviewed the bank's 2011, 2012, and 2013 HMDA data. In majority minority census tracts, IBERIABANK's loan applications and loan originations exceeded the aggregate in each year, in some cases significantly. Examiners found that the bank's lending pattern is closely aligned with the location of its branches, and that its HMDA lending is clustered in the center of the assessment area where the majority minority tracts are concentrated. Overall, examiners concluded that the bank's redlining risk in the Birmingham assessment area is low.

IBERIABANK's Fair Lending Program. IBERIABANK has established policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations, and these are considered satisfactory from a supervisory perspective.

The bank's Compliance Department is responsible for establishing and maintaining the bank's fair lending policy and managing its fair lending compliance program. The Compliance Department, together with other business units, identifies, plans for and implements new and revised regulations; evaluates new and existing products; develops and updates policies and procedures; reviews advertising and marketing material and disclosures; identifies compliance risks and assists with risk mitigation; assists with internal compliance audits and regulatory examinations; and develops, coordinates, and oversees the bank's compliance training program, which is required for all staff, management, and board members.

The Compliance Department conducts an annual global risk assessment that identifies and measures risk inherent in the bank's lending processes and determines the appropriate controls and monitoring necessary to mitigate those risks. The bank uses software to conduct statistical reviews and analyses that generally include focal point analysis, regression analysis, comparative file reviews, mapping, and redlining analyses. These analyses, which are conducted separately for HMDA data, credit cards, small business loans, and other products, include data points such as credit scores, loan-to-value ratios and debt-to-value ratios. Pricing- and underwriting-override reviews are also analyzed to determine whether individuals' protected class attributes affect the ability to receive an override.

IBERIABANK maintains a secondary review process for all loan denials. The second review is conducted to ensure that the bank's lending standards are applied fairly and uniformly to all applicants, that all possible avenues of approval have been explored prior to formal denial, and that the application was not denied based on the applicant's race, sex, sexual orientation, color, national origin, religion, age, marital status, disability or other prohibited basis. The second review is conducted by an underwriter within 10 days of the original loan denial, and the denial and second review are both documented in the loan file. If the second review concludes that the applicant qualifies for the loan or there may be alternative loan options, the application is redirected for further processing.

The Compliance Department also conducts reviews analyzing the policies governing the bank's lending activities and the use and appropriateness of its loan products. The analysis includes a review to determine whether the policies and procedures could result in lending discrimination across the bank's lending areas and whether the policies and procedures provide consistency throughout the application and credit approval process.

C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

IBKC represents that the proposal would provide customers of the combined organization access to an expanded branch network and would offer additional or expanded services to current Florida Bank customers, including expanded internet and mobile banking services and customer service availability. The combined organization would also offer consumer loan and retail deposit products not currently offered to Florida Bank customers. Several of these loan products are specifically targeted to LMI customers, including home improvement loans, credit builder loans, and expanded home mortgage options, including FHA and VA product lines and other low down payment programs targeted to first-time homebuyers. The bank would also offer an expanded line of low-cost retail deposit account options, including a "second chance" deposit account designed to provide an entry-level account for unbanked and underbanked individuals.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by IBERIABANK, confidential supervisory information, and the public comment on the proposal. Based on the Board's evaluation of the HMDA data, evaluation of the lending operations and compliance programs of IBERIABANK and Florida Bank, review of examination reports, and all the facts of record, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a

proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[36]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[37] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[38]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, IBERIABANK would have approximately $16 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger resulting in a firm with less than $25 billion in consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Establishment of Branches

IBERIABANK has applied under section 9 of the FRA to establish branches at the current branch locations of Florida Bank. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA.[39] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

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[36] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

[37] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[38] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

[39] 12 U.S.C. § 322; 12 CFR 208.6. Specifically, the Board has considered IBERIABANK's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. In addition, upon consummation of the proposed transaction, IBERIABANK's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved.[40] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by IBKC and IBERIABANK with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter, unless such period is extended for good cause by the Board or the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective February 13, 2015.

Voting for this action: Chair Yellen, Governors Tarullo, Powell, and Brainard. Absent and not voting: Vice Chairman Fischer.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Hillister Enterprises, II, Inc.
Beaumont, Texas

Umphrey II Family Limited Partnership
Beaumont, Texas

CBFH, Inc.
Orange, Texas

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2015–02 (January 15, 2015)

CBFH, Inc. ("CBFH"), Orange, and its top-tier and immediate parent companies, Hillister Enterprises, II, Inc. ("Hillister") and Umphrey II Family Limited Partnership ("Umphrey"), both of Beaumont, all of Texas (collectively, "Applicants"), have requested

[40] A commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire MC Bancshares, Inc. ("MC Bancshares") and thereby indirectly acquire its subsidiary, Memorial City Bank, both of Houston, Texas. Under the proposal, MC Bancshares would be merged into CBFH, and Memorial City Bank would be merged into CBFH's wholly owned subsidiary, CommunityBank of Texas, National Association ("CommunityBank"), Beaumont, Texas; CBFH and CommunityBank would be the surviving entities.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (79 *Federal Register* 21930 (2014)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

CBFH, with consolidated assets of approximately $2.6 billion, is the 295th largest insured depository organization in the United States, controlling less than 1 percent of nationwide deposits. CBFH controls CommunityBank, which operates only in Texas. CommunityBank is the 28th largest insured depository institution in Texas, controlling approximately $2.2 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[4]

MC Bancshares, with consolidated assets of approximately $289 million, controls less than 1 percent of nationwide deposits. MC Bancshares controls Memorial City Bank, which operates only in Texas. Memorial City Bank is the 206th largest insured depository institution in Texas, controlling approximately $259 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, CBFH would become the 278th largest depository organization in the United States, with consolidated assets of approximately $2.8 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. In Texas, CBFH would become the 26th largest depository organization, with total deposits of approximately $2.5 billion.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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.[5]

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1 12 U.S.C. § 1842. Hillister and Umphrey do not have any operations, employees, or investments other than the controlling ownership of CBFH.

2 The merger of Memorial City Bank into CommunityBank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") under the Bank Merger Act. 12U.S.C.§1828(c). The OCC approved the bank merger on May 22, 2014 (Letter from Karen H. Bryant, Deputy Director for District Licensing, Southern District, to Patrick R. Hanchey, Bracewell and Giuliani LLP (May 22, 2014)). On May 20, 2014, a commenter protested the approval of the holding company application but not the bank merger application.

3 12 CFR 262.3(b).

4 State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, cooperative banks, industrial banks, and savings banks.

5 12 U.S.C. § 1842(c)(1).

CommunityBank and Memorial City Bank compete directly in the Houston, Texas banking market (the "Houston banking market").[6] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") controlled by Applicants and MC Bancshares;[7] the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[8] and other characteristics of the market.

Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the combined organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

In this case, CBFH and CommunityBank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction involves the acquisition and merger of a bank holding company and its subsidiary bank and is structured as a cash transaction. The asset quality, earnings, and liquidity of CommunityBank and Memorial City Bank are consistent with approval, and CBFH appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. Based on its review of the record, the Board finds that the CBFH organization has sufficient financial resources to effect the proposal.[9]

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[6] The Houston banking market includes Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller counties.

[7] Deposit, market share, and ranking data are as of June 30, 2014, and, unless otherwise noted, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group* , 75 *Federal Reserve Bulletin* 386 (1989), and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 52 (1991).

[8] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

[9] The aggregate cash consideration to be paid in connection with the proposal is approximately $56.4 million, and CBFH has sufficient resources to fund the proposed transaction.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of CBFH, MC Bancshares, and their insured depository institution subsidiaries, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

CBFH, MC Bancshares, and their insured depository institution subsidiaries are each considered to be well managed. CBFH's existing risk-management program and its directorate and senior management are considered to be satisfactory. The senior executive officers of CBFH and MC Bancshares have substantial knowledge of and experience in the banking sector.

The Board also has considered CBFH's plans for implementing the proposal. CBFH has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. CBFH would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, CBFH's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and CBFH is proposing to integrate the MC Bancshares organization's existing management and personnel in a manner that augments CommunityBank's management.[10]

CBFH's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of CBFH and MC Bancshares in combatting money-laundering activities, are consistent with approval.

Convenience and Needs 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 Community Reinvestment Act ("CRA").[11] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[12] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[13]

The Board has considered all the facts of record, including reports of examination of the CRA performance of CommunityBank and Memorial City Bank, other information provided by Applicants, confidential supervisory information, and the public comment

[10] On consummation, five individuals currently serving as management officials of the MC Bancshares organization will be added to CommunityBank's management team.

[11] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[12] 12 U.S.C. § 2901(b).

[13] 12 U.S.C. § 2903.

received on the proposal. The Board received one comment that objected to the proposal, alleging both that the proposed acquisition does not have clearly demonstrated public benefits and that CommunityBank is not meeting the needs of LMI and minority communities in the Beaumont-Port Arthur Metropolitan Statistical Area ("Beaumont-Port Arthur MSA") as reflected in 2012 HMDA data.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[14] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[15] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of CommunityBank. CommunityBank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the OCC in January 2013 ("CommunityBank Evaluation"). CommunityBank received a "high satisfactory" rating for the Lending Test and "low satisfactory" ratings for both the Investment Test and the Service Test.[16]

With respect to the Lending Test, examiners observed that CommunityBank's primary lending focus was on commercial and small business loans[17] and found that the bank's small business lending activity in both the Beaumont and Houston assessment areas was good. The bank had good performance in funding small loans (less than or equal to $1 million) to businesses in moderate-income census tracts for the Beaumont assessment area and excellent performance in the Houston assessment area.

Examiners noted that CommunityBank's overall distribution of home purchase loans by census-tract income level was adequate. In the Houston assessment area, CommunityBank had adequate to good performance in LMI census tracts with respect to originations of home purchase, improvement, and refinance loans. In the Beaumont assessment area, examiners noted areas for improvement in originations for home purchase and home improvement loans to borrowers located in LMI census tracts.

Examiners did not identify any unexplained or conspicuous gaps in geographic distribution of CommunityBank's home mortgage and small business loan products. Further, examiners noted that the bank's community development lending, which included affordable hous-

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[14] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[15] 12 U.S.C. § 2906.

[16] The evaluation was prepared using the interagency evaluation procedures for large institutions. The evaluation period for the Lending Test was from January 1, 2009, through December 31, 2011, except for community development loans. The Investment Test, the Service Test, and the review of community development loans covered the period from July 13, 2009, through January 28, 2013. The evaluation included a full-scope review of both the Beaumont and Houston assessment areas and a limited-scope review of the Beaumont Non-Metropolitan Statistical Area.

[17] At the time of the evaluation, commercial real estate loans and commercial loans represented approximately 70 percent of CommunityBank's loan portfolio. One- to four-family and multifamily lending represented 12 percent of the portfolio, and construction and land development loans represented 11 percent. Consumer lending represents 4.7 percent. All other loan originations accounted for less than 1 percent of the bank's loan portfolio.

ing loans that benefited low- and moderate-income families in both assessment areas, was a positive contributing factor to examiners' overall assessment of the Lending Test.

With respect to the Investment Test, OCC examiners found that CommunityBank's level of qualified community development investments was adequate in both the Beaumont and Houston assessment areas. Examiners noted that qualifying investments helped fund several programs, including affordable housing, social and health services, and economic development. Examiners noted room for improvement by the bank in making more complex and innovative investments and in making investments in the Houston assessment area.

With respect to the Service Test, OCC examiners concluded that CommunityBank demonstrated low satisfactory performance in providing community development services in the Beaumont and Houston assessment areas. Nevertheless, examiners deemed the bank's delivery systems to be reasonably accessible to businesses and individuals of different income levels and different geographies in the assessment areas. In addition, examiners noted that CommunityBank's efforts demonstrated a commitment to community development through its provision of technical assistance on financial and banking-related matters to community groups in the Beaumont assessment area.

Memorial City Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC") in February 2013 ("Memorial City Bank Evaluation").[18]

CRA Performance of Memorial City Bank. The evaluation assessed the following performance factors: loan-to-deposit ratio, lending concentration inside the assessment area, borrower profile loan distribution, geographic loan distribution, and response to consumer complaints. FDIC examiners concluded that Memorial City Bank demonstrated a reasonable record regarding its average net loan-to-deposit ratio; an adequate record of concentrating its loans inside its assessment area, which was supported by an adequate record of small business loans; a reasonable record regarding its borrower profile loan distribution, based on its reasonable record regarding small business loans; and could improve its record of geographically distributing its loans, particularly with respect to the dispersion of small business loans throughout the assessment area. FDIC examiners also noted that the bank did not receive any CRA-related complaints since the previous evaluation.

B. Fair Lending Record and Public Comment on the Proposal

The Board has considered the record of CommunityBank in complying with fair lending and other consumer protection laws. As part of this evaluation, the Board reviewed the CommunityBank and the Memorial City Bank Evaluations and considered the comment on the application, the Applicants' response, and the OCC's view on CommunityBank's record of performance under the fair lending laws. The Board considered CommunityBank's fair lending policies and procedures and confidential supervisory information, and conferred with the OCC concerning the comment received on the proposal.

The commenter expressed concerns, based on 2012 HMDA data, that CommunityBank was not meeting the credit needs of LMI and minority communities in the Beaumont-Port Arthur MSA. In particular, the commenter alleged that, compared to the aggregate of all lenders in the Beaumont-Port Arthur MSA, CommunityBank made a lesser proportion of

[18] The Memorial City Bank Evaluation was conducted using Small Bank CRA evaluation procedures in Memorial City Bank's single assessment area, which comprises the majority of the western portion of Harris County in the Houston-Sugar Land-Baytown MSA in Texas. The evaluation covered the period from January 19, 2010, through February 4, 2013.

prime home mortgage loans to African American, Hispanic, and LMI borrowers and borrowers in LMI census tracts.[19]

Applicants contend that HMDA lending data do not fairly represent CommunityBank's CRA performance because home mortgage loans make up only approximately 14 percent of the bank's lending activities, while 70 percent of its lending is to small and medium-sized businesses. Applicants also represent that CommunityBank has not received any consumer complaints, comments, or other allegations from local community-based organizations regarding the bank's CRA performance or non-compliance with fair lending laws or regulations.

Applicants also note that CommunityBank engaged in marketing campaigns in 2013 and 2014 to reach historically underserved demographics for business and mortgage lending in the Houston and Southeast Texas markets served by the bank.[20] The bank added several loan products to assist in serving LMI and rural markets in the first half of 2014. In addition, CommunityBank has purchased newly originated LMI whole-loan mortgages.

The Board notes that the CRA does not require insured depository institutions to engage in any particular type of credit activity, and instead encourages institutions to serve the credit needs of the entire community. The Board has recognized that institutions may meet these responsibilities by providing credit to small businesses throughout the relevant community.

Nevertheless, the Board is concerned when HMDA data for an institution may indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether CommunityBank excluded or denied credit to any group on a prohibited basis.[21]

Because of the limitations of HMDA data, the Board also has considered other information, including examination reports that provide on-site evaluations of compliance by CommunityBank with fair lending laws and regulations. The Board has considered that CommunityBank's HMDA data were reviewed and considered by examiners in the OCC's

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[19] The commenter also asserted that CommunityBank's lending activities did not reflect an appropriate balance between prime and high-priced loans. In response, Applicants explained that CommunityBank had formed a mortgage department to serve commercial lending clients that requested residential mortgages, rather than referring such clients to competitors, and that high-priced mortgage loans had resulted from the fact that the bank previously had offered only one mortgage loan product that it retained in its loan portfolio ("portfolio product"), which CommunityBank stopped offering in August 2013. Currently, CommunityBank offers two mortgage portfolio products that are designed not to generate high-priced loans. Applicants also indicated that they do not intend to allow these products to become Higher Priced Covered Transactions (i.e., high-priced loans) under the Consumer Financial Protection Bureau's Ability-to-Repay and Qualified Mortgage regulations.

[20] The campaigns included direct mail and print ads in publications that specifically targeted Hispanic and African-American communities.

[21] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than do other institutions, and do not provide a basis for an independent assessment of an applicant's creditworthiness. In addition, data on credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

January 2013 CRA performance evaluation. This evaluation by examiners found no evidence of discriminatory lending practices.

The Board also has consulted with the OCC with respect to CommunityBank's record of fair lending performance since the CommunityBank Evaluation. In this regard, since its January 2013 CRA examination, CommunityBank has undertaken a number of measures to increase its home mortgage lending to LMI and minority individuals and communities, including direct-mail marketing campaigns to these communities promoting the bank's home mortgage products, print advertisements in publications targeting Hispanic and African American communities, and the development of a new "Community Development Home Improvement Loan" product designed to meet the needs of LMI homeowners. In addition, as noted above, the bank replaced a portfolio product that generated higher-priced mortgage loans with portfolio home mortgage products that are designed not to generate higher-priced loans. The bank also has augmented its consumer compliance, including its fair lending, infrastructure. For example, the bank recently hired a chief compliance officer with extensive large bank experience. In addition, the bank has approved or hired additional experienced compliance officers.

CommunityBank's Fair Lending Program. Applicants indicate that CommunityBank has instituted a consumer compliance and fair lending program, with policies, procedures, and practices to ensure compliance with fair lending laws and that credit standards and polices are fair and responsive to all applicants. This includes a second-level review process for all approvals, declines, and counteroffers related to all consumer loans and all declined mortgage loans. In addition, the bank's policies require all consumer loans to have standardized terms, underwriting criteria, and pricing, with no discretion by loan officers to vary the terms. Applicants indicated that any exceptions must be justified, documented, and approved by the bank's fair lending officer, and the exceptions are monitored and reported to the board of directors on a quarterly basis.[22] CommunityBank's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. The commenter alleged that the proposed acquisition does not have clearly demonstrated public benefits.

Applicants represent that the combined organization would have the ability to deliver a more in-depth menu of products and services to customers currently served by Memorial City Bank, thus providing customers greater convenience through access to a broader range of financial products and services. Memorial City Bank's customers also would have access to CommunityBank's call center and mobile applications, which would increase access to banking services; significantly larger branch and ATM networks; and a larger legal lending limit. Moreover, Applicants state that the proposal would provide opportunities to achieve cost savings for the combined organization by consolidating redundant functions, including retail credit underwriting and data processing. Applicants also note that the combined organization would be able to provide customers with banking benefits through more efficient and cost-effective provisions of banking services and would be able

[22] Mortgage loan exceptions, in particular, are monitored and reported to the Directors Loan Committee quarterly.

to dedicate additional resources to meeting the banking needs of Memorial City Bank customers.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, information provided by Applicants, confidential supervisory information, and the public comment on the proposal. Based on the Board's review of examination reports and the CRA records of the insured depository institutions involved in this transaction, and on its consultations with the OCC, the Board concludes that the convenience and needs factor, including the CRA records of the institutions involved, is consistent with approval of the application. The Board encourages CommunityBank to continue to seek opportunities to assist in meeting the credit needs of the communities it serves.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[23]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[24] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[25]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, CBFH would have approximately $2.8 billion in consolidated assets, and by any of a number of alternative measures of firm size, CBFH would not be likely to pose systemic risks. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or

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[23] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

[24] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[25] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[26] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by the Applicants with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter unless such period is extended for good cause by the Board or the Federal Reserve Bank of Dallas acting pursuant to delegated authority.

By order of the Board of Governors, effective January 15, 2015.

Voting for this action: Chair Yellen and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

KSRS, LLC
Osceola, Missouri

Order Approving the Formation of a Bank Holding Company
FRB Order No. 2015–12 (March 23, 2015)

KSRS, LLC ("KSRS"), Osceola, Missouri, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to become a bank holding company by retaining 32.11 percent of the voting shares of Bancorp II, Inc. ("Bancorp"), Kansas City, Missouri, and thereby indirectly retaining control of its subsidiary bank, Citizens Community Bank, Pilot Grove, Missouri.

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[26] The commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a publichearing on an application unless the appropriate supervisory authorities forthe bank tobeacquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

[1] 12 U.S.C. § 1842(a)(1).

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 32956 (2014)).[2] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

KSRS is a newly organized limited liability company formed for the purpose of acquiring control of Bancorp. Bancorp, with consolidated assets of approximately $106.2 million, is the 4,455th largest insured depository organization in the United States, controlling approximately $94.9 million in deposits.[3] Bancorp operates only in Missouri. Citizens Community Bank is the 186th largest insured depository institution in Missouri, controlling deposits of approximately $94.9 million, which represent less than 1 percent of total deposits of insured depository institutions in that state.[4]

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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.[5]

The Department of Justice has conducted a review of the potential competitive effects of the proposal and advised the Board that it does not believe that consummation of the proposal is likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

KSRS did not previously control a depository institution and does not currently control any other depository institution. Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board also evaluates the effect of the transaction on the financial condition of the applicant, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future

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[2] 12 CFR 262.3(b).

[3] Asset and nationwide deposit-ranking data are as of December 31, 2014, unless otherwise noted.

[4] State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

[5] 12 U.S.C. § 1842(c)(1).

prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

The Board also has considered the managerial resources of the applicant and the public comment received on the proposal. The Board received a comment objecting to the proposal principally on grounds involving the manner in which KSRS acquired the Bancorp shares. KSRS acquired from another financial institution a defaulted note (the "Note") on which the commenter was the obligor, secured by 32.11 percent of Bancorp shares. The commenter also opposed the proposal on several other grounds related to alleged actions of KSRS and its principals. In particular, the commenter alleged that, prior to acquiring the Note, the principals of KSRS violated the Change in Bank Control Act ("CIBC Act")[6] when, acting in concert with a group of investors in 2011, they acquired shares of Bancorp without regulatory approval.[7] The commenter also argued that one of the principals of KSRS breached his fiduciary duties to Bancorp by using information gained in his capacity as a Bancorp director to purchase the Note.[8]

In considering the managerial resources of the applicant, the Board also considered information provided by the applicant. As an initial matter, the Board notes that an acquisition of a loan in default that is secured by voting securities of a state member bank or bank holding company is considered an acquisition of those securities.[9] KSRS represented that its principals were unaware that acquiring the Note required prior approval of the Federal Reserve under the BHC Act or the CIBC Act. KSRS stated that its principals thought, based on advice received from a bank regulatory consultant, that regulatory approval would only be required prior to directly acquiring Bancorp shares.

After acquiring the Note, KSRS conducted a public auction for the Bancorp shares in which it was the winning bidder. Under the terms of the auction, the winning bidder cannot consummate the transaction until receiving regulatory approval to acquire the shares. Accordingly, KSRS filed the BHC Act application following the auction.

KSRS represents that its principal acquired information about the Note in his personal capacity and that he did not use his position as a director of Bancorp to benefit KSRS in the transaction. Further, KSRS represents that, prior to acquiring the Note, its principal informed Bancorp's shareholders and directors about the opportunity to purchase the Note, and they declined the opportunity.

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6 12 U.S.C. § 1817(j).

7 A person or persons acting in concert must seek the Board's approval prior to acquiring control of a state member bank or bank holding company. *See* 12 CFR 225.41(c)(1). The Board considers an acquisition of 25 percent or more of any class of voting securities to be an acquisition of control requiring prior approval, and also presumes that there is an acquisition of control when a person or persons acting in concert acquire 10 percent or more of any class of voting securities of an institution and no other person will own, control, or hold the power to vote a greater percentage of any class of that institution's voting securities. *See* 12 CFR 225.41(c)(1) and (c)(2)(ii). Based on the evidence in the record, even assuming the various parties identified by the commenter were a group acting in concert in 2011, this group in the aggregate owned less than 25 percent of the voting securities of Bancorp and another shareholder owned a greater percentage of Bancorp's shares. Thus, the control definition and presumptions would not appear to have been triggered. In light of the evidence in the record and the Board's rules and presumptions of control, there is insufficient evidence to conclude that the principals of KSRS violated the CIBC Act in 2011.

8 The commenter also alleged that the auction that KSRS held to sell the Bancorp shares securing the Note was not conducted in a commercially reasonable manner. KSRS represents that it appropriately exercised its rights under the terms of the Note and conducted the auction in accordance with state law. The commenter also claimed that KSRS violated the terms of a shareholder agreement when conducting the auction and that KSRS's purchase of the Note injured shareholders by preventing the sale of Bancorp to another potential purchaser. These allegations relate to private disputes involving state contract and corporate law and may be adjudicated by a court with competent jurisdiction. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

9 12 CFR 225.41(e).

The Board has also considered documents concerning the manner in which KSRS acquired the Note and conducted the auction, disclosures made by KSRS to Bancorp's board of directors and shareholders regarding the Note and the auction, and state law requirements. The Board also considered the regulatory guidance received by KSRS's principals, and commitments made by KSRS to the Board. Further, the Board has considered confidential supervisory information regarding KSRS and Bancorp, its supervisory experiences with the principals of KSRS and their records of compliance with applicable banking and anti-money-laundering laws, as well as KSRS's plan for the acquisition. KSRS has committed to seek advice from appropriate regulatory agencies and third-party banking or professional advisors prior to making any future investments in any other bank or bank holding company stock.

The Board has reviewed the examination records of Bancorp and Citizens Community Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

Bancorp and Citizens Community Bank are both considered to be well managed. Bancorp's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Bancorp have substantial knowledge of and experience in the banking and financial services sectors. KSRS represents that it has no plans to effect significant changes in management at either Bancorp or Citizens Community Bank.

Based on all the facts and circumstances, the Board concludes that managerial resources are consistent with approval. In addition, KSRS's managerial and operational resources, as well as the supervisory record of Bancorp and Citizens Community Bank, provide a reasonable basis on which to conclude that future prospects are consistent with approval.

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, as well as the records of effectiveness of Bancorp and Citizens Community Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs 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 Community Reinvestment Act ("CRA").[10] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[11] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[12]

[10] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.
[11] 12 U.S.C. § 2901(b).
[12] 12 U.S.C. § 2903.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Citizens Community Bank, other information provided by KSRS, and confidential supervisory information.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisor of the CRA performance records of that institution.[13] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[14] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

Citizens Community Bank was assigned an overall rating of "satisfactory" at its most recent CRA performance evaluation by the FDIC in March 2014.[15]

CRA Performance of Citizens Community Bank. Examiners determined that the bank's average quarterly net loan-to-deposit ratio was reasonable given the bank's asset size, financial condition, and assessment area credit needs. In addition, examiners found that a majority of loans sampled were made within the assessment area, illustrating a reasonable commitment to meeting the credit needs of the local community. Examiners also noted that the bank's geographic distribution of lending reflected a reasonable dispersion throughout the assessment area. Further, the bank's lending distribution to borrowers reflected excellent penetration among farm operations of different sizes and individuals of different income levels, as well as reasonable penetration among commercial businesses of different sizes.

B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

KSRS represents that this proposal allows Bancorp and Citizens Community Bank to continue to be locally controlled, and that the acquisition of the Note stabilized ownership of Bancorp. Further, KSRS has no plans to effect significant changes in management at either organization. KSRS believes that such continuity in ownership and management is in the best interests of the communities served by Citizens Community Bank. Further, KSRS represents that Citizens Community Bank has historically received satisfactory ratings during its CRA examinations and that it does not anticipate undertaking any new programs, activities, or products that would undermine its consistently satisfactory ratings.

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[13] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

[14] 12 U.S.C. § 2906.

[15] Citizens Community Bank's CRA evaluation was conducted using Small Institution CRA Examination Procedures, and examiners reviewed the bank's lending activity from December 8, 2008, through March 10, 2014.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the reports of examination of the CRA record of the institution involved, information provided by KSRS, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Citizens Community Bank, review of examination reports, consultations with other agencies, and all the facts of record, the Board concludes that the convenience and needs factor, including the CRA record of the insured depository institution involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[16]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[17] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[18]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Bancorp would have approximately $106.2 million in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger or acquisition resulting in a firm with less than $25 billion in consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board concludes that considerations relating to financial stability are consistent with approval.

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[16] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

[17] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[18] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by KSRS with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective March 23, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Simmons First National Corporation

Pine Bluff, Arkansas

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2015–03 (February 12, 2015)

Simmons First National Corporation ("Simmons"), Pine Bluff, Arkansas, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with Community First Bancshares, Inc. ("Community First"), and thereby indirectly acquire its subsidiary bank, First State Bank ("First Bank"), both of Union City, Tennessee.[2] Following the proposed acquisition, First Bank, a state nonmember bank, would be merged into Simmons' subsidiary bank, Simmons First National Bank ("Simmons Bank"), Pine Bluff, Arkansas.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 43047 (2014)).[4] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Simmons, with consolidated assets of approximately $4.8 billion, is the 185th largest depository organization in the United States, controlling approximately $4.0 billion in consolidated deposits.[5] Simmons operates in Arkansas, Kansas, and Missouri.

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1 12 U.S.C. § 1842.

2 Simmons has also requested the Board's approval to merge with Liberty Bancshares, Inc. ("Liberty"), Springfield, Missouri. *See Liberty Bancshares, Inc.*, FRB Order 2015-04 (February 12, 2015).

3 The consolidation of First Bank into Simmons Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

4 12 CFR 262.3(b).

5 Asset and nationwide deposit-ranking data are as of June 30, 2014, and are updated to reflect Simmons' acquisition on September 1, 2014, of Delta Trust and Banking Corporation, formerly headquartered in Little Rock, Arkansas, unless otherwise noted.

Community First, with consolidated assets of approximately $2.0 billion, is the 367th largest depository organization in the United States, controlling approximately $1.6 billion in consolidated deposits. Community First operates only in Tennessee.

On consummation of the current proposals,[6] Simmons would become the 125th largest depository organization in the United States, with consolidated assets of approximately $7.8 billion, which represent less than 0.1 percent of the total assets of insured depository institutions in the United States. Simmons would control total deposits of approximately $6.4 billion. In Tennessee,[7] Simmons would become the 13th largest depository organization, controlling deposits of approximately $1.6 billion, which represent 1.3 percent of the total deposits of insured depository institutions in that state.[8]

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[9] Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[10] In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[11]

For purposes of the BHC Act, the home state of Simmons is Arkansas and Community First's home state is Tennessee.[12] Simmons is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA") rating.[13] Tennessee has no minimum age requirement, and Community First has been in existence for more than five years. On consummation of the proposed transactions, Simmons would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control approximately 1 percent of the total amount of deposits of insured depository institutions in Community First's home state, Tennessee, and there are no states in which Simmons and Community First have overlapping banking operations. Accordingly, in light

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[6] Pro forma data include this request to merge with Community First and Simmons' separate request to merge with Liberty. *See Liberty Bancshares, Inc*., *infra* note 2.

[7] State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and banks.

[8] Simmons' deposit-rankings in Arkansas, Kansas, and Missouri would remain unchanged. Simmons' separate request to merge with Liberty does not involve any assets or deposits controlled in Tennessee.

[9] 12 U.S.C. § 1842(d)(1)(A).

[10] 12 U.S.C. § 1842(d)(1)(B).

[11] 12 U.S.C. § 1842(d)(2)(A), (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

[12] *See* 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

[13] 12 U.S.C. §§ 2901–2908.

of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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.[14]

Simmons Bank and First Bank do not compete directly in any banking market.[15] Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. Simmons and Simmons Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as an exchange of shares.[16] The asset quality, earnings, and liquidity of Simmons Bank and First Bank are consistent with approval, and Simmons appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Simmons, Community First, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank

[14] 12 U.S.C. § 1842(c)(1).

[15] The subsidiary depository institutions of Community First and Liberty also do not compete directly in any banking market. *See Liberty Bancshares, Inc.*, *infra* note 2.

[16] As part of the proposed transaction, each share of Community First common stock would be exchanged for 17.8975 shares of Simmons common stock.

supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

Simmons, Community First, and their subsidiary depository institutions are each considered to be well managed. Simmons' existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Simmons have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Simmons' plans for implementing the proposal. Simmons is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.[17] Simmons would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Simmons' and Community First's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Simmons is proposing to integrate First Bank's existing management and personnel in a manner that augments Simmons' management.[18]

Simmons' supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Simmons and Community First in combatting money-laundering activities, are consistent with approval.

Convenience and Needs 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.[19] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[20] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[21]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Simmons Bank and First Bank, data reported by Simmons Bank and

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[17] Simmons plans to operate First Bank as a separate entity until September 2015, at which time Simmons will integrate First Bank into Simmons Bank.

[18] On consummation, Simmons will increase from 9 to 11 the number of seats on its board of directors. Nine directors currently serving on Simmons' board of directors and two directors nominated by Community First's board of directors will serve on the board of the combined organization. On consummation of its separate request to merge with Liberty, Simmons will further increase the number of seats on its board of directors to 12, and the additional director will be nominated by Liberty's board of directors. The chairman and chief executive officer of Simmons will continue to serve in his role following the merger. The current president and chief executive officer of both Community First and First Bank will continue to serve in his role at First Bank following the merger and will become a regional chairman of Simmons.

[19] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[20] 12 U.S.C. § 2901(b).

[21] 12 U.S.C. § 2903.

First Bank under the Home Mortgage Disclosure Act ("HMDA"),[22] other information provided by Simmons, confidential supervisory information, and the public comment received on the proposal. The Board received one comment that objected to the proposal on the basis of Simmons Bank's fair lending record as reflected in 2012 HMDA data and Simmons Bank's disposition of branches in connection with previous acquisitions.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[23] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[24] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Simmons Bank. Simmons Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the OCC in January 2013 ("Simmons Bank Evaluation"). Simmons Bank received "low satisfactory" ratings for both the Lending Test and Investment Test and a "high satisfactory" rating for the Service Test.[25] Examiners noted that Simmons Bank had a good level of community development services in the states in which the bank maintained an ongoing presence.[26] The Board has consulted with the OCC regarding the Simmons Bank Evaluation.

Examiners found that the bank's overall lending activity was adequate and reflected adequate responsiveness to its assessment area credit needs. Simmons Bank's distribution of home mortgage loans by geography and to borrowers of different income levels was found to be adequate. In addition, the bank's distribution of small business loans to businesses of different sizes was considered adequate.

In evaluating the bank's performance under the Investment Test, examiners found that Simmons Bank had an overall adequate level of qualified community development investments. Examiners noted that there was an adequate level of qualified investments based on the investment opportunities compared to the dollar volume of investments the bank made in its assessment areas.

With respect to the bank's performance under the Service Test, examiners noted that branch locations were accessible to LMI geographies and individuals of different income levels. Examiners also noted that the institution provided a good level of community development services in the assessment areas in which the bank has maintained an ongoing presence. In addition, examiners found that Simmons Bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems to LMI geographies or LMI individuals.

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[22] 12 U.S.C. § 2801 *et seq*.

[23] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[24] 12 U.S.C. § 2906.

[25] The Simmons Bank Evaluation was conducted using Large Bank CRA evaluation procedures. The evaluation period for data reported under the Home Mortgage Disclosure Act was 2009 through 2011, and for community development loans, investments, services, and retail services was September 30, 2008, through January 2, 2013.

[26] The Simmons Bank Evaluation included full-scope reviews of at least one assessment area within each state in which Simmons Bank had an office. The states reviewed were Arkansas, Kansas, and Missouri.

CRA Performance of First Bank. First Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC") in March 2013 ("First Bank Evaluation"). First Bank received a "high satisfactory" rating for each of the Lending Test, Investment Test, and the Service Test.[27]

In evaluating the bank's performance under the Lending Test, examiners concluded that First Bank's lending levels reflected good responsiveness to its assessment area's credit needs. Examiners found that the majority of the bank's loans were originated in the overall assessment area, and the geographic distribution of its loans was good. Examiners noted that First Bank's distribution of loans by income reflected good penetration among retail customers of different income levels. Examiners also found First Bank to be a leader in community development loans and that the bank made extensive use of innovative and flexible lending practices to serve the credit needs of its assessment area.

In evaluating the bank's performance under the Investment Test, examiners found that the bank had a significant level of qualified community development investments and grants in its assessment area. First Bank's community development activities represented very good responsiveness to community needs. In evaluating the bank's performance under the Service Test, examiners noted that First Bank's branch and ATM network did not vary in a way that inconvenienced portions of the assessment area, particularly LMI geographies. The First Bank Evaluation noted that the bank provided a relatively high level of community development services throughout its assessment areas and that the bank was one of only nine banks to participate in the FDIC's Safe Deposit Accounts Pilot Program.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Simmons Bank and First Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Simmons Bank and First Bank Evaluations, assessed Simmons Bank's and First Bank's HMDA data, and considered the public comment on the application as well as other agencies' views on Simmons Bank's record of performance under fair lending laws. The Board also considered Simmons Bank's fair lending policies and procedures.

Review of HMDA Data and Branch Closings. The Board reviewed Simmons Bank's 2012 and 2013 HMDA data, as well as the bank's preliminary 2014 HMDA data through July 31, 2014, for the specific market areas addressed in the public comment (Little Rock, Arkansas, and Kansas City, Missouri). Within those markets, the Board focused its review on data related to home purchase, refinancing, and home improvement loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, i.e., African Americans and Hispanics. In addition, the Board reviewed the bank's record of branch closings that followed previous acquisitions.

Simmons Bank's HMDA Data and Branch Closings. The commenter expressed concerns that, based on 2012 HMDA data, Simmons Bank is not meeting the credit needs of minority individuals in the communities served by the bank. The commenter alleges that there are inaccuracies in Simmons Bank's data reporting and that the bank is disguising potential violations of provisions of HMDA and the Equal Credit Opportunity Act. In particular, the commenter asserts that Simmons Bank is prescreening minority borrowers, citing the HMDA data in two market areas that for some loan types reflect a small number of denials.

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[27] The First Bank Evaluation was conducted using Large Bank CRA evaluation procedures in First Bank's assessment areas of Nashville, Jackson, Memphis, Knoxville, and non-metropolitan areas, all in Tennessee. Examiners reviewed data reported by First Bank from September 8, 2009, to March 25, 2013.

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether the bank excluded or denied credit to any group on a prohibited basis.[28] Fully evaluating a bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The Board's review of Simmons Bank's HMDA data confirmed that the bank reported relatively high origination rates in the Little Rock and Kansas City market areas for government-secured mortgage loans for both nonminority and minority applicants.[29] The same HMDA data, however, show ordinary origination and denial rates when including all HMDA product categories. As such, the data are not consistent with evidence of prescreening.

Simmons provided information reflecting nondiscriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio) on home purchase and home improvement loans cited by the commenter. Simmons also provided the Board with detailed information on Simmons Bank's procedures and policies to prevent prescreening.

The Board has consulted with, and placed great emphasis on the views of, the OCC regarding its evaluation of Simmons Bank's compliance with fair lending laws and regulations. The Simmons Bank Evaluation included review of 2012 HMDA data, and, in January 2013, the OCC tested the accuracy of the bank's 2012 HMDA data. In February 2014, the OCC also conducted fair lending and compliance examinations of Simmons Bank. Based on its consultations with the OCC regarding these reviews, the Board concludes that the bank's fair lending management program and its compliance management program are consistent with approval of this proposal.

The commenter also alleges that Simmons has a business strategy of closing branches and reducing financial services, resulting in inconvenience to local communities. The Board analyzed the distribution of Simmons Bank's branches and the 2010 census data within the bank's assessment areas. The Board found that, of the bank's 112 branches, 20.6 percent are located in LMI census tracts. Of the population within Simmons Bank's assessment areas, 29.3 percent are in LMI geographies. As noted above, examiners on site believed that the branch locations of Simmons Bank provided a good level of services in the community and were readily accessible to individuals of different income levels.

Simmons has stated that Simmons Bank does not intend to close any branches in connection with the proposed transaction. Although the bank closed several branches in recent years, the bank has represented that the decisions were based on profitability analysis and

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[28] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, the data do not account for the possibility that an institution entered the assessment area shortly before the close of the reporting period, thereby creating an unrepresentative sample.

[29] Government-secured loans are those under programs of the Federal Housing Administration, Farm Service Agency, Rural Housing Service, or Department of Veterans Affairs.

proximity to other branches and that community impact was assessed prior to all closings. Further, the Board has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.[30] The Board notes that the OCC examiners found that Simmons Bank's opening and closing of branches had not adversely affected accessibility of its services in LMI geographies or to LMI individuals. The OCC will continue to review Simmons Bank's branch closing record in the course of conducting CRA performance evaluations.

Simmons' Fair Lending Program. Simmons has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk-management program includes written policies outlining the bank's responsibility for compliance with fair lending laws and regulations, provision for fair lending officers to serve within each of the bank's lending departments, and required annual fair lending training for applicable staff and the board of directors. Simmons also has a centralized underwriting procedure, an automated application process, a second review process, a documented exception process, and a standard pricing sheet.

C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

Simmons represents that the proposal would provide opportunities to achieve various operational efficiencies and economies of scale, which would benefit current and future customers of the combined organization through more efficient and cost-effective banking services. Simmons asserts that the transaction has the potential to benefit all aspects of Community First's operations, particularly its audit and loan review functions, online banking platform, and ATM systems. Simmons also states that the combined organization's larger lending limit would allow Simmons to better meet the lending needs of its corporate customers and more effectively compete for larger commercial customers.

Simmons states that the proposal would provide customers with an expanded network of over 112 branches in Arkansas, Kansas, and Missouri. Simmons notes that the combined organization would provide First Bank's customers with an expanded and more sophisticated range of products and services than First Bank currently offers, including an enhanced range of consumer services and deposit accounts.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Simmons, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the mortgage lending operations and compliance programs of Simmons Bank and First Bank, review of examination reports, consultations with other agencies, and all the facts of record, the Board believes that the conve-

[30] Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

nience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[31]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[32] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[33]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Simmons would have approximately $7.8 billion in consolidated assets and would not be likely to pose systemic risks.[34] The Board generally presumes that a merger resulting in a firm with less than $25 billion in consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[35] In reaching its conclusion, the Board has con-

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[31] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

[32] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[33] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

[34] Pro forma data include this request to merge with Community First and Simmons' separate request to merge with Liberty. *See Liberty Bancshares, Inc*., *infra* note 2.

[35] A commenter requested that the Board hold public hearings on the proposal. Section3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12CFR

sidered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Simmons with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis acting under delegated authority.

By order of the Board of Governors, effective February 12, 2015.

Voting for this action: Chair Yellen, Governors Tarullo, Powell, and Brainard. Absent and not voting: Vice Chairman Fischer.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Simmons First National Corporation
Pine Bluff, Arkansas

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2015–04 (February 12, 2015)

Simmons First National Corporation ("Simmons"), Pine Bluff, Arkansas, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with Liberty Bancshares, Inc. ("Liberty"), and thereby indirectly acquire its subsidiary bank, Liberty Bank, both of Springfield, Missouri.[2] Following the proposed acquisition, Liberty Bank, a state nonmember bank, would be merged into Simmons' subsidiary bank, Simmons First National Bank ("Simmons Bank"), Pine Bluff, Arkansas.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 42793 (2014)).[4] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

1 12 U.S.C. § 1842.

2 Simmons has also requested the Board's approval to merge with Community First Bancshares, Inc. ("Community First"), Union City, Tennessee. *See Community First Bancshares, Inc.*, FRB Order 2015-03 (February 12, 2015).

3 The consolidation of Liberty Bank into Simmons Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

4 12 CFR 262.3(b).

Simmons, with consolidated assets of approximately $4.8 billion, is the 185th largest depository organization in the United States, controlling approximately $4.0 billion in consolidated deposits.[5] Simmons operates in Arkansas, Kansas, and Missouri. Simmons is the 106th largest depository organization in Missouri, controlling deposits of approximately $207.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[6]

Liberty, with consolidated assets of approximately $1.1 billion, is the 630th largest depository organization in the United States, controlling approximately $881.2 million in consolidated deposits. Liberty operates only in Missouri. Liberty is the 22nd largest depository organization in Missouri, controlling less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the current proposals,[7] Simmons would become the 125th largest depository organization in the United States, with consolidated assets of approximately $7.8 billion, which represent less than 0.1 percent of the total assets of insured depository institutions in the United States. Simmons would control total deposits of approximately $6.4 billion. In Missouri, Simmons would become the 20th largest depository organization, controlling deposits of approximately $1.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8]

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[9] Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[10] In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[11]

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[5] Asset and nationwide deposit-ranking data are as of June 30, 2014, and are updated to reflect Simmons' acquisition on September 1, 2014, of Delta Trust and Banking Corporation, formerly headquartered in Little Rock, Arkansas, unless otherwise noted.

[6] State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and banks.

[7] Pro forma data include this request to merge with Liberty and Simmons' separate request to merge with Community First. *See Community First Bancshares, Inc.*, *infra* note 2.

[8] Simmons' deposit-rankings in Arkansas and Kansas would remain unchanged. Simmons' separate request to merge with Community First does not involve any assets or deposits controlled in Missouri.

[9] 12 U.S.C. § 1842(d)(1)(A).

[10] 12 U.S.C. § 1842(d)(1)(B).

[11] 12 U.S.C. § 1842(d)(2)(A), (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

For purposes of the BHC Act, the home state of Simmons is Arkansas and Liberty's home state is Missouri.[12] Simmons is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA") rating.[13] Missouri has no minimum age requirement, and Liberty has been in existence for more than five years. On consummation of the proposed transactions, Simmons would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 1 percent of the total amount of deposits of insured depository institutions in Liberty's home state, Missouri, the only state in which Simmons and Liberty have overlapping banking operations. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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.[14]

Simmons Bank and Liberty Bank compete directly only in the Springfield, Missouri, banking market (the "Springfield banking market").[15] The Board has considered the competitive effects of this proposal on the Springfield banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") controlled by Simmons and Liberty;[16] the concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[17] and other characteristics of the markets.

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[12] *See* 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

[13] 12 U.S.C. §§ 2901–2908.

[14] 12 U.S.C. § 1842(c)(1).

[15] The Springfield banking market is defined as the counties of Christian, Dade, Dallas, Greene, Polk, Webster, and the northern half of Lawrence (including the townships of Red Oak, Green, Lincoln, Ozark, Turnback, Mount Vernon, and Vineyard, and the city of Mount Vernon) in Missouri. The subsidiary depository institutions of Liberty and Community First do not compete directly in any banking market. *See Community First Bancshares, Inc*., *infra* note 2.

[16] Deposit and market share data are as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See*, *e.g*., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 52 (1991).

[17] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Springfield banking market. On consummation, the Springfield banking market would remain unconcentrated as measured by the HHI, and numerous competitors would remain.[18]

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Springfield banking market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. Simmons and Simmons Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as an exchange of shares.[19] The asset quality, earnings, and liquidity of Simmons Bank and Liberty Bank are consistent with approval, and Simmons appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Simmons, Liberty, and their subsidiary depository institutions, including assessments of

in 2010 (*see* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

[18] Simmons Bank is the 39th largest depository institution in the Springfield banking market, controlling approximately $8.1 million in deposits, which represent less than 1percent of market deposits. Liberty Bank is the fourth largest depository institution in the market, controlling approximately $586.3 million in deposits, which represent 6.88 percent of market deposits. On consummation of the proposed transaction, Simmons Bank would become the fourth largest depository institution in the market, controlling approximately $594.5 million in deposits, which represent 6.98 percent of market deposits. The HHI would increase by one point to 694, and 39 competitors would remain in the market.

[19] As part of the proposed transaction, each share of Liberty common stock would be exchanged for one share of Simmons common stock.

their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

Simmons, Liberty, and their subsidiary depository institutions are each considered to be well managed. Simmons' existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Simmons have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Simmons' plans for implementing the proposal. Simmons is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.[20] Simmons would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Simmons' and Liberty's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Simmons is proposing to integrate Liberty Bank's existing management and personnel in a manner that augments Simmons' management.[21]

Simmons' supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Simmons and Liberty in combatting money-laundering activities, are consistent with approval.

Convenience and Needs 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.[22] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[23] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[24]

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[20] Simmons plans to operate Liberty Bank as a separate entity until April 2015, at which time Simmons will integrate Liberty Bank into Simmons Bank.

[21] On consummation, Simmons will increase from 9 to 10 the number of seats on its board of directors. Nine directors currently serving on Simmons' board of directors, and one director nominated by Liberty's board of directors will serve on the board of the combined organization. On consummation of its separate request to merge with Community First, Simmons will further increase the number of seats on its board of directors to 12, and the two additional directors will be nominated by Community First's board of directors. The chairman and chief executive officer of Simmons will continue to serve in his role following the merger. The current chairman and chief executive officer of both Liberty and Liberty Bank will continue to serve in his role at Liberty Bank following the merger and will become a regional chairman of Simmons.

[22] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Simmons Bank and Liberty Bank, data reported by Simmons Bank and Liberty Bank under the Home Mortgage Disclosure Act ("HMDA"),[25] other information provided by Simmons, confidential supervisory information, and the public comment received on the proposal. The Board received one comment that objected to the proposal on the basis of Simmons Bank's fair lending record as reflected in 2012 HMDA data and Simmons Bank's disposition of branches in connection with previous acquisitions.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[26] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[27] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Simmons Bank. Simmons Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the OCC in January 2013 ("Simmons Bank Evaluation"). Simmons Bank received "low satisfactory" ratings for both the Lending Test and Investment Test and a "high satisfactory" rating for the Service Test.[28] Examiners noted that Simmons Bank had a good level of community development services in the states in which the bank maintained an ongoing presence.[29] The Board has consulted with the OCC regarding the Simmons Bank Evaluation.

Examiners found that the bank's overall lending activity was adequate and reflected adequate responsiveness to its assessment area credit needs. Simmons Bank's distribution of home mortgage loans by geography and to borrowers of different income levels was found to be adequate. In addition, the bank's distribution of small business loans to businesses of different sizes was considered adequate.

In evaluating the bank's performance under the Investment Test, examiners found that Simmons Bank had an overall adequate level of qualified community development investments. Examiners noted that there was an adequate level of qualified investments based on the investment opportunities compared to the dollar volume of investments the bank made in its assessment areas.

With respect to the bank's performance under the Service Test, examiners noted that branch locations were accessible to LMI geographies and individuals of different income levels. Examiners also noted that the institution provided a good level of community development services in the assessment areas in which the bank has maintained an ongoing presence. In addition, examiners found that Simmons Bank's opening and closing of branches

[25] 12 U.S.C. § 2801 *et seq*.

[26] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[27] 12 U.S.C. § 2906.

[28] The Simmons Bank Evaluation was conducted using Large Bank CRA evaluation procedures. The evaluation period for data reported under the Home Mortgage Disclosure Act was 2009 through 2011, and for community development loans, investments, services, and retail services was September 30, 2008, through January 2, 2013.

[29] The Simmons Bank Evaluation included full-scope reviews of at least one assessment area within each state in which Simmons Bank had an office. The states reviewed were Arkansas, Kansas, and Missouri.

had not adversely affected the accessibility of its delivery systems to LMI geographies or LMI individuals.

CRA Performance of Liberty Bank. Liberty Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation in November 2013 ("Liberty Bank Evaluation"). Liberty Bank received a "satisfactory" rating for the Lending Test and an "outstanding" rating for the Community Development Test.[30]

With respect to the bank's performance under the Community Development Test, examiners determined that Liberty Bank demonstrated excellent responsiveness to the community development needs in the assessment areas. Examiners noted that Liberty Bank employees or officers had devoted time and lent technical expertise to an adequate number of community development services.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Simmons Bank and Liberty Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Simmons Bank and Liberty Bank Evaluations, assessed Simmons Bank's HMDA data, and considered the public comment on the application as well as other agencies' views on Simmons Bank's record of performance under fair lending laws. The Board also considered Simmons Bank's fair lending policies and procedures.

Review of HMDA Data and Branch Closings. The Board reviewed Simmons Bank's 2012 and 2013 HMDA data, as well as the bank's preliminary 2014 HMDA data through July 31, 2014, for the specific market areas addressed in the public comment (Little Rock, Arkansas, and Kansas City, Missouri). Within those markets, the Board focused its review on data related to home purchase, refinancing, and home improvement loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, i.e., African Americans and Hispanics. In addition, the Board reviewed the bank's record of branch closings that followed previous acquisitions.

Simmons Bank's HMDA Data and Branch Closings. The commenter expressed concerns that, based on 2012 HMDA data, Simmons Bank is not meeting the credit needs of minority individuals in the communities served by the bank. The commenter alleges that there are inaccuracies in Simmons Bank's data reporting and that the bank is disguising potential violations of provisions of HMDA and the Equal Credit Opportunity Act. In particular, the commenter asserts that Simmons Bank is prescreening minority borrowers, citing the HMDA data in two market areas that for some loan types reflect a small number of denials.

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether the bank

[30] The Liberty Bank evaluation was conducted using the Intermediate Small Bank evaluation procedures, and examiners reviewed the bank's small business and residential lending activity from September 13, 2010, to November 4, 2013. These products were selected for analysis because they represented 79 percent of the bank's loan portfolio.

excluded or denied credit to any group on a prohibited basis.[31] Fully evaluating a bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The Board's review of Simmons Bank's HMDA data confirmed that the bank reported relatively high origination rates in the Little Rock and Kansas City market areas for government-secured mortgage loans for both nonminority and minority applicants.[32] The same HMDA data, however, show ordinary origination and denial rates when including all HMDA product categories. As such, the data are not consistent with evidence of prescreening.

Simmons provided information reflecting nondiscriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio) on home purchase and home improvement loans cited by the commenter. Simmons also provided the Board with detailed information on Simmons Bank's procedures and policies to prevent prescreening.

The Board has consulted with, and placed great emphasis on the views of, the OCC regarding its evaluation of Simmons Bank's compliance with fair lending laws and regulations. The Simmons Bank Evaluation included review of 2012 HMDA data and, in January 2013, the OCC tested the accuracy of the bank's 2012 HMDA data. In February 2014, the OCC also conducted fair lending and compliance examinations of Simmons Bank. Based on consultations with the OCC regarding these reviews, the Board concludes that the bank's fair lending management program and the compliance management program are consistent with approval of this proposal.

The commenter also alleges that Simmons has a business strategy of closing branches and reducing financial services, resulting in inconvenience to local communities. The Board analyzed the distribution of Simmons Bank's branches and the 2010 census data within the bank's assessment areas. The Board found that, of the bank's 112 branches, 20.6 percent are located in LMI census tracts. Of the population within Simmons Bank's assessment areas, 29.3 percent are in LMI geographies. As noted above, examiners on site believed that the branch locations of Simmons Bank provided a good level of services in the community and were readily accessible to individuals of different income levels.

Simmons has stated that Simmons Bank does not intend to close any branches in connection with the proposed transaction. Although the bank closed several branches in recent years, the bank has represented that the decisions were based on profitability analysis and proximity to other branches and that community impact was assessed prior to all closings. Further, the Board has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before clos-

[31] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, the data do not account for the possibility that an institution entered the assessment area shortly before the close of the reporting period, thereby creating an unrepresentative sample.

[32] Government-secured loans are those under programs of the Federal Housing Administration, Farm Service Agency, Rural Housing Service, or Department of Veterans Affairs.

ing a branch.[33] The Board notes that the OCC examiners found that the Simmons Bank's opening and closing of branches had not adversely affected accessibility of its services in LMI geographies or to LMI individuals. The OCC will continue to review Simmons Bank's branch closing record in the course of conducting CRA performance evaluations.

Simmons' Fair Lending Program. Simmons has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk-management program includes written policies outlining the bank's responsibility for compliance with fair lending laws and regulations, provision for fair lending officers to serve within each of the bank's lending departments, and required annual fair lending training for applicable staff and the board of directors. Simmons also has a centralized underwriting procedure, an automated application process, a second review process, a documented exception process, and a standard pricing sheet.

C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

Simmons represents that the proposal would provide opportunities to achieve various operational efficiencies and economies of scale, which would benefit current and future customers of the combined organization through more efficient and cost-effective banking services. Simmons asserts that the transaction has the potential to benefit all aspects of Liberty's operations, particularly its audit and loan review functions, online banking platform, and ATM systems. Simmons also states that the combined organization's larger lending limit would allow Simmons to better meet the lending needs of its corporate customers and more effectively compete for larger commercial customers.

Simmons states that the proposal would provide customers with an expanded network of over 112 branches in Arkansas, Kansas, and Missouri. Simmons notes that the combined organization would provide Liberty Bank's customers with an expanded and more sophisticated range of products and services than Liberty Bank currently offers, including an enhanced range of consumer services and deposit accounts.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Simmons, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the mortgage lending operations and compliance programs of Simmons Bank and Liberty Bank, review of examination reports, consultations with other agencies, and all the facts of record, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

[33] Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[34]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[35] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[36]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Simmons would have approximately $7.8 billion in consolidated assets and would not be likely to pose systemic risks.[37] The Board generally presumes that a merger resulting in a firm with less than $25 billion in consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[38] In reaching its conclusion, the Board has con-

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[34] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

[35] Many of the metrics considered by Board measure an institution's activities relative to the U.S. financial system.

[36] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

[37] Pro forma data include this request to merge with Liberty and Simmons' separate request to merge with Community First. *See Community First Bancshares, Inc*., *infra* note 2.

[38] A commenter requested that the Board hold public hearings on the proposal. Section3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's

sidered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Simmons with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis acting under delegated authority.

By order of the Board of Governors, effective February 12, 2015.

Voting for this action: Chair Yellen, Governors Tarullo, Powell, and Brainard.Absent and not voting: Vice Chairman Fischer.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Sumitomo Mitsui Financial Group, Inc.
Tokyo, Japan

Sumitomo Mitsui Banking Corporation
Tokyo, Japan

Order Approving Acquisition of Shares of a Bank Holding Company
FRB Order No. 2015–07 (February 20, 2015)

Sumitomo Mitsui Financial Group, Inc. ("SMFG"), and Sumitomo Mitsui Banking Corporation ("SMBC"), both of Tokyo, Japan (collectively, "Applicants"), foreign banking organizations that are financial holding companies under the Bank Holding Company Act of 1956, as amended ("BHC Act"),[1] have requested the Board's approval under section 3(a) of the BHC Act to increase their ownership interest from 9.7 percent to 19.9 percent of the voting shares of The Bank of East Asia, Limited ("BEA"), Hong Kong SAR, People's Republic of China, a foreign banking organization that is a bank holding company under the BHC Act by virtue of its ownership interest in Industrial and Commercial Bank of China (USA), National Association ("ICBC-USA"), New York, New York.[2]

view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

[1] 12 U.S.C. § 1842.

[2] 12 CFR 225.11(c)(1). BEA and its subsidiary, East Asia Holding Company, Inc., New York, New York, are bank holding companies by virtue of their ownership of 20 percent of the voting shares of ICBC-USA and, thus, subject to the BHC Act. Prior to July 2012, ICBC-USA was a wholly owned subsidiary of BEA and was named The Bank of East Asia (USA), National Association ("BEA-USA"). In 2012, with the Board's prior approval, BEA sold an 80 percent interest in the voting shares of BEA-USA (now ICBC-USA) to the Industrial and Commercial Bank of China Limited, Beijing, People's Republic of China. *See Industrial and Commercial Bank of China Limited*, FRB Order No. 2012-4 (May 9, 2012). BEA also is subject to the BHC Act because

Notice of the proposal affording interested persons an opportunity to submit comments has been published (79 *Federal Register* 61308 (October 10, 2014)). The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

SMFG, with total assets of approximately $1.6 trillion, is the third largest banking organization in Japan.[3] SMFG, through its subsidiaries, including SMBC, engages in a broad range of banking and financial services throughout Japan, Asia, the United Kingdom, and North and South America. Outside Japan, SMFG owns subsidiary banks in the United Kingdom, Brazil, Canada, the People's Republic of China, Indonesia, Russia, and Malaysia, and SMBC operates branches in more than a dozen additional countries.

In the United States, Applicants own Manufacturers Bank, Los Angeles, California, with consolidated assets of $2.4 billion and deposits of approximately $1.9 billion.[4] Manufacturers Bank engages in retail and commercial banking in the United States through 10 branches in California. SMBC operates uninsured state branches in New York City, Los Angeles, and San Francisco and representative offices in Houston and Jersey City. Applicants also maintain nonbanking subsidiaries in the United States.[5] SMFG and SMBC are each qualifying foreign banking organizations and, upon consummation of the proposal, would continue to meet the requirements for a qualifying foreign banking organization under Regulation K.[6]

BEA, with total consolidated assets of approximately $100.8 billion, is the fifth largest bank in Hong Kong. BEA engages primarily in retail and commercial banking, wealth management, and insurance services in the People's Republic of China, North America, the United Kingdom, and Southeast Asia. In the United States, BEA operates an FDIC-insured federal branch in New York City ("BEA-NY") and uninsured federal branches in New York City and Los Angeles. As noted above, BEA also owns 20 percent of the voting shares of ICBC-USA. ICBC-USA, with consolidated assets of approximately $1.1 billion and deposits of approximately $910 million, engages in retail and commercial banking in the United States and operates 13 branches in New York and California.

Noncontrolling Investment

Applicants currently own approximately 9.7 percent of the voting shares of BEA and propose to increase their ownership interest to 19.9 percent of voting shares. Applicants have stated that they do not propose to control or exercise a controlling influence over BEA as a result of the proposal.[7]

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it operates branches in the United States. 12 U.S.C. § 3106(a). On October 31, 2012, the Board approved an application from the Applicants to increase their interest in BEA from 4.7 percent to up to 9.9 percent. *See Sumitomo Mitsui Financial Group, Inc*., FRB Order No. 2012-11 (Oct. 31, 2012) ("Sumitomo Order").

3 Asset and ranking data are as of September 30, 2014, and are based on the exchange rate as of that date, unless otherwise noted. No shareholder owns 5 percent or more of the outstanding shares of SMFG.

4 Asset and deposit data are as of September 30, 2014.

5 These nonbanking subsidiaries include SMBC Capital Markets, Inc.; SMBC Leasing and Finance, Inc.; SMBC Nikko Securities America, Inc.; and JRI America, Inc., all of New York, New York.

6 12 CFR 211.23(a).

7 The Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank or bank holding company. *See* , *e.g*., *Sumitomo Order, Mitsubishi UFG Financial Group, Inc*., 95 *Federal Reserve Bulletin* B34 (2009) (acquisition of up to 24.9 percent of the voting shares of a bank holding company); *Brookline Bancorp, MHC*, 86 *Federal Reserve Bulletin* 52 (2000) (acquisition of up to 9.9 percent of the voting shares of a bank holding company); *Mansura Bancshares, Inc*., 79 *Federal Reserve Bulletin* 37 (1993) (acquisition of 9.7 percent of the voting shares of a bank holding company).

The Board received a comment objecting to the proposal on the grounds that a group of BEA shareholders, including Applicants, may be acting in concert in relation to their investments in BEA and may have control over BEA for purposes of section 3 of the BHC Act. The Board has considered the commenter's allegations in light of all the facts of record and has reviewed information provided by both the commenter and Applicants, as well as confidential supervisory information, including information provided by Applicants' home country supervisor, the Japanese Financial Services Agency ("JFSA").

In particular, Applicants have agreed to abide by certain commitments substantially similar to those on which the Board has previously relied in determining that an investing company would not be able to exercise a controlling influence over another bank holding company or bank for purposes of the BHC Act ("Passivity Commitments"). For example, Applicants have committed not to exercise or attempt to exercise a controlling influence over the management or policies of BEA, not to seek or accept more than one representative on the board of directors of BEA, and not to have any other director or executive officer interlocks with BEA or its subsidiaries.

In addition, Applicants have committed not to enter into any agreement with BEA or any of its subsidiaries that substantially limits the discretion of BEA's management over major policies and decisions; not to solicit or participate in soliciting proxies with respect to any matter that has been presented to the shareholders of BEA or its subsidiaries; and not to dispose or threaten to dispose of equity interests of BEA or any of its subsidiaries in any manner as a condition, or inducement, of specific action or non-action on the part of BEA or any of its subsidiaries. The Passivity Commitments also contain certain restrictions on the permissible business relationships between Applicants and BEA.

Upon consummation of the proposal, SMBC would not be authorized to own, control, or have the power to vote 25 percent or more of any class of voting securities of BEA, or to control in any manner the election of a majority of the directors of BEA. Applicants have represented that they have provided all existing or proposed agreements regarding the proposed investment to the Board and have confirmed that they made their decision to invest in BEA independent of any other BEA shareholder. The terms of the investment agreement between SMBC and BEA are consistent with the requirements of the Board's Policy Statement on Equity Investments in Banks and Bank Holding Companies for noncontrolling investments. In addition, Applicants have represented that they have no agreements with other investors in BEA.

The Board has also considered the restrictions imposed by the laws of Hong Kong and the People's Republic of China on the authority of Applicants to control BEA and the structure of ownership of BEA by other shareholders, including the founding members of BEA. The Board has consulted with the supervisory authorities in Hong Kong and Japan on these matters.

Based on these considerations and all the facts of record, the Board has concluded that the structure of the proposed transaction would not constitute control or the exercise of a controlling influence over BEA or any of its subsidiaries. The Board notes that the BHC Act requires Applicants to receive the Board's approval before directly or indirectly acquiring additional shares of BEA or attempting to exercise a controlling influence over BEA or any of its subsidiaries.[8]

[8] 12 U.S.C. § 1842. *See*, *e.g.*, *Emigrant Bancorp, Inc.*, 82 *Federal Reserve Bulletin* 555 (1996) ("Emigrant Bancorp Order").

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[9]

The Board previously has stated that one company need not acquire control of another company to lessen competition between them substantially.[10] Noncontrolling interests in directly competing depository institutions may raise competitive issues under the BHC Act, and the specific facts of each case will determine whether a minority investment in a company would be anticompetitive.[11]

Because the subsidiary banks of Applicants and BEA compete directly in the Los Angeles and San Francisco-Oakland-San Jose banking markets,[12] the Board has reviewed the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits held by insured depository institutions that Applicants would control in the markets ("market deposits"),[13] the concentration levels of market deposits and the increase in those levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Guidelines"), and other characteristics of the markets.[14]

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the relevant banking markets. On consummation, the Los Angeles banking market would remain unconcentrated and the San Francisco-Oak-

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[9] 12 U.S.C. § 1842(c)(1). *See, e.g., Emigrant Bancorp* Order.

[10] *See e.g., Sun Trust Banks, Inc*., 76 *Federal Reserve Bulletin* 542 (1990).

[11] *See e.g., BOK Financial Corp*., 81 *Federal Reserve Bulletin* 1052, 1053-54 (1995).

[12] The Los Angeles banking market is defined as the Los Angeles Ranally Metropolitan Area ("RMA") and the cities of Acton in Los Angeles County and Rosamond in Kern County. The San Francisco-Oakland-San Jose banking market is defined as the San Francisco-Oakland-San Jose RMA and the cities of Byron in Contra Costa County, Hollister and San Juan Bautista in San Bonito County, Pescadero in San Mateo County, and Point Reyes Station in Marsh County. Applicants do not currently compete with BEA in any other relevant banking market. BEA operates an insured branch in New York, and ICBC-USA operates in New York. SMBC's New York branch is not insured by the Federal Deposit Insurance Corporation and generally cannot accept retail deposits. Moreover, neither banking organization controls a significant share of the New York banking market.

[13] Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2013, and have been updated to reflect industry mergers and acquisitions as of September 18, 2014. The data are also based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group, Inc*., 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 52 (1991).

[14] Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its guidelines for bank mergers or acquisitions, which were issued in 1995, were not changed. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/department-justice-and-federal-trade-commission-issue-revised-horizontal-merger-guidelines.

land-San Jose banking market would remain highly concentrated, as measured by the HHI.[15] Numerous competitors would remain in both banking markets.

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the application.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval of the proposal.

Financial, Managerial, and Other Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources (including consideration of the competence, experience, and integrity of officers, directors, and principal shareholders) and future prospects of the companies and depository institutions involved in the proposal, as well as the effectiveness of these companies in combatting money-laundering activities.[16] Section 3 of the BHC Act also requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates as the Board deems appropriate to determine and enforce compliance with the BHC Act.[17]

The review was conducted in light of all the facts of record, including confidential supervisory and examination information from the various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, consultation with the JFSA, and information provided by Applicants and by public commenters.

In evaluating financial factors, the Board reviews the financial condition of the organizations involved. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board also evaluates the effect of the transaction on the financial condition of the applicants, including their capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board considers capital adequacy to be especially important.

The capital levels of Applicants exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization seeking to acquire up to 19.9 percent of BEA.[18] Applicants' reported earnings performance, liquidity, and asset quality indicators,

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[15] As of June 30, 2014, the HHI would remain at 973 in the Los Angeles banking market, which has 132 insured depository institution competitors. The HHI would remain at 2030 in the San Francisco-Oakland-San Jose banking market, which has 85 insured depository institution competitors. The combined deposits of the institutions involved in the proposal in each of the Los Angeles and San Francisco-Oakland-San Jose banking markets represent less than 1 percent of market deposits.

[16] The Board has analyzed the effectiveness of Applicants' anti-money-laundering efforts in connection with the Board's assessment of whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.

[17] 12 U.S.C. § 1842(c)(3)(A).

[18] The Board has considered the total, and the tier 1 risk-based capital ratios, and the ratios of tier 1 capital to total consolidated assets of SMFG and SMBC.

including nonperforming loans and reserves for loan losses, are consistent with approval of the proposal. Applicants' U.S. bank subsidiary, Manufacturers Bank, and ICBC-USA are each well capitalized and would remain so on consummation of the proposal.

The proposed transaction is structured as a cash purchase of shares. SMBC would acquire and hold the shares directly and would use existing resources to fund the proposed purchase. In light of the relative size of Applicants to the size of the investment in BEA, the transaction would have a minimal impact on the financial condition of Applicants. Based on its review of the record, the Board concludes that Applicants have sufficient financial resources to effect the proposal.

The Board has also considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Applicants' and BEA's U.S. operations, including assessments of their management, risk-management systems, and operations. The Board also has considered its supervisory experiences and those of the other relevant bank supervisory agencies with the organizations, including consultations in connection with this proposal, and the organizations' records of compliance with applicable banking and anti-money-laundering laws. As noted, the Board also has consulted with the JFSA. In addition, the Board has considered the future prospects of Applicants, BEA, Manufacturers Bank, and ICBC-USA in light of the financial and managerial resources of the organizations.

The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Applicants have committed that, to the extent not prohibited by applicable law, they will make available to the Board such information on their operations and the operations of their affiliates as the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable them or their affiliates to make such information available to the Board.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as access to information by the Board, are consistent with approval.

Supervision or Regulation on a Consolidated Basis

In evaluating this application and as required by section 3 of the BHC Act, the Board has considered whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.[19]

[19] 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under standards set forth in Regulation K. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard under section 211.24 of Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regulation examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank's financial

The Board previously has determined that SMFG and SMBC are subject to comprehensive supervision on a consolidated basis by their home country supervisor.[20] The Applicants continue to be supervised by the JFSA on substantially the same terms and conditions. Based on this finding and all the facts of record, the Board has concluded that SMBC and SMFG continue to be subject to comprehensive supervision on a consolidated basis by their home country supervisor.

The Board has considered the effectiveness of Applicants' anti-money-laundering policies and procedures as well as the Board's supervisory experiences and those of other relevant banking supervisory organizations with Applicants' compliance record. On the basis of all facts of record, the Board has determined that Applicants' anti-money-laundering measures are consistent with approval.

Convenience and Needs 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 insured depository institutions under the Community Reinvestment Act ("CRA").[21] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[22] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[23]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Manufacturers Bank, BEA-NY, and ICBC-USA; information provided by Applicants; and confidential supervisory information.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.[24] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[25] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[26]

CRA Performance of Manufacturers Bank. Manufacturers Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal

condition on a worldwide consolidated basis; (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

[20] *See, e.g., Sumitomo* Order; *The Wakashio Bank, Limited*, 89 *Federal Reserve Bulletin* 217 (2003).

[21] 12 U.S.C. § 2901 *et seq*.; 12 U.S.C. § 1842(c)(2).

[22] 12 U.S.C. § 2901(b).

[23] 12 U.S.C. § 2903.

[24] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010) ("Interagency Questions and Answers").

[25] 12 U.S.C. § 2906.

[26] *See Interagency Questions and Answers*.

Deposit Insurance Corporation ("FDIC") in February 2014 ("Manufacturers Bank Evaluation").[27] Manufacturers Bank received a "low satisfactory" rating for the Lending Test and "high satisfactory" ratings for both the Investment Test and the Service Test.

In evaluating the Lending Test, examiners noted that the bank adequately responded to the credit needs of its assessment areas. Examiners found that the bank was a leader in making community development loans and that the geographic distribution of loans provided by the bank reflected adequate penetration throughout the assessment areas.

In evaluating the Investment Test, examiners found that the qualified investments held by the bank exhibited good responsiveness to credit and community economic development needs in its assessment areas. Examiners noted that the total amount of qualified investments held by the bank had increased from the prior evaluation period. The majority of the bank's qualified investments had been utilized to purchase securities for affordable housing and economic development. Grants and donations provided by the bank also had increased from the prior evaluation period and had been utilized for various purposes, such as affordable housing, community development services, and economic development within the bank's assessment areas.

In evaluating the Service Test, examiners found that the bank's delivery systems, banking products and services, and business hours were accessible to essentially all portions of the bank's assessment areas. The geographical dispersion of the bank's branch offices by income level was considered fairly diverse, with all income levels represented. Examiners also noted that the bank provided a relatively high level of community development services that benefited LMI individuals and geographies within the bank's assessment areas.

CRA Performance of BEA-NY. BEA-NY was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC") in January 2010 ("BEA-NY Evaluation"), with a rating of "outstanding" for the Lending Test.[28] In evaluating the Lending Test, examiners found that the bank's average loan-to-deposit ratio met the standard for outstanding performance, and that the geographical distribution of the bank's loans reflected excellent dispersion in its assessment areas. A substantial majority of the loans originated by BEA-NY during the period evaluated were within its assessment areas, and examiners noted that the distribution of loans reflected reasonable dispersion among businesses of different sizes and excellent dispersion throughout geographies of different income levels. Examiners also found that the percentage of small business loans made by the bank to businesses in LMI geographies exceeded the percentage of businesses located in these areas during the evaluation period.

CRA Performance of ICBC-USA. ICBC-USA was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the OCC in January 2010 ("ICBC-USA

[27] The Manufacturers Bank Evaluation was conducted using Large Bank CRA examination procedures. Examiners reviewed small business lending data for 2012 and 2013 and community development loans, investments, and services from November 29, 2010, through February 18, 2014. For community development investments, examiners also considered the current book value of any prior period investments still outstanding as of the subject evaluation. The Manufacturers Bank Evaluation included a full-scope review of the Los Angeles assessment area, comprising the following regions: Los-Angeles-Long Beach-Glendale Metropolitan Division; Santa Ana-Anaheim-Irvine Metropolitan Statistical Area ("MSA"); and Riverside-San Bernardino-Ontario MSA.

[28] The BEA-NY Evaluation was conducted using the Small Bank CRA examination procedures. Examiners reviewed commercial real estate loans from January 1, 2007, through September 30, 2009. The BEA-NY Evaluation included a full-scope review of three counties in New York State: Kings, New York, and Queens, which are part of the New York-Northern New Jersey-Long Island MSA. SMBC's and BEA's uninsured branches are not subject to the CRA.

Evaluation"). ICBC-USA received "outstanding" ratings for both the Lending Test and the Community Development Test.[29]

In evaluating the Lending Test, examiners noted that the bank's average loan-to-deposit ratio was more than reasonable and met the standard for outstanding performance. The geographical distribution of the bank's loans was considered to reflect excellent dispersion throughout the assessment areas. The distribution of the bank's loans was also considered to reflect excellent penetration among businesses of different sizes. Examiners also noted that the percentage of small business loans made by the bank to businesses in LMI geographies exceeded the percentage of businesses located in these areas during the evaluation period.

In evaluating the Community Development Test, examiners noted that the bank's performance demonstrated excellent responsiveness to the needs of the assessment areas through community development loans, investments, and services. During the evaluation period, the bank made community development loans and qualified investments for affordable housing to promote economic development, to revitalize and stabilize LMI areas, and to provide an array of community services, including health care and youth programs. Bank staff also supported various community development services, including financial literacy and homeownership seminars and workshops for senior citizens.

B. Additional Information on Convenience and Needs of Communities to Be Served

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

The proposal is part of BEA's efforts to increase its capital base. Applicants represent that the proposal is not expected to result in any discontinuation or material changes to the products or services offered by Applicants', BEA's, or ICBC-USA's U.S. offices, including with respect to LMI neighborhoods. Applicants also represent that after this proposal, they will continue to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and in materially the same manner as before consummation of the proposal.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by Applicants, and confidential supervisory information. Based on the Board's assessment of the CRA performance of Manufacturers Bank, BEA-NY, and ICBC-USA; its review of examination reports; and its consultation with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")

[29] The ICBC-USA Evaluation, which occurred when ICBC-USA was a wholly owned subsidiary of BEA, was conducted using Intermediate Small Bank CRA performance procedures. Examiners reviewed commercial loans from January 1, 2007, through September 30, 2009. The evaluation period for community development loans, investments, and services was April 26, 2006, through January 4, 2010. The ICBC-USA Evaluation included a full-scope review of three statistical areas: New York-Northern New Jersey-Long Island (Multi-State) MSA; San Francisco-San Mateo-Redwood City MSA; and Los Angeles-Long Beach-Glendale MSA.

amended section 3 of the BHC Act to require the Board also to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[30]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[31] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[32]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. In this case, the proposed acquisition of a noncontrolling interest in BEA is not a significant expansion by SMFG and would have a de minimis impact on SMFG's systemic footprint. The value of the additional shares that Applicants propose to purchase is approximately $945 million.[33] The Board generally presumes that an acquisition of less than $2 billion in assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction, as the proposal merely increases Applicants' ownership interest from approximately 9.7 percent to 19.9 percent of the voting shares of BEA. Applicants would neither consider BEA a subsidiary nor consolidate its financial performance on their balance sheets.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board approves the proposal by Applicants to acquire additional shares of BEA up to 19.9 percent of the voting shares of BEA. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board conditions its decision on Applicants providing to the Board adequate information on their operations and activities as well as those of their affiliates to determine and enforce compliance by Applicants or their affiliates with applicable federal statutes. Should

[30] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.SC. § 1842(c)(7).

[31] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[32] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

[33] This value is based on BEA's listed price on the Hong Kong Stock Exchange as of September 12, 2014, and the exchange rate as of that date.

any restrictions on access to information on the operations or activities of Applicants or any of their affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Applicants or their affiliates with applicable federal statutes, the Board may require termination or divestiture of any of Applicants' or their affiliates' direct or indirect activities in the United States.

The Board's approval is specifically conditioned on compliance by Applicants with the conditions imposed in this order and the commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein, and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 20, 2015.

Voting for this action: Chair Yellen and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Orders Issued Under Federal Reserve Act

Banco Popular de Puerto Rico

Hato Rey, Puerto Rico

Order Approving the Acquisition of Assets, Assumption of Liabilities, and the Establishment of Branches
FRB Order No. 2015–10 (February 27, 2015)

Banco Popular de Puerto Rico ("Banco Popular")[1], Hato Rey, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[2] ("Bank Merger Act") to acquire assets and assume liabilities of Doral Bank ("Doral"), San Juan,[3] a state nonmember bank, both of Puerto Rico. In addition, Banco Popular has applied under section 9 of the Federal Reserve Act ("FRA")[4] to establish and operate branches at the locations of the branches acquired from Doral.

The Federal Deposit Insurance Corporation ("FDIC") has been appointed receiver of Doral and has scheduled the sale of certain assets and the transfer of certain liabilities of Doral for February 27, 2015. The FDIC, as receiver, has selected a consortium bid lead by Banco Popular as the least-cost proposal in accordance with the least-cost-resolution

[1] Banco Popular is a subsidiary of Popular, Inc. ("Popular"), San Juan, Puerto Rico.
[2] 12 U.S.C. § 1828(c).
[3] Doral is a subsidiary of Doral Financial Corporation, San Juan, Puerto Rico.
[4] 12 U.S.C. § 321. These locations are listed in the appendix.

requirements in the Federal Deposit Insurance Act ("FDI Act")[5] and eliminated more costly proposals.[6] The FDIC has recommended immediate action by the Board on Banco Popular's consortium proposal to prevent the probable failure of Doral. On the basis of the information before the Board, the Board finds that it must act immediately pursuant to the Bank Merger Act[7] to safeguard the depositors of Doral. Accordingly, public notice of the application and opportunity for comment are not required by the Bank Merger Act.

Banco Popular, with total assets of approximately $26.2 billion, operates in Puerto Rico, the U.S. Virgin Islands, and New York.[8] Banco Popular is the largest insured depository institution in Puerto Rico, controlling deposits of approximately $20.1 billion, which represent 46.7 percent of the total amount of deposits of insured depository institutions in the Commonwealth ("total deposits").[9]

Doral, with total assets of approximately $6.4 billion, operates in Puerto Rico, New York, and Florida.[10] Doral is the sixth largest insured depository institution in Puerto Rico, controlling deposits of approximately $2.3 billion, which represent approximately 5.4 percent of the total deposits in the Commonwealth.

On consummation of the proposal, and accounting for the proposed divestitures, Banco Popular would remain the largest insured depository institution in Puerto Rico, controlling deposits of approximately $21.0 billion, which represent 49.4 percent of total deposits.

Competitive Considerations

The Board has considered the competitive effects of the proposal in light of all the facts of record. The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market.[11] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the communities to be served.[12]

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[5] *See* 12 U.S.C. §§ 1821, 1822, and 1823(c)-(k). The least-cost procedures require the FDIC to choose the resolution method in which the total amount of the FDIC's expenditures and obligations incurred (including any immediate or long-term obligation and any direct or contingent liability) is the least costly to the Deposit Insurance Fund of all possible methods.

[6] Banco Popular intends to sell Doral's branches in New York and Florida and certain of its branches in Puerto Rico to other members of its bidding consortium. Its affiliate, Banco Popular North America, New York, New York, has requested the Board's approval to acquire certain assets and assume certain liabilities of Doral in New York. *See Banco Popular North America*, FRB Order 2015-11 (Feb. 27, 2015) ("BPNA Order"). Centennial Bank, Conway, Arkansas, has requested the Board's approval to acquire certain assets and assume certain liabilities of Doral in Florida. *See Centennial Bank*, FRB Order 2015-09 (Feb. 27, 2015).

[7] 12 U.S.C. § 1828(c).

[8] Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, Banco Popular had total assets of approximately $27.1 billion. For purposes of this order, insured depository institutions include commercial banks. No savings associations operate in Puerto Rico.

[9] Puerto Rican market shares and rankings exclude corporate deposits booked in San Juan by Citigroup Inc.

[10] Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, Doral had total assets of approximately $5.9 billion.

[11] 12 U.S.C. § 1828(c)(5)(A).

[12] 12 U.S.C. § 1828(c)(5)(B).

Banco Popular and Doral compete directly in three banking markets in Puerto Rico and in one banking market in New York.[13] The Board has reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the financial condition of Doral and the fact that the Office of the Commissioner of Financial Institutions of Puerto Rico ("Puerto Rico OCFI") has placed the bank into FDIC receivership. In addition, the FDIC, as receiver for Doral, has selected Banco Popular's consortium bid for Doral in accordance with the least-cost-resolution requirements in the FDI Act. The Board also has considered the resulting loss of Doral as an independent competitor in the banking markets if this transaction is not consummated, as well as various measures of competition and market concentration, and other characteristics of the markets.

Under the proposal, Banco Popular would purchase assets and assume liabilities of Doral and thereby merge Doral's businesses into a viable ongoing concern with demonstrated capital strength and management capability. Banco Popular's proposal would continue the availability of credit opportunities and banking services for the customers and communities that Doral served and avoid serious economic disruption in Puerto Rico. The FDIC actively solicited bids for Doral and, after considering Banco Popular's proposal in light of competing proposals submitted by other bidders, determined that Banco Popular's bid represented the lowest cost to the Deposit Insurance Fund. On this basis, Banco Popular's, proposal is the only means before the Board of achieving the public benefits discussed above.

In addition, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") controlled by Banco Popular; the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[14] other characteristics of the markets; and, as discussed below, commitments made by Banco Popular to divest branches in two banking markets in Puerto Rico.

In the San Juan, Puerto Rico, banking market (the "San Juan banking market"),[15] Banco Popular is the largest depository institution, controlling approximately $17.1 billion in deposits, which represent approximately 44.1 percent of deposits in that market.[16] Doral is

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[13] The proposal would not result in substantially adverse competitive effects in the Metro New York City banking market, the banking market in New York in which Banco Popular and Doral compete. *See* BPNA Order.

[14] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[15] The San Juan banking market is defined to include the following municipalities in Puerto Rico: Aguas Buenas, Aibonito, Arecibo, Barceloneta, Barranquitas, Bayamon, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Ciales, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guaynabo, Gurabo, Hatillo, Humacao, Juncos, Lares, Las Piedras, Loiza, Luquillo, Manati, Maunabo, Morovis, Naguabo, Naranjito, Orocovis, Quebradillas, Rio Grande, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, and Yabucoa.

[16] In addition to the exclusion of Citigroup Inc.'s corporate deposits booked in San Juan, calculations for the Puerto Rican banking markets also exclude approximately $700 million in brokered deposits booked in San Juan that will not be acquired by any party to the transaction and include deposits of cooperative lending societies ("cooperativas") weighted at 50 percent. Cooperativas are Commonwealth-insured depository institutions unique to Puerto Rico. Although cooperativas are membership organizations, few impose membership restric-

the sixth largest depository institution, controlling approximately $1.4 billion in deposits, which represent approximately 3.7 percent of deposits in that market. In the Aguadilla-Mayaguez, Puerto Rico, banking market (the "Aguadilla-Mayaguez banking market"),[17] Banco Popular is the largest depository institution, controlling approximately $1.8 billion in deposits, which represent approximately 50 percent of the deposits in that market. Doral is the sixth largest depository institution, controlling approximately $103 million in deposits, which represent approximately 2.8 percent of the deposits in that market. To mitigate the potentially adverse competitive effects of the proposal in the San Juan and Aguadilla-Mayaguez banking markets, Banco Popular has committed to divest eight branches in the San Juan banking market and both of the Doral branches in the Aguadilla-Mayaguez banking market, which account for approximately $736 million in deposits in these two markets.[18]

After the divestiture, the proposal would be consistent with Board precedent in the San Juan and Aguadilla-Mayaguez banking markets. Banco Popular would remain the largest depository institution in the Aguadilla-Mayaguez market, and its market share would remain unchanged.

After the divestiture, Banco Popular would remain the largest depository institution in the San Juan banking market, controlling approximately $18.0 billion in deposits, which represent approximately 46.2 percent of deposits in that market. The HHI would increase 232 points, from 2548 to 2780. Five other commercial banking organizations would remain in that market.

In the Ponce, Puerto Rico, banking market (the "Ponce banking market"),[19] Banco Popular is the largest depository institution, controlling approximately $944 million in deposits, which represent approximately 39.4 percent of the deposits in that market. Doral is the sixth largest depository institution, controlling approximately $67 million in deposits, which represent approximately 2.8 percent of the deposits in that market. Upon consummation of the transaction, Banco Popular would remain the largest depository institution in the Ponce banking market, controlling approximately $1.0 billion in deposits, which represent approximately 42.2 percent of deposits in that market. The HHI would increase by 221 points to 2431. Four other commercial banking organizations would remain in that market.

tions, and they are authorized to provide a full range of products and services to nonmembers, including transaction accounts for personal and business purposes. For a detailed discussion of the activities of cooperativas, *see BanPonce Corporation*, 77 *Federal Reserve Bulletin* 43, 45 (1991); *Statement by the Board of Governors of the Federal Reserve System Regarding the Application by Banco Santander, S.A.*, 82 *Federal Reserve Bulletin* 833, 834-835 (1996) ("Statement"). The Board previously has recognized and continues to believe that cooperativas are at least as significant as thrift institutions as competitors of commercial banks and should be weighted at 50 percent. *See* Statement at 835 n.13.

[17] The Aguadilla-Mayaguez banking market is defined to include the following municipalities in Puerto Rico: Aguada, Aguadilla, Anasco, Cabo Rojo, Hormigueros, Isabela, Lajas, Las Marias, Maricao, Mayaguez, Moca, Rincon, Sabana Grande, San German, and San Sebastian.

[18] As a condition to consummation of the proposed merger, Banco Popular has committed that it will execute an agreement to sell within 180 days of consummating the proposed merger the Doral branches in the San Juan and Aguadilla-Mayaguez banking markets to a purchaser determined by the Board to be competitively suitable. If the proposed divestiture is not completed within the 180-day period, Banco Popular commits to transfer the unsold branches to an independent trustee who will be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. *See BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991). Banco Popular has provided a similar commitment to the DOJ.

[19] The Ponce banking market is defined to include the following municipalities in Puerto Rico: Adjuntas, Coamo, Guanica, Guayanilla, Jayuya, Juana Diaz, Penuelas, Ponce, Salinas, Santa Isabel, Villalba, and Yauco.

The DOJ also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal, with the proposed divestiture of branches as discussed above, would not likely have a significantly adverse effect on competition in any relevant banking market.

Under these circumstances, and after careful consideration of all the facts of record, the Board concludes that the anticompetitve effects of this proposal in the relevant markets are clearly outweighed in the public interest by the probable effect of the Banco Popular proposal in meeting the convenience and needs of the communities to be served in Puerto Rico.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and future prospects of the institutions involved and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential supervisory and examination information from the Puerto Rico OCFI and the U.S. banking supervisors of the institutions involved, and publicly reported and other financial information, including information provided by Banco Popular.

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, the Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction.

Banco Popular is well capitalized and would remain so on consummation of the proposal. Based on its review of the record in this case, the Board finds that Banco Popular has sufficient financial resources to effect the proposal. As noted, the proposed transaction is structured as a purchase of assets and assumption of liabilities from the FDIC as receiver, and the transaction will be funded by cash.

The Board also has considered the managerial resources of Banco Popular and has reviewed the examination records of Banco Popular, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the FDIC, with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Banco Popular's plans for implementing the proposal, including its plans for managing the integration of the acquired assets and operations into the bank.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Banco Popular are consistent with approval under the Bank Merger Act, as are the other statutory factors.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served and take into account the records of the

relevant depository institutions under the Community Reinvestment Act ("CRA").[20] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, in evaluating bank acquisition proposals. Banco Popular received an overall rating of "outstanding" at its most recent CRA performance examination by the Federal Reserve Bank of New York, as of January 22, 2013.[21] After consummation of the proposal, Banco Popular plans to implement its CRA policies at the branches and consumer lending operations acquired from Doral.

As noted, the Board believes that the proposal will result in substantial benefits to the convenience and needs of the communities to be served by maintaining the availability of credit and deposit services to customers of Doral. Banco Popular has represented that consummation of the proposal would allow it to provide a broader range of financial products and services to the customers of Doral. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs of the communities to be served and the CRA performance records of the relevant depository institutions are consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[22]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[23] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[24]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Popular would have approximately $36 billion in total consolidated assets and would not be likely to pose sys-

[20] 12 U.S.C. § 2901 *et seq*.

[21] Banco Popular's CRA evaluation was conducted using Large Bank CRA Examination Procedures, and examiners reviewed the bank's lending activity from January 1, 2010, through December 31, 2012.

[22] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

[23] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[24] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

temic risks. Evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors is not present in this transaction. Banco Popular would continue to engage in traditional commercial banking activities. The resulting organization would only experience very small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, Banco Popular's intrafinancial assets and liabilities would comprise a negligible share of the systemwide total, both before and after the transaction, and the resulting firm would control less than 0.2 percent of the assets of all U.S. depository institutions. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Establishment of Branches

Banco Popular has applied under section 9 of the FRA to establish and operate branches at the locations of the branches acquired from Doral, and the Board has considered the factors it is required to consider when reviewing an application under that section.[25] Specifically, the Board has considered Banco Popular's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by Banco Popular with all of the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

Because the Board has found that it must act immediately to prevent the probable failure of Doral, the transaction may be consummated immediately. In no event, however, should the transaction 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 New York acting pursuant to delegated authority.

By order of the Board of Governors, effective February 27, 2015.

[25] 12 U.S.C. § 322; 12 CFR 208.6.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Robert deV. Frierson
Secretary of the Board

Appendix

Branches to Be Established by Banco Popular de Puerto Rico

1. Rexville Town Center, Carr Pr-167, Esquina Pr-199, Barrio Pajaros, Bayamon, Puerto Rico
2. 65th Infanteria Km 6.9 San Anton, Carolina, Puerto Rico
3. Plaza Dorado Road #693 Km 8.5 Higuillar, Dorado, Puerto Rico
4. Road #20 Km 3.4, Guaynabo, Puerto Rico
5. 1451 F.D. Roosevelt Avenue, San Juan, Puerto Rico
6. Pr Road Number 2 Corner La Fuente Avenue, Candelaria Ward, Toa Baja, Puerto Rico
7. Carr #181 Barrio Las Cueveas, Trujillo Alto, Puerto Rico

Banco Popular North America
New York, New York

Order Approving the Acquisition of Assets, Assumption of Liabilities, and the Establishment of Branches
FRB Order No. 2015–11 (February 27, 2015)

Banco Popular North America ("BPNA"),[1] New York, New York, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[2] ("Bank Merger Act") to acquire certain assets and assume certain liabilities of Doral Bank ("Doral"), San Juan, Puerto Rico,[3] a state nonmember bank, from its affiliate, Banco Popular, San Juan. In addition, BPNA has applied under section 9 of the Federal Reserve Act ("FRA")[4] to establish and operate branches at the locations of the branches acquired from Doral.

The Federal Deposit Insurance Corporation ("FDIC") has been appointed receiver of Doral and has scheduled the sale of certain assets and the transfer of certain liabilities of Doral for February 27, 2015. The FDIC, as receiver, has selected a consortium bid led by Banco Popular de Puerto Rico ("Banco Popular"), San Juan, Puerto Rico, as the least-cost proposal in accordance with the least-cost-resolution requirements in the Federal Deposit Insurance Act ("FDI Act")[5] and eliminated more costly proposals. The FDIC has recommended immediate action by the Board on Banco Popular's consortium proposal to prevent the probable failure of Doral.

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1 BPNA and Banco Popular de Puerto Rico ("Banco Popular") are subsidiaries of Popular, Inc. ("Popular"), San Juan, Puerto Rico.

2 12 U.S.C. § 1828(c).

3 Doral is a subsidiary of Doral Financial Corporation, San Juan.

4 12 U.S.C. § 321. These locations are listed in the appendix.

5 *See* 12 U.S.C. §§ 1821, 1822, and 1823(c)-(k). The least-cost procedures require the FDIC to choose the resolution method by which the total amount of the FDIC's expenditures and obligations incurred (including any immediate or long-term obligation and any direct or contingent liability) is the least costly to the Deposit Insurance Fund of all possible methods.

BPNA is a member of the Banco Popular consortium. Banco Popular will acquire Doral's assets and assume its liabilities from the FDIC.[6] BPNA will then acquire the New York branches of Doral directly from Banco Popular.

On the basis of the information before the Board, the Board finds that it must act immediately pursuant to the Bank Merger Act[7] to safeguard the depositors of Doral. Accordingly, public notice of the application and opportunity for comment are not required by the Bank Merger Act.

BPNA, with total assets of approximately $7.1 billion, operates in Florida, New Jersey, and New York.[8] BPNA is the 42nd largest insured depository institution in New York, controlling deposits of approximately $2.4 billion, which represent 0.2 percent of the total amount of deposits of insured depository institutions in the state ("total deposits").

Doral, with total assets of approximately $6.4 billion, operates in Puerto Rico, New York, and Florida.[9] Doral is the 53rd largest insured depository institution in New York, controlling deposits of approximately $1.6 billion, which represent 0.1 percent of the total deposits in the state.

On consummation of the proposal, BPNA would become the 31st largest depository institution in New York, controlling deposits of approximately $3.9 billion, which represent 0.3 percent of total deposits.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market.[10] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the communities to be served.[11]

BPNA and Doral compete directly in the Metro New York City, NY-NJ-CT-PA banking market ("Metro New York market"). The Board has reviewed the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the financial condition of Doral and the fact that the Office of the Commissioner of Financial Institutions of Puerto Rico has placed the bank into FDIC receivership. In addition, the FDIC, as receiver for Doral, has selected BPNA's consortium bid with Banco Popular in accordance with the least-cost- resolution requirements in the FDI Act. The Board also has considered the resulting loss of Doral as an independent competitor in all the banking markets where it operates if this transaction is not consummated, as

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[6] *See Banco Popular de Puerto Rico*, FRB Order 2015-10 (Feb. 27, 2015).

[7] 12 U.S.C. § 1828(c).

[8] Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, BPNA had total assets of approximately $7.4 billion. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[9] Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, Doral had total assets of approximately $6.4 billion.

[10] 12 U.S.C. § 1828(c)(5)(A).

[11] 12 U.S.C. § 1828(c)(5)(B).

well as various measures of competition and market concentration, and other characteristics of the market.

Under the proposal, BPNA would purchase certain assets and assume certain liabilities of Doral in New York and thereby merge the branches into a viable ongoing concern with demonstrated capital strength and management capability. BPNA's proposal would continue the availability of credit opportunities and banking services for the customers and communities that Doral served and avoid serious economic disruption in New York.

In addition, the Board has considered the competitive effects of the proposal in the Metro New York market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market ("market deposits") that BPNA would control;[12] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[13] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Metro New York market. On consummation of the proposal, the Metro New York market would remain unconcentrated as measured by the HHI. The HHI change would be minimal, and numerous competitors would remain in the market.[14]

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in the Metro New York market.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Metro New York market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

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[12] Deposit and market share data are as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[13] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010),www.justice.gov/opa/pr/2010/August/10-at-938.html .

[14] BPNA operates the 38th largest depository institution in the Metro New York market, controlling approximately $2.6 billion in deposits, which represent less than 1 percent of market deposits. Doral operates the 52nd largest depository institution in the same market, controlling deposits of approximately $1.6 billion, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, BPNA would become the 32nd largest depository institution in the market, controlling deposits of approximately $4.2 billion, which represent less than 1 percent of market deposits. The HHI for the Metro New York market would remain unchanged at 1308, and 252 competitors would remain in the market.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and future prospects of the institutions involved and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential supervisory and examination information from the U.S. banking supervisors of the institutions involved, and publicly reported and other financial information, including information provided by BPNA.

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, the Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction.

BPNA is well capitalized and would remain so on consummation of the proposal. Based on its review of the record in this case, the Board finds that BPNA has sufficient financial resources to effect the proposal. As noted, the proposed transaction is structured as a purchase of certain assets and assumption of certain liabilities from Banco Popular, which will purchase the assets and assume the liabilities from the FDIC as receiver, and the transaction will be funded by cash.

The Board also has considered the managerial resources of BPNA and has reviewed the examination records of BPNA, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the FDIC, with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered BPNA's plans for implementing the proposal, including its plans for managing the integration of the acquired assets and operations into the bank.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of BPNA are consistent with approval under the Bank Merger Act, as are the other statutory factors.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[15] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank acquisition proposals.

[15] 12 U.S.C. § 2901 *et seq.*

The Board has considered all the facts of record, including reports of examination of the CRA performance of BPNA, information provided by BPNA, and confidential supervisory information.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.[16] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[17] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of BPNA. BPNA received an overall rating of "satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of New York, as of July 15, 2013.[18] BPNA received a "low satisfactory" rating for the Lending Test, a "high satisfactory" rating for the Investment Test, and an "outstanding" rating for the Service Test.

In evaluating the Service Test, examiners noted that BPNA's delivery systems were readily accessible to the bank's assessment areas and to individuals of different income levels and that alternate delivery systems provided improved accessibility to bank services throughout its assessment areas. The examiners concluded that BPNA could be considered a leader in the provision of community development services.

In evaluating the Investment Test, examiners found that BPNA demonstrated adequate responsiveness to credit and community development needs and rarely used complex investments to support community development initiatives. The examiners also noted that BPNA had a significant level of qualified community development investments in its assessment areas.

In evaluating the Lending Test, examiners found that BPNA's overall lending activity reflected adequate responsiveness to the credit needs of its assessment areas and that BPNA originated a high percentage of its loans in its assessment areas during the period reviewed. In addition, examiners noted that the geographic distribution of loans demonstrated excellent penetration throughout LMI geographies and adequate penetration among customers of different income levels and among business customers of different sizes.

After consummation of the proposal, BPNA plans to implement its CRA policies at the acquired branches of Doral.

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[16] *See Interagency Questions and Answers Regarding Community Reinvestment* , 75 *Federal Register* 11642,11665 (March 11, 2010).

[17] 12 U.S.C. § 2906.

[18] BPNA's CRA evaluation was conducted using Large Bank CRA Examination Procedures, and examiners reviewed the bank's lending activity from January 1, 2011, through December 31, 2013.

B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. The Board believes that the proposal will result in substantial benefits to the convenience and needs of the communities to be served by maintaining the availability of credit and deposit services to customers of Doral. BPNA notes that without its purchase and assumption of certain assets and liabilities of Doral, Doral's operations would likely cease to exist. In addition, BPNA represents that it will be better positioned to meet the credit needs of the communities currently served by Doral's New York branches. BPNA's customers will continue to receive the full range of products and services to which they are accustomed. In addition, BPNA represents that the proposal will result in an overall enhancement in banking products and financial services available to members of the communities in which Doral's New York branches are located. BPNA anticipates that it will be able to expand and strengthen the services already provided to current customers of both Doral's New York branches and BPNA.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by BPNA, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of BPNA, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[19]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[20] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[21]

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[19] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

[20] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[21] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Popular would have approximately $36 billion in total consolidated assets and would not be likely to pose systemic risks. Evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors is not present in this transaction. BPNA would continue to engage in traditional commercial banking activities. The resulting organization would only experience very small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, BPNA's intrafinancial assets and liabilities would comprise a negligible share of the systemwide total, both before and after the transaction, and the resulting firm would control less than 0.2 percent of the assets of all U.S. depository institutions. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Establishment of Branches

BPNA has applied under section 9 of the FRA to establish and operate branches at the locations of the branches acquired from Doral, and the Board has considered the factors it is required to consider when reviewing an application under that section.[22] Specifically, the Board has considered BPNA's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by BPNA with all of the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

Because the Board has found that it must act immediately to prevent the probable failure of Doral, the transaction may be consummated immediately. In no event, however, should the transaction 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 New York acting pursuant to delegated authority.

By order of the Board of Governors, effective February 27, 2015.

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[22] 12 U.S.C. § 322; 12 CFR 208.6.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Robert deV. Frierson
Secretary of the Board

Appendix

Branches to be Established by Banco Popular North America
1. 623 Fifth Avenue, New York, New York 10022
2. 875 Third Avenue, New York, New York 10022
3. 345 Park Avenue South, New York, New York 10010

Centennial Bank
Conway, Arkansas

Order Approving the Acquisition of Assets, Assumption of Liabilities, and the Establishment of Branches
FRB Order No. 2015–09 (February 27, 2015)

Centennial Bank ("Centennial"),[1] Conway, Arkansas, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[2] ("Bank Merger Act") to acquire certain assets and assume certain liabilities of Doral Bank ("Doral"), San Juan, Puerto Rico, a state nonmember bank. In addition, Centennial has applied under section 9 of the Federal Reserve Act ("FRA")[3] to establish and operate branches at the locations of the branches acquired from Doral.

The Federal Deposit Insurance Corporation ("FDIC") has been appointed receiver of Doral and has scheduled the sale of certain assets and the transfer of certain liabilities of Doral for February 27, 2015. The FDIC, as receiver, has selected a consortium bid lead by Banco Popular de Puerto Rico ("Banco Popular"), San Juan, Puerto Rico, as the least-cost proposal in accordance with the least-cost-resolution requirements in the Federal Deposit Insurance Act ("FDI Act")[4] and eliminated more costly proposals. The FDIC has recommended immediate action by the Board on Banco Popular's consortium proposal to prevent the probable failure of Doral.

Centennial is a member of the Banco Popular consortium. Banco Popular will acquire certain assets and assume certain liabilities from the FDIC.[5] Centennial will then acquire the Florida branches of Doral directly from Banco Popular.

On the basis of the information before the Board, the Board finds that it must act immediately pursuant to the Bank Merger Act[6] to safeguard the depositors of Doral. Accordingly, public notice of the application and opportunity for comment is not required by the Bank Merger Act.

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1 Centennial is a subsidiary of Home Bancshares, Inc. ("Home"), Conway, Arkansas.

2 12 U.S.C. § 1828(c).

3 12 U.S.C. § 321. These locations are listed in the appendix.

4 *See* 12 U.S.C. §§ 1821, 1822, and 1823(c)-(k). The least-cost procedures require the FDIC to choose the resolution method in which the total amount of the FDIC's expenditures and obligations incurred (including any immediate or long-term obligation and any direct or contingent liability) is the least costly to the Deposit Insurance Fund of all possible methods.

5 *See Banco Popular de Puerto Rico*, FRB Order 2015-10 (Feb. 27, 2015).

6 12 U.S.C. § 1828(c).

Centennial, with total assets of approximately $7.2 billion, operates in Alabama, Arkansas, and Florida.[7] Centennial is the 35th largest insured depository institution in Florida, controlling deposits of approximately $1.5 billion, which represent 0.3 percent of the total deposits of insured depository institutions in the state ("total deposits").

Doral, with total assets of approximately $6.4 billion, operates in Puerto Rico, New York, and Florida.[8] Doral is the 50th largest insured depository institution in Florida, controlling deposits of approximately $921 million, which represent 0.2 percent of the total deposits in that state.

On consummation of this proposal, Centennial would become the 25th largest insured depository institution in Florida, controlling deposits of approximately $2.4 billion, which represent 0.5 percent of the total deposits in that state.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market.[9] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of the communities to be served.[10]

Centennial and Doral compete directly in the Pensacola and Panama City banking markets, both in Florida. The Board has reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the financial condition of Doral and the fact that the Office of the Commissioner of Financial Institutions of Puerto Rico ("Puerto Rico OCFI") has placed the bank into FDIC receivership. In addition, the FDIC, as receiver for Doral, has selected Centennial's consortium bid with Banco Popular in accordance with the least-cost-resolution requirements in the FDI Act. The Board also has considered the resulting loss of Doral as an independent competitor in all the banking markets where it operates if this transaction is not consummated, as well as various measures of competition and market concentration, and other characteristics of the markets.

Under the proposal, Centennial would purchase certain assets and assume certain liabilities of Doral in Florida and thereby merge the branches acquired from Doral into a viable ongoing concern with demonstrated capital strength and management capability. Centennial's proposal would continue the availability of credit opportunities and banking services for the customers and communities that Doral served and avoid serious economic disruption in Florida.

In addition, the Board has considered the competitive effects of the proposal in the Pensacola and Panama City banking markets in light of all the facts of record. In particular, the

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[7] Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, Centennial had total assets of approximately $7.2 billion. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[8] Asset and nationwide deposit-ranking data are as of September 30, 2014. State deposit and ranking data are as of June 30, 2014. As of December 31, 2014, Doral had total assets of approximately $5.9 billion.

[9] 12 U.S.C. § 1828(c)(5)(A).

[10] 12 U.S.C. § 1828(c)(5)(B).

Board has considered the number of competitors that would remain in the banking markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that Centennial would control; the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[11] and other characteristics of the markets.

In the Panama City Area, Florida, banking market (the "Panama City banking market"),[12] Centennial is the fifth largest depository institution, controlling approximately $256.4 million in deposits, which represent approximately 8.8 percent of deposits in that market. Doral is the largest depository institution, controlling approximately $763 million in deposits, which represent approximately 23.7 percent of deposits in that market. In the Pensacola Area, Florida, banking market (the "Pensacola banking market"),[13] Centennial is the 17th largest depository institution, controlling approximately $22.5 million in deposits, which represent less than 1 percent of the deposits in that market. Doral is the 11th largest depository institution, controlling approximately $158.2 million in deposits, which represent approximately 3.3 percent of the deposits in that market.

This proposal would be consistent with Board precedent in the Panama City and Pensacola banking markets. Centennial would become the largest depository institution in the Panama City banking market, controlling approximately $1.0 billion in deposits, which represent approximately 31.7 percent of deposits in that market. The HHI would increase approximately 379 points, from 1164 to 1542. Fifteen other commercial banking organizations would remain in that market. Centennial would become the tenth largest depository institution in the Pensacola banking market, controlling approximately $180.7 million in deposits, which represent approximately 3.8 percent of deposits in that market. The HHI would increase by 3 points, from 1111 to 1114. Twenty other commercial banking organizations would remain in that market.

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which Centennial and Doral compete or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and future prospects of the institutions involved and certain other supervisory factors. The Board has considered these factors in light of all the facts of

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[11] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[12] The Panama City banking market includes Bay and Gulf counties, and the southern half of Washington County, including the towns of Vernon and Wausau, all in Florida.

[13] The Pensacola banking market is defined to include Escambia and Santa Rosa Counties, Florida.

record, including confidential supervisory and examination information from the U.S. banking supervisors of the institutions involved, and publicly reported and other financial information, including information provided by Centennial.

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, the Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction.

Centennial is well capitalized and would remain so on consummation of the proposal. Based on its review of the record in this case, the Board finds that Centennial has sufficient financial resources to effect the proposal. As noted, the proposed transaction is structured as a purchase of certain assets and assumption of certain liabilities from Banco Popular, which has purchased the assets and assumed the liabilities from the FDIC as receiver, and the transaction will be funded by cash.

The Board also has considered the managerial resources of Centennial and has reviewed the examination records of Centennial, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the FDIC, with the organization and its record of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Centennial's plans for implementing the proposal, including its plans for managing the integration of the acquired assets and operations into the bank.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Centennial are consistent with approval under the Bank Merger Act, as are the other statutory factors.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[14] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank acquisition proposals.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Centennial, information provided by Centennial, and confidential supervisory information.

[14] 12 U.S.C. § 2901 *et seq.*

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.[15] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[16] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Centennial. Centennial received an overall rating of "satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of St. Louis, as of July 8, 2013.[17] Centennial received "high satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.

In evaluating the Service Test, examiners noted that Centennial's delivery systems were accessible to the bank's assessment areas and individuals of different income levels. In addition, examiners noted that Centennial's services did not vary in a way that would inconvenience individuals in its assessment area. The examiners also noted that Centennial provided a relatively high level of community development services within the assessment areas.

In evaluating the Investment Test, examiners found that Centennial made a significant level of qualified community development investments and grants and was occasionally in a leadership position. The examiners also noted that Centennial made a good level of qualified community development investments in its assessment areas.

In evaluating the Lending Test, examiners found that Centennial's overall lending activity reflected good responsiveness to the credit needs of its assessment areas and that Centennial originated a substantial percentage of its loans in its assessment areas during the period reviewed. In addition, examiners noted that the geographic distribution of loans demonstrated good penetration throughout the assessment areas and among customers of different income levels and business customers and farms of different sizes.

After consummation of the proposal, Centennial plans to implement its CRA policies at the branches acquired from Doral.

B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. The Board believes that the proposal will result in substantial benefits to the convenience and needs of the communities to be served by maintaining the availability of credit and deposit services to customers of Doral. Centennial represents that Doral's customers will continue to receive the full range of products and services to which they are accustomed. Although Centennial does not anticipate that there will be any immediate sig-

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[15] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642,11665 (March 11, 2010).

[16] 12 U.S.C. § 2906.

[17] Centennial's CRA evaluation was conducted using Large Bank CRA Examination Procedures, and examiners reviewed the bank's lending activity in 2011 and 2012.

nificant changes in services or products as a result of the proposal, Centennial's management will evaluate the products, services, and fee schedules of Doral and make certain changes in order to align them with what is currently offered by Centennial.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Centennial, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Centennial, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[18]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[19] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[20]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Home would have approximately $7.9 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

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[18] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

[19] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[20] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

Establishment of Branches

Centennial has applied under section 9 of the FRA to establish and operate branches at the locations of the acquired branches of Doral, and the Board has considered the factors it is required to consider when reviewing an application under that section.[21] Specifically, the Board has considered Centennial's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by Centennial with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

Because the Board has found that it must act immediately to prevent the probable failure of Doral, the transaction may be consummated immediately. In no event, however, should the transaction 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 St. Louis acting pursuant to delegated authority.

By order of the Board of Governors, effective February 27, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Robert deV. Frierson
Secretary of the Board

Appendix

1. 1002 West 23rd Street, Panama City, Florida 32405
2. 701 Harrison Avenue, Panama City, Florida 32401
3. 123 North Tyndall Parkway, Panama City, Florida 32404
4. 415 North Richard Jackson Blvd., Panama City Beach, Florida 32404
5. 4920 Bayou Blvd., Pensacola, Florida 32503

Comerica Bank
Dallas, Texas

Order Approving Establishment of a Branch
FRB Order No. 2015–01 (January 15, 2015)

Comerica Bank, a state member bank subsidiary of Comerica Incorporated, both of Dallas, Texas, has requested the Board's approval under section 9 of the Federal Reserve Act

[21] 12 U.S.C. § 322; 12 CFR 208.6.

("FRA")[1] and the Board's Regulation H[2] to establish a branch at 31 68th Avenue, Coopersville, Michigan (the "Coopersville branch").

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's Rules of Procedure.[3] The time for submitting comments has expired, and the Board has considered the notice and all comments received in light of the factors specified in the FRA.

Comerica Bank is the second largest depository institution in Michigan with 215 branches, controlling approximately $25.8 billion in deposits, which represent approximately 14.6 percent of the total amount of deposits of insured depository institutions in the state.[4] Comerica Bank's main office is in Dallas, and it operates 138 branches throughout Texas. Comerica Bank operates a total of 485 branches in Arizona, California, Florida, Michigan, and Texas.

Under the Board's Regulation H, which implements section 9 of the FRA,[5] the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA");[6] and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.[7]

The Board has considered the application in light of these factors and the public comment received on the proposal. A commenter objected to the proposal, alleging that Comerica Bank discriminates against African Americans and redlines African American neighborhoods, particularly in the Houston, Texas Metropolitan Statistical Area ("Houston MSA"), with respect to its branching, marketing, and lending activities.[8]

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Comerica Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Comerica Bank, and the comment received. Comerica Bank is well capitalized and would remain so on consummation of the proposal. After considering all the facts of record, the Board has concluded that the financial history and condition, capital adequacy, and future earnings prospects of Comerica Bank are consistent with approval of the pro-

1 12 U.S.C. § 321 *et seq*.

2 12 CFR part 208.

3 12 CFR 262.3(b).

4 Data are as of June 30, 2014, the most recent available, and are updated to reflect mergers through the date. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

5 12 CFR 208.6(b).

6 12 U.S.C. § 2901 *et seq*.

7 Section 9 of the FRA, 12 U.S.C. § 321, which applies the interstate branching provisions of the National Bank Act, 12 U.S.C. § 36(c)(2), permits a state member bank with a branch in a state other than the bank's home state to establish additional branches in that state to the same extent as a bank chartered in that state. Comerica Bank currently operates branches in Michigan and is permitted under both Michigan state law and section 9 of the FRA to establish additional branches in Michigan. *See* 12 U.S.C. §§ 36(c)(2), 36(f)(1)(A); Mich. Comp. Laws Ann. § 487.13711(7) (stating that an out-of-state bank located in a state whose laws permit the establishment of a branch in that state, may establish and operate branches in Michigan).

8 Redlining is the practice of denying a creditworthy applicant a loan or service in a certain neighborhood even though the applicant may otherwise be eligible for the loan or service.

posal. The Board also has reviewed Comerica Bank's proposed investment in the Coopersville branch and concluded that its investment is consistent with regulatory limitations on investment in bank premises.[9]

In considering Comerica Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Comerica Bank and the bank's record of compliance with applicable banking laws, including anti-money laundering laws. Comerica Bank is considered to be well managed. Based on this review and all the facts of record, the Board has concluded that the character of Comerica Bank's management, as well as the records of effectiveness of Comerica Bank in combatting money laundering activities, are consistent with approval of the proposal.

Convenience and Needs Considerations

The Board also has considered the convenience and needs of the community to be served, taking into account the comment received and the bank's performance under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation.[10] In addition, the CRA requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[11]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Comerica Bank, data reported by Comerica Bank under the Home Mortgage Disclosure Act ("HMDA"),[12] other information provided by Comerica Bank, confidential supervisory information, the public comment received on the proposal, and other information. As noted above, a commenter objected to the proposal, alleging that Comerica Bank had engaged in discriminatory lending practices, particularly in the Houston MSA.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of that institution.[13] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[14] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

Comerica Bank was assigned an overall "satisfactory" rating at its CRA performance evaluation by the Federal Reserve Bank of Dallas ("Reserve Bank") as of August 16, 2012

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[9] 12 CFR 208.21(a).

[10] 12 U.S.C. § 2901(b).

[11] 12 U.S.C. § 2903.

[12] 12 U.S.C. § 2801 *et seq*.

[13] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[14] 12 U.S.C. § 2906.

("Comerica Bank Evaluation").[15] Comerica Bank received "high satisfactory" ratings for the Lending Test and the Service Test, and an "outstanding" rating for the Investment Test.[16] In Texas, Comerica Bank received an overall "outstanding" rating, a "high satisfactory" rating for the Lending Test, and "outstanding" ratings for the Investment Test and the Service Test.

As described in the Comerica Bank Evaluation, Reserve Bank examiners found that the bank's overall lending activity in the assessment areas was good in the origination and purchasing of HMDA-reportable loans and small business loans. Examiners also found that Comerica Bank's lending levels reflected a good responsiveness to the assessment areas' credit needs. Examiners noted that the bank had a good penetration of loans among borrowers of different income levels, and among farms and businesses of difference sizes. Examiners also found that the bank had an excellent geographic distribution of loans in the assessment areas, including in LMI geographies in the assessment areas.

Examiners noted that Comerica Bank made an adequate level of community development loans. Examiners found that Comerica made use of innovative and flexible lending practices to serve the credit needs of its assessment areas. Examiners also noted that Comerica Bank's community development loans were used for a variety of purposes, including the financing of affordable housing and high-impact community development projects; the promotion of economic development and job creation; and the revitalization of targeted communities in LMI geographies.

In evaluating Comerica Bank's performance under the Investment Test, examiners found that Comerica Bank made an excellent level of qualified community development investments and grants during the evaluation period. Examiners noted that the bank's investments were particularly responsive to the assessment areas' needs for affordable housing and financial assistance to small businesses. Examiners highlighted Comerica Bank's investments in low-income housing tax credit projects, mortgage-backed securities, small-business investment corporations, community development financial institutions, municipal bonds targeted to LMI areas, zero-interest deposits, and mutual funds that supported affordable housing. Examiners also noted that Comerica Bank made charitable contributions to support affordable housing initiatives; small business development; and educational, health care, and social services organizations that primarily served LMI individuals and geographies.

In evaluating Comerica Bank's performance under the Service Test, examiners found that Comerica Bank's retail banking services and products were generally accessible to businesses of different sizes and individuals of different income levels. Further, examiners highlighted that Comerica Bank had demonstrated leadership in providing community development services in its assessment areas, and offered financial literacy programs, affordable housing seminars, and other economic development services.

[15] The Comerica Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The scope of the Comerica Bank Evaluation for the Lending Test included an evaluation of data from January 1, 2010, through December 31, 2011, as well as data regarding certain community development loans from July 28, 2011, through December 31, 2012. The Investment Test and the Service Test included evaluations of data from January 1, 2010, through March 31, 2012.

[16] The Comerica Bank Evaluation included a review of Comerica Bank's 38 assessment areas, including a full-scope review of 18 of these assessment areas. The Comerica Bank Evaluation included a full-scope review of at least one assessment area within each state where Comerica Bank had an office.

B. Fair Lending and Other Consumer Protection Laws

Fair Lending Analysis. The Board reviewed Comerica Bank's branching, marketing, and lending activities, particularly in the Houston MSA, and performed a redlining review of small business lending and residential mortgage lending for 2012 and 2013.

Examiners found that more than 26 percent of Comerica Bank's branches are located in LMI tracts in the Houston MSA. Examiners considered this percentage to be reasonable and adequate in providing banking services to the LMI populations in that area, based on the percentage of LMI census tracts in the Houston MSA and based on examination guidelines. Examiners also found that more than 45 percent of Comerica Bank's branches in the Houston MSA are in census tracts where minority residents represent a majority of the population. Examiners reviewed Comerica Bank's marketing and outreach activities in the Houston MSA and found that these activities extend to all geographies in the Houston MSA and that the bank advertises in media outlets that reach minority populations and sponsors community events, civic organizations, and multi-cultural initiatives designed to attract minorities. Examiners also found that Comerica Bank's branching in the Houston MSA shows reasonable penetration of LMI tracts and tracts where minority residents represent a majority of the population, and that the bank's marketing activities and community outreach activities reach, and in some cases specifically target, LMI and minority populations, including African Americans.

Examiners also reviewed Comerica Bank's lending policies and procedures, including its fair lending policy. Comerica Bank has instituted a detailed and comprehensive consumer compliance and fair lending program. Comerica Bank conducts ongoing monitoring and testing, including performing fair lending risk assessments and audits, to ensure compliance with all fair lending and other consumer protection laws and regulations. The bank also performs statistical analyses of its lending data and comparative file reviews to detect underwriting and pricing disparities. In addition, Comerica Bank's policies require that its mortgage lending meet well defined guidelines and underwriting criteria, and any exceptions must be well documented and approved by a senior underwriter. Comerica Bank requires mandatory annual fair lending training for all of its employees and offers targeted fair lending training to employees and senior management on an ongoing basis.

HMDA Data. The Board analyzed Comerica Bank's HMDA data from 2012 and 2013 in the Houston MSA related to all HMDA-reportable loans to develop a view of the bank's overall lending patterns, and examined the subset of those data related specifically to the loan products that were the subject of the public comment received on the proposal, including small business lending. The Board analyzed Comerica Bank's assessment area in the Houston MSA, which includes the specific market areas addressed in the public comment.

The Board is concerned when HMDA data for an institution indicate lending disparities. The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also to provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether a bank excludes or denies credit to any group on a prohibited basis.[17] Fully evalu-

[17] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness. In addition, credit history problems, exces-

ating a bank's compliance with fair lending laws and regulations requires a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

In comparing the percentage of Comerica Bank's HMDA applications and originations in majority-minority census tracts to other similarly situated lenders, examiners did not find statistically significant disparities in the Houston MSA in 2012 or 2013. In addition, examiners did not find statistically significant disparities in the percentages of lending by the bank in African American-only census tracts compared to the aggregate in the Houston MSA. In reviewing Comerica Bank's small business lending in the Houston MSA in 2012 and 2013, examiners found that the bank outperformed the aggregate in majority-minority census tracts as a well as in African American-only census tracts.

C. Conclusion on Convenience and Needs Considerations

Comerica Bank proposes to establish the Coopersville branch in connection with the planned closure of another Comerica Bank branch, located at 345 Main Street, Coopersville, Michigan, which is approximately 1.4 miles from the proposed location of the Coopersville branch. The Coopersville branch would be within the same census tract as the branch on Main Street. Comerica Bank represents that the Coopersville branch would provide public benefits by enabling customers to maintain access to its banking services after the closure of the branch on Main Street. Comerica Bank also represents that the Coopersville branch would provide public benefits by increasing functionality and convenience for its customers, and the branch's visibility would attract new opportunities for its customers in the area. Based on all the facts of record, including consultations with other agencies, and for the reasons described in this order, the Board concludes that the convenience and needs factor, including Comerica Bank's CRA record, is consistent with approval of the application.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[18] The Board's approval is specifically conditioned on Comerica Bank's compliance with all commitments made to the Board in connection with the proposal as well as all conditions imposed in this order. The commitments and conditions relied on by the Board are deemed to be conditions imposed in writing in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

sive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

[18] The Board interprets the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Approval of this application is also subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank, acting under authority delegated by the Board.

By order of the Board of Governors, effective January 15, 2015.

Voting for this action: Chair Yellen and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

First Farmers Bank & Trust
Converse, Indiana

Order Approving the Merger of Banks and the Establishment of a Branch
FRB Order No. 2015–06 (February 17, 2015)

First Farmers Bank & Trust ("FFBT"), Converse, Indiana,[1] a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[2] ("Bank Merger Act") to merge with First National Bank of Chrisman ("Chrisman"), Chrisman, Illinois.[3] In addition, FFBT has applied under section 9 of the Federal Reserve Act ("FRA")[4] to establish and operate a branch at the location of Chrisman's sole office.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[5] The time for filing comments has expired. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The Board has considered the applications and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

FFBT, with total assets of approximately $1.4 billion, operates in Indiana and Illinois.[6] FFBT is the 23rd largest insured depository institution in Indiana, controlling deposits of approximately $1.0 billion, which represent less than 1 percent of the total deposits in insured depository institutions in the state ("state deposits").[7] FFBT is the 173rd largest insured depository institution in Illinois, controlling deposits of approximately $221.0 million, which represent less than 1 percent of total state deposits.

Chrisman, with total assets of approximately $38.5 million, operates only in Illinois. Chrisman is the 478th largest insured depository institution in Illinois, controlling deposits of approximately $34.8 million, which represent less than 1 percent of total state deposits.On consummation of the proposal, FFBT would become the 150th largest insured depository

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1 FFBT is a subsidiary of First Farmers Financial Corporation, a financial holding company, also of Converse, Indiana.

2 12 U.S.C. § 1828(c).

3 Chrisman is a subsidiary of Chrisman Bancorp, Inc., a bank holding company, Springfield, Illinois.

4 12 U.S.C. § 321.

5 12 CFR 262.3(b).

6 Asset data are as of September 30, 2014, updated to include the assets acquired by FFBT through the purchase of nine branches from BMO Harris Bank National Association, Chicago, Illinois, on November 14, 2014.

7 Deposit data and state rankings are as of June 30, 2014, updated to include the anticipated mergers with Community Bank, Hoopeston, Illinois, and United Community Bank, Oakwood, Illinois, both of which were approved by the Federal Reserve on February 3, 2015. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

institution in Illinois, controlling deposits of approximately $255.8 million, representing less than 1 percent of total state deposits.

Interstate Analysis

Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal Act") authorizes a bank to merge with a bank located in another state under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction adopted a law expressly prohibiting merger transactions involving out-of-state banks.[8] For purposes of the Riegle-Neal Act, the home state of FFBT is Indiana, and the home state of Chrisman is Illinois.[9] FFBT has provided a copy of its Bank Merger Act application to the relevant state agency and has complied with state law filing requirements.[10] The proposal also complies with all other requirements of the Riegle-Neal Act.[11] Accordingly, the Riegle-Neal Act does not prohibit this interstate branch acquisition.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[12] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.[13]

FFBT and Chrisman compete directly in the Edgar County, Illinois market.[14] FFBT operates two branches in Paris, Illinois, located in the southern portion of the market. Chrisman's main office and only location is in Chrisman, Illinois, in the northern portion of the market. The Board has reviewed the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative share of the total deposits in insured depository institutions in the market ("market deposits") that FFBT would control,[15] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Jus-

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[8] 12 U.S.C. § 1831u.

[9] *See* 12 U.S.C. § 1831u(g)(4).

[10] 12 U.S.C. § 1831u(b)(1). The Indiana Department of Financial Institutions has indicated that this transaction would comply with applicable Indiana law, and the Illinois Department of Financial & Professional Regulation has indicated that this transaction would comply with applicable Illinois law. *See* Ind. Code § 28-2-17-20 and 205 Ill. Comp. Stat. 5/21.1.

[11] *See* 12 U.S.C. § 1831u. As required by the Riegle-Neal Act, FFBT and Chrisman are both at least adequately capitalized (as defined in 12 U.S.C. § 1831o(b)(1)(B)), and the resulting bank would be well capitalized and well managed on consummation of the transaction. On consummation of the proposal, FFBT would control less than 10 percent of the total amount of deposits in insured depository institutions in the United States and less than 30 percent of the total amount of deposits in insured depository institutions in Illinois. *See* 12 U.S.C. § 1831u(b)(2)(A) and (B)(ii). All other requirements of section 102 of the Riegle-Neal Act would also be met on consummation of the proposal.

[12] 12 U.S.C. § 1828(c)(5)(A).

[13] 12 U.S.C. § 1828(c)(5)(B).

[14] The Edgar County banking market is defined as Edgar County, Illinois, minus Kansas Township.

[15] Deposit and market share data are based on data reported by insured depository institutions in the Federal Deposit Insurance Corporation's summary of deposits data as of June 30, 2014.

tice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[16] and other characteristics of the market.

In the Edgar County banking market, the change in concentration levels and the concentration levels on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines. FFBT is the third largest insured depository institution in the Edgar County banking market, controlling deposits of approximately $78.9 million, which represent approximately 17.4 percent of market deposits. Chrisman is the fifth largest insured depository institution in the market, controlling deposits of approximately $34.8 million, which represent approximately 7.7 percent of market deposits. On consummation of the proposal, FFBT would remain the third largest depository institution in the Edgar County banking market, controlling deposits of approximately $113.6 million. The market concentration level in the Edgar County banking market as measured by the HHI would increase by 266 points, from 2369 to 2635, and the market share of the combined entity would represent approximately 25.0 percent of market deposits.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the market.[17] Several factors indicate that the increase in concentration in the Edgar County banking market, as measured by the HHI and the market share of the combined organization, overstates the potential competitive effects of the proposal in the market. The Board has considered the competitive influence of one active thrift, First Bank & Trust, S.B. ("First Bank"), Paris, Illinois. First Bank has a ratio of commercial and industrial loans to assets that is comparable to the ratio for some commercial banks in the market; accordingly, the Board has concluded that deposits controlled by First Bank should be weighted at 100 percent in the market-share calculations.[18]

In addition, after consummation of the proposal, three other competitors would remain in the market, each controlling more than 15 percent of market deposits, including two with greater market share than the combined organization. The largest and second largest competitors in the market would control approximately 32.8 percent and 25.8 percent of market deposits, respectively, and the fourth largest competitor in the market would control approximately 16.4 percent of market deposits. The Board has concluded that this also mitigates, in part, the potential effects of the proposal.

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[16] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[17] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in and resulting level of concentration in a banking market. *See NationsBank Corp*., 84 *Federal Reserve Bulletin* 129 (1998).

[18] The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks (*see, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984)) and has given their deposits 50 percent weighting to reflect their limited lending to small businesses relative to banks' lending levels. However, the Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. *See, e.g., Banknorth Group, Inc*., 75 *Federal Reserve Bulletin* 703 (1989). First Bank has a ratio of commercial and industrial loans to assets that is greater than the ratio for some thrift institutions that the Board has previously found to be full competitors of commercial banks.

The geographic locations of the applicant and target in the market also suggest that HHI calculations likely overstate the competitive effects of the proposal. FFBT's branches are located in Paris township, which is located in the more populated, southern portion of the county where a significant majority of the market's banking activity is centered. In contrast, Chrisman only operates in Ross township, which is in the less populated, northern part of the county.[19] Although the northern and southern parts of Edgar County are included in the same banking market, only a small number of Edgar County residents regularly commute between the two townships.[20] Therefore, there appear to be very few residents for whom the effective number of banking options would be reduced. The Board has concluded that these factors also mitigate the potential competitive effects of the proposal.

The DOJ conducted a review of the potential competitive effects of the merger and has advised the Board that consummation would not be likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Edgar County banking market, or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and future prospects of the institutions involved. In its evaluation of financial factors, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important.

FFBT is well capitalized and would remain so on consummation of the proposal. Chrisman would be merged into FFBT.[21] The asset quality, earnings, and liquidity of FFBT are consistent with approval, and FFBT appears to have adequate resources to absorb the costs of the proposal and to complete the integration of FFBT's and Chrisman's operations. Future prospects are considered consistent with approval. Based on its review of the record, the Board concludes that the organization has sufficient financial resources to effect the proposal.

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[19] Chrisman's branch in Ross township is located approximately 14 miles north of FFBT's branches in Paris township.

[20] Although the percentage of residents that regularly commute between Paris township and Ross township is high enough that these townships are considered to be in the same banking market, the actual number of commuters from Ross township is low.

[21] Each outstanding share of Chrisman stock would be canceled and converted into a right-to-receive cash consideration. The anticipated aggregate cash consideration to be paid in connection with the merger is approximately $4.3 million, subject to certain adjustments.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of FFBT and Chrisman, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

FFBT and Chrisman are considered to be well managed. FFBT's existing risk-management program, and its board of directors and senior management, are considered to be satisfactory. The directors and senior executive officers of FFBT have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered FFBT's plans for implementing the proposal. FFBT is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. FFBT would operate the acquired branch of Chrisman under its existing risk-management policies, procedures, and controls, which are considered to be acceptable from a supervisory perspective. In addition, FFBT's and Chrisman's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner, and FFBT is proposing to integrate Chrisman's existing management and personnel in a manner that augments FFBT's management.[22]

Based on all the facts of record, including FFBT's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of FFBT, as well as the records of effectiveness of FFBT and Chrisman in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger 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 Community Reinvestment Act ("CRA").[23] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank merger proposals.

The Board has considered all the facts of record, including reports of examination of the CRA performance of FFBT and Chrisman, information provided by FFBT, and confidential supervisory information.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.[24] The CRA requires

[22] FFBT's board of directors and senior management team would remain the same after consummating the merger.

[23] 12 U.S.C. § 2901 *et seq*.

[24] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[25] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of FFBT. FFBT received an overall rating of "satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of Chicago ("Reserve Bank"), in February 2012 ("FFBT Evaluation"). FFBT received "satisfactory" ratings on the Lending Test and the Community Development Test.[26]

In evaluating the Lending Test, examiners found that a substantial majority of FFBT's HMDA-reportable, small business, and small farm loans were within the bank's assessment areas. Examiners noted that FFBT's loans reflected a reasonable dispersion among geographies of different income levels and that the bank's borrower distribution reflected reasonable penetration among individuals of different income levels. Examiners commented favorably on FFBT's loan-to-deposit ratio, which consistently exceeded that of its peers and closest competitors.

In evaluating the Community Development Test, examiners noted that FFBT's level of community development lending demonstrated adequate responsiveness to the needs of its assessment areas. Examiners noted that FFBT's staff participated in qualified community development services offering a wide variety of financial assistance to all portions of the bank's assessment areas. Examiners noted that FFBT made qualified community development investments that were used for a variety of purposes, including economic development and affordable housing. FFBT made qualified grants and donations to various charitable organizations that served the needs of the LMI populations.

CRA Performance of Chrisman. Chrisman received an overall rating of "satisfactory" at its most recent CRA performance examination by the Office of the Comptroller of the Currency, in December 2010 ("Chrisman Evaluation").[27] The Chrisman Evaluation focused on Chrisman's primary loan product, agricultural loans. Examiners found that Chrisman's loan-to-deposit ratio was reasonable based on the bank's size, financial condition, and the credit needs of the assessment area. Examiners also noted that the bank's distribution of loans reflected reasonable penetration among farms of different sizes.

[25] 12 U.S.C. § 2906.

[26] The FFBT Evaluation was conducted using Intermediate-Small Bank CRA Examination Procedures. The evaluation period for the bank's HMDA-reportable, small business, and small farm loans was from January 1, 2009, through December 31, 2010. The evaluation period for the bank's community development activities was from February 22, 2010, through February 27, 2012. The evaluation included full-scope reviews of FFBT's non-metropolitan assessment area (including all of Cass, Huntington, and Miami counties, and portions of Clinton, Fulton, Grant, Marshall, Pulaski, Starke, Wabash, and White counties, all of Indiana) and the Kokomo, Indiana Metropolitan Statistical Area ("MSA"). Limited-scope reviews were performed in the portion of the bank's assessment areas located within the Anderson MSA, Indianapolis-Carmel MSA, and Lafayette MSA, all in Indiana.

[27] The Chrisman Evaluation was conducted using Small Bank CRA Examination Procedures. The evaluation period was from August 5, 2005, through December 6, 2010. The evaluation examined three census tracts in Edgar County, Indiana, which included the cities of Paris and Chrisman.

B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

FFBT represents that the proposed transaction would provide Chrisman's customers with access to a broader network of branches and ATMs, enhanced products and services, and expanded financial resources and lending capacity. FFBT plans to expand the suite of products and services currently available to Chrisman's customers to include, among other things, various mobile banking services and securities and insurance brokerage services. FFBT also plans to offer additional credit services, including additional mortgage loans, farm lending, equipment leasing, and various government-sponsored loan programs.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination and the CRA records of the institutions involved, information provided by FFBT, and confidential supervisory information. Based on the Board's assessment of the CRA and consumer compliance records of FFBT and Chrisman, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[28]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[29] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[30]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, FFBT would have

[28] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

[29] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[30] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

approximately $1.5 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Establishment of Branch

FFBT has applied under section 9 of the FRA to establish a branch at the current location of Chrisman,[31] and the Board has considered the factors it is required to consider when reviewing an application under that section.[32] Specifically, the Board has considered FFBT's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investments in bank premises.[33] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by FFBT with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

FFBT's acquisition of Chrisman may not be consummated before the 15th calendar day after the effective date of this order or 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 Reserve Bank acting pursuant to delegated authority.

By order of the Board of Governors, effective February 17, 2015.

Voting for this action: Chair Yellen and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[31] Chrisman's main office and only location is 147 West Monroe Avenue, Chrisman, Illinois 61924.

[32] 12 U.S.C. § 322; 12 CFR 208.6.

[33] Upon consummation of the proposed transaction, FFBT's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

Orders Issued Under International Banking Act

Taiwan Cooperative Bank, Ltd.
Taipei, Taiwan

Order Approving Establishment of a Branch
FRB Order No. 2015–08 (February 20, 2015)

Taiwan Cooperative Bank, Ltd., Taipei, Taiwan ("Taiwan Cooperative"), a foreign bank within the meaning of the International Banking Act of 1978 ("IBA"), has applied under section 7(d) of the IBA [1] to establish a state-licensed branch in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Post*, August 27, 2014). The time for submitting comments has expired, and the Board has considered all comments received.

Taiwan Cooperative, with consolidated assets of approximately $92.0 billion, is the second largest bank in Taiwan.[2] Taiwan Cooperative Financial Holding Co., Ltd., Taipei, owns all of Taiwan Cooperative's shares. Taiwan Cooperative offers a range of commercial, wealth management, and retail banking products. Outside Taiwan, Taiwan Cooperative operates branches in Manila, Sydney, Hong Kong, Suzhou, Tianjin, and Phnom Penh; a representative office in Beijing; and a subsidiary bank, United Taiwan Bank S.A., Brussels, Belgium. In the United States, Taiwan Cooperative operates a limited state-licensed branch in Los Angeles, California, and a state-licensed branch in Seattle, Washington.[3] Taiwan Cooperative is a qualifying foreign banking organization under Regulation K.[4]

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, (2) the foreign bank has furnished to the Board the information it needs to assess the application adequately, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.[5] The Board also considers additional standards as set forth in the IBA and Regulation K.[6]

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1 12 U.S.C. § 3105(d).

2 Asset and ranking data are as of December 31, 2014, and are based on the exchange rate as of that date.

3 As a limited branch, the Los Angeles branch is prohibited from accepting deposits from sources other than those permitted by section 25A of the Federal Reserve Act. Pursuant to section 25A of the Federal Reserve Act, a limited branch may receive deposits outside the United States and only such deposits within the United States that are incidental to or for the purpose of carrying out transactions in foreign countries. 12 U.S.C. § 615(a). Regulation K defines the extent of permissible deposit-taking activities of entities under section 25A of the Federal Reserve Act. *See* 12 CFR 211.6(a)(1).

4 12 CFR 211.23(a).

5 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to an affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv)receive from the bank financial reports that are consolidated on a

As noted above, Taiwan Cooperative engages directly in the business of banking outside the United States. Taiwan Cooperative also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

With respect to supervision by home country authorities, the Federal Reserve previously has determined that Taiwan Cooperative is subject to comprehensive supervision on a consolidated basis by its home country supervisor, the Financial Supervisory Commission ("FSC").[7] Taiwan Cooperative remains supervised by the FSC on substantially the same terms and conditions. Based on all the facts of record, it has been determined that Taiwan Cooperative continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account. The FSC has no objection to the establishment of the proposed branch.

The Board has also considered the financial and managerial factors in the case. Taiwan's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Basel Accord"). Taiwan Cooperative's capital is in excess of the minimum levels that would be required by the Basel Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Taiwan Cooperative are considered consistent with approval, and Taiwan Cooperative appears to have the experience and capacity to support the proposed branch. In addition, Taiwan Cooperative has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

Taiwan has enacted laws and regulations to deter money laundering that are consistent with the Financial Action Task Force's recommendations. Money laundering is a criminal offense in Taiwan, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Taiwan Cooperative has policies and procedures to comply with these laws and regulations, and its compliance is monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information on Taiwan Cooperative's operations, the restrictions on disclosure in relevant jurisdictions in which Taiwan Cooperative operates have been reviewed. Taiwan Cooperative has committed to make available to the Board such information on its operations and on those of any of its affiliates that the Board deems necessary

worldwide basis, or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

6 12 U.S.C. § 3105(d)(3)-(4), 12 CFR 211.24(c)(2)-(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: (i)whether the bank's home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; (v) whether the bank has provided the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes; (vi) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vii) the needs of the community; and (viii) the bank's record of operation. The Board also considers, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

7 *Taiwan Cooperative Bank*, 92 *Federal Reserve Bulletin* C201 (2006).

to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Taiwan Cooperative has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, it has been determined that Taiwan Cooperative has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the IBA to provide that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.[8] Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to the absolute and relative size of Taiwan Cooperative in its home jurisdiction; the scope of Taiwan Cooperative's activities, including the type of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising Taiwan Cooperative in its home jurisdiction. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

The IBA establishes criteria that must be met before the Board can approve the establishment of a branch outside a foreign bank's home state. Taiwan Cooperative's home state is Washington. Under section 5(a)(2) of the IBA, as amended by section 104 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,[9] a foreign bank, with the approval of the Board and the appropriate state supervisory agency, may establish and operate a state-licensed branch in any state outside its home state to the extent that a state-chartered bank with the same home state as the foreign bank could do so under section 18(d)(4) of the Federal Deposit Insurance Act ("FDI Act"). Section 18(d)(4), which previously authorized states to "opt-in" to interstate de novo branching, was amended by section 613 of the Dodd-Frank Act to permit insured state banks to establish interstate de novo branches nationwide.[10] It has been determined that all the other criteria referred to in section 5(a)(1) and 5(a)(3) of the IBA, including the criteria in section 7(d) of the IBA, have been met.[11] In view of all the facts of record, the Board is permitted to approve the establishment of an interstate de novo state-chartered branch by Taiwan Cooperative under section 5(a) of the IBA.

On the basis of all the facts of record, and subject to the commitments made by Taiwan Cooperative, as well as the terms and conditions set forth in this order, Taiwan Cooperative's application to establish a branch in New York is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General

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[8] Pub. L. No. 111-203, 124 Stat. 1376, 1440 (2010), codified at 12U.S.C.§3105(d)(3)(E).

[9] 12 U.S.C. § 3103(a)(2).

[10] Pub. L. No. 111-203, 124 Stat. 1376, 1614 (2010), codified at 12 U.S.C. § 1828(d)(4)(A)(i).

[11] Section 18(d)(4) of the FDI Act and section 5(a) of the IBA require that certain conditions of section 44 of the FDI Act be met in order for the Board to approve a de novo interstate state-chartered branch. *See* 12 U.S.C. § 1848(d)(4)(B) and 12 U.S.C. §1303(a)(3)(C) (referring to sections 44(b)(1), 44(b)(3), and 44(b)(4) of the FDI Act, 12 U.S.C. § 1831u(b)(1), (b)(3), and (b)(4)). It has been determined that Taiwan Cooperative is in compliance with state filing requirements. Taiwan Cooperative was well capitalized as of the date the application was filed, and on consummation of this proposal, Taiwan Cooperative would continue to be well capitalized and well managed.

Counsel, pursuant to authority delegated by the Board.[12] Should any restrictions on access to information on the operations or activities of Taiwan Cooperative and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Taiwan Cooperative or its affiliates with applicable federal statutes, the Board may require termination of any of Taiwan Cooperative's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Taiwan Cooperative with the commitments made in connection with this application and with the conditions in this order.[13]

By order, approved pursuant to authority delegated by the Board, effective February 20, 2015.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[12] 12 CFR 265.7(d)(12).

[13] The Board's authority to approve the establishment of branches parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York and its agent, the New York State Department of Financial Services, to license the proposed branch of Taiwan Cooperative in accordance with any terms and conditions that the New York State Department of Financial Services may impose.

Federal Reserve
BULLETIN
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Legal Developments: Second Quarter, 2015

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Chemical Financial Corporation
Midland, Michigan

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2015–13 (April 20, 2015)

Chemical Financial Corporation ("Chemical"), Midland, a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with Lake Michigan Financial Corporation ("Lake Michigan"), Holland, and thereby indirectly acquire its subsidiary banks, The Bank of Holland ("Bank of Holland"), Holland, and The Bank of Northern Michigan ("Bank of Northern Michigan"), Petoskey, all of Michigan.

In addition, Chemical's subsidiary state member bank, Chemical Bank, Midland, Michigan, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Bank of Holland and Bank of Northern Michigan, with Chemical Bank as the surviving entity.[2] Chemical Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main offices and branches of Bank of Holland and Bank of Northern Michigan.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 7594 (2015)).[4] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General and a copy of the request has been provided to the Federal Deposit Insurance Corporation ("FDIC").

Chemical, with total consolidated assets of approximately $7.3 billion, is the 144th largest depository organization in the United States.[5] Chemical controls Chemical Bank and operates only in Michigan. Chemical Bank controls approximately $6.0 billion in deposits and

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1 12 U.S.C. § 1842.

2 12 U.S.C. § 1828(c).

3 12 U.S.C. § 321. These locations are listed in Appendix A. Chemical will consolidate two branches of Bank of Northern Michigan with neighboring branches of Chemical Bank.

4 12 CFR 262.3(b).

5 Nationwide deposit, asset, and ranking data are as of December 31, 2014. In this context, insured depository institutions include commercial banks, savings banks, savings associations, and non-deposit trust companies.

is the eighth largest insured depository institution in the state, with deposits representing 3.4 percent of the total deposits in insured depository institutions in Michigan.[6]

Lake Michigan, with consolidated assets of approximately $1.2 billion, is the 593rd largest depository organization in the United States. Lake Michigan controls two banks, Bank of Holland and Bank of Northern Michigan, which operate only in Michigan. Lake Michigan is the 22nd largest insured depository organization in the state, controlling approximately $937 million in deposits representing 0.5 percent of the total deposits held by insured depository institutions in Michigan.

On consummation of the proposal, Chemical would become the 128th largest depository organization in the United States, with consolidated assets of approximately $8.7 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Chemical would control total deposits of approximately $6.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Michigan, Chemical would become the seventh largest depository organization, controlling deposits representing 3.9 percent of the total deposits held by insured depository institutions in the state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[7] Both statutes also prohibit the Board from approving a proposal 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 communities to be served.[8]

Chemical and Lake Michigan have subsidiary depository institutions that compete directly in five banking markets in Michigan: Holland, Grand Rapids, Muskegon-Grand Haven, Petoskey, and Traverse City.

A. Competitive Effects in the Banking Markets

The Board has considered the competitive effects of the proposal in each of the banking markets in which Chemical and Lake Michigan compete. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative share of total deposits in insured depository institutions in the markets ("market deposits") that Chemical Bank would control upon consummation of the proposal;[9] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive

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[6] State deposit, market share, and ranking data are as of June 30, 2014, as updated to reflect changes in ownership structure from mergers through March 6, 2015 (including Chemical's merger with Northwestern Bancorp, Inc., on October 31, 2014).

[7] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[8] 12 U.S.C. § 1828(c)(5)(B).

[9] Local deposit and market share data are as of June 30, 2014 (including deposits from Chemical's merger with Northwestern Bank on October 31, 2014), and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 53 (1991).

Review guidelines ("DOJ Bank Merger Guidelines"), after consummation of the proposal;[10] and other characteristics of the markets.

Banking Markets Within Established Guidelines. Based on initial competitive screening data, consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Grand Rapids, Muskegon-Grand Haven, Petoskey, and Traverse City banking markets.[11] On consummation of the proposal, each of these four banking markets would remain moderately concentrated, and the changes in market concentrations would be within the DOJ Bank Merger Guidelines and Board precedent. In each of these banking markets, numerous competitors would remain.

Banking Market Warranting Special Scrutiny. The structural effects that consummation of the proposal would have on the Holland banking market[12] warrant a detailed review because, using initial competitive screening data, the concentration level on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines.

Using the initial screening data, Chemical is the sixth largest depository organization in the Holland banking market, controlling approximately $102.9 million in deposits, which represent 4.8 percent of market deposits. Lake Michigan is the largest depository organization in the market, controlling approximately $482.9 million in deposits, which represent 22.4 percent of market deposits. On consummation, the combined entity would be the largest depository institution in the Holland banking market, controlling approximately $585.8 million in deposits, which would represent approximately 27.2 percent of market deposits. The HHI in this market would increase by 214 points, from 1631 to 1845.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Holland banking market.[13] Factors indicate that the increase in concentration in the Holland banking market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, six community credit unions exert a competitive influence in the Holland banking market. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.[14] The Board finds that these circumstances warrant including the

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[10] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[11] These four banking markets and the competitive effects of the proposal in these markets are described in Appendix B.

[12] The Holland banking market is defined as the Park, Holland, Zeeland, Olive, and Port Sheldon townships in Ottawa County and the Laketown, Fillmore, and Overisel townships in Allegan County, all of Michigan.

[13] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. *See NationsBank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

[14] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012–12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012–9 (August 30, 2012); *United Bankshares, Inc.*, (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation, supra; Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

deposits of these credit unions at a 50-percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration of the proposed transaction in the Holland banking market is less significant than would appear from the initial competitive screening data, which focused on commercial bank competitors. In particular, adjusting to reflect competition by other insured depository institutions in the market, the market concentration level in the Holland banking market as measured by the HHI would increase by 194, from a level of 1482 to 1676, and the market share of Chemical resulting from the transaction would increase in the market from 4.5 percent to 25.9 percent. After consummation of the proposal, the merged entity would continue to face competition from commercial bank competitors in the market, three of which have a market share greater than 15 percent.

B. Views of Other Agencies and Conclusion Regarding Competitive Factors

The DOJ conducted a review of the potential competitive effects of the merger and has advised the Board that consummation of the proposal would not be likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Holland banking market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Factors

In reviewing a proposal under the BHC Act, the Bank Merger Act, and the FRA, the Board considers the financial and managerial resources and future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Chemical and Chemical Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and stock purchase, with a subsequent merger of the subsidiary depository institutions. Chemical expects to fund the transaction with cash and other liquid assets on hand. Chemical has the resources to fund the cash portion of the consideration. The asset quality, earnings, and liquidity of Chemical are consistent with approval, and Chemical appears to have adequate resources to absorb the costs of the proposal and to complete the integration of Chemical and Lake Michigan's operations. In addition, future

prospects are considered consistent with approval. Based on its review of the record, the Board finds that Chemical has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Chemical, Lake Michigan, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Chemical, the Board's supervisory experiences with Chemical and Lake Michigan and those of other relevant bank supervisory agencies with the organizations, and their records of compliance with applicable banking and anti-money-laundering laws.

Chemical and its subsidiary depository institution are each considered to be well managed. The directors and senior executive officers of Chemical have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Chemical's plans for implementing the proposal. Chemical is devoting sufficient financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Chemical would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Chemical and Lake Michigan's management have the experience and resources that should allow the combined organization to operate in a safe and sound manner.

Based on all the facts of record, including Chemical's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Chemical and Lake Michigan in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[15] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[16] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[17]

The Board has considered all the facts of record, including reports of examination of the CRA performance of Chemical Bank, Bank of Holland, and Bank of Northern Michigan, information provided by Chemical, and confidential supervisory information.

[15] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*
[16] 12 U.S.C. § 2901(b).
[17] 12 U.S.C. § 2903.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[18] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[19] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Chemical Bank. Chemical Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago ("Reserve Bank") in August 2013 ("Chemical Bank Evaluation").[20] Chemical Bank received "outstanding" ratings for the each of the Lending Test, the Investment Test, and the Service Test.[21]

In evaluating the Lending Test, examiners noted that Chemical Bank originated a substantial majority of loans within its assessment areas and showed excellent responsiveness to credit needs throughout its assessment areas. Examiners also noted that the bank had an excellent record of serving the credit needs of very small businesses. Further, Chemical Bank's geographic distribution of loans reflected excellent penetration throughout the assessment areas. Examiners also noted that Chemical Bank is a leader in making community development loans inside its assessment areas and uses flexible and innovative lending practices in serving assessment area needs. Examiners noted that the dollar amount of Chemical Bank's lending increased by approximately 11.0 percent from the prior evaluation.

In evaluating the Investment Test, examiners found that Chemical Bank had provided an excellent level of qualified investments, donations, and grants. Examiners noted that the bank demonstrated excellent responsiveness to credit and community development needs. The bank also made extensive use of innovative and complex investments to support community development initiatives. Examiners noted that Chemical Bank's CRA-qualified investments increased by approximately 32.9 percent in number and 50.5 percent in dollars from the prior evaluation.

In evaluating the Service Test, examiners noted that Chemical Bank's branch location changes had improved the accessibility of its delivery systems, particularly to LMI geographies and LMI individuals. Examiners also found that the bank's delivery systems were readily accessible to the bank's geographies and individuals of different income levels in the assessment areas. Further, examiners highlighted that Chemical Bank was a leader in providing community development services throughout its assessment areas.

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[18] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[19] 12 U.S.C. § 2906.

[20] The Chemical Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. The Chemical Bank Evaluation reviewed home mortgage and small business lending data from January 1, 2011, through December 31, 2012. The evaluation period for community development loans, investments, and services was July 1, 2011, through August 26, 2013.

[21] The Chemical Bank Evaluation included a full-scope review of five assessment areas: the Grand Rapids-Wyoming Metropolitan Statistical Area ("MSA"); the Niles-Benton Harbor MSA; the Bay City MSA; the Kalamazoo-Portage MSA; and the North Central-Non-MSA. A limited-scope review was performed in the Battle Creek MSA; the Flint MSA; the Holland-Grand Haven MSA; the Saginaw-Saginaw Township North MSA; the South Bend-Mishawaka (Multi-State) MSA (Cass County, Michigan, only); the East-Non-MSA; the South-Non-MSA; and the West-Non-MSA.

CRA Performance of Bank of Holland. The Bank of Holland was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC in February 2012 ("Bank of Holland Evaluation"), with ratings of "satisfactory" for the Lending Test and the Community Development Test.[22]

In evaluating the Lending Test, examiners noted that the bank originated a majority of home mortgage loans and small business loans within its assessment areas.[23] Examiners also found that the bank's geographic distribution of home mortgage loans and small business loans reflected reasonable dispersion throughout its assessment areas. They further noted that the bank's distribution of loans to borrowers reflected reasonable penetration among individuals of different income levels, with room for improvement noted in penetrating businesses of different sizes. Further, examiners concluded that Bank of Holland's loan-to-deposit ratio was reasonable given its size, financial condition, and assessment areas' credit needs.

In evaluating the Community Development Test, examiners noted that Bank of Holland's level of community development performance demonstrated adequate responsiveness to the community development needs of its assessment areas through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of opportunities for community development in the bank's assessment areas.

CRA Performance of Bank of Northern Michigan. The Bank of Northern Michigan was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC in November 2013 ("Bank of Northern Michigan Evaluation"), with ratings of "satisfactory" for the Lending Test and the Community Development Test.[24]

In evaluating the Lending Test, examiners noted that the bank originated a majority of home mortgage loans and small business loans within its assessment area.[25] Examiners also found that the bank's geographic distribution of home mortgage loans and small business loans reflected reasonable dispersion throughout its assessment area, and the bank's distribution of loans to borrowers reflected reasonable penetration among individuals of different income levels and businesses of different sizes. Further, examiners concluded that Bank of Northern Michigan's loan-to-deposit ratio was reasonable given its size, financial condition, and assessment area credit needs. Examiners also noted that Bank of Northern Michigan did not receive any complaints about its performance in meeting assessment area credit needs.

In evaluating the Community Development Test, examiners noted that Bank of Northern Michigan's level of community development performance demonstrated adequate respon-

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[22] The Bank of Holland Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. The Lending Test included a review of home mortgage loans and small business loans for the period of January 1, 2010, through December 31, 2011. The Community Development Test reviewed all community development activities, including donations and investments, services, and any community development loans originated by Bank of Holland since its previous CRA evaluation, in March 2008.

[23] The Bank of Holland has two designated assessment areas. The first assessment area, the "Holland Assessment Area," consists of the whole of Ottawa County, Michigan, in the Holland-Haven MSA. The second assessment area, the "Grand Rapids Assessment Area," consists of southern portions of Kent County, Michigan, in the Grand Rapids-Wyoming MSA.

[24] The Bank of Northern Michigan Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. The Lending Test included a review of home mortgage loans and small business loans for the period of January 1, 2012, through September 30, 2013. The Community Development Test reviewed all community development activities, including donations and investments, services, and any community development loans originated by Bank of Northern Michigan since its previous CRA evaluation, in August 2010.

[25] The Bank of Northern Michigan has one designated assessment area, which comprises Charlevoix, Emmet, Grand Traverse, and Leelanau counties, all of which are nonmetropolitan areas in Michigan.

siveness to the community development needs of its assessment area through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of opportunities for community development in the bank's assessment area.

Additional CRA Activities of Chemical Bank. Chemical Bank represents that it provides a comprehensive range of banking and related financial services to meet the needs of individuals, families, and businesses in the communities it serves. Chemical Bank states that it uses innovative and flexible lending practices designed to expand homeownership opportunities for LMI borrowers, such as FHA Mortgages, Rural Development Mortgages, and Veteran Administration Loans. In addition, Chemical Bank is involved in both the Michigan State Housing Development Authority's Property Improvement Program loans and the federal Neighborhood Impact Program rehab grants. Chemical Bank makes available to borrowers portfolio home lending products, which provide it greater flexibility in meeting the needs of LMI borrowers. Chemical also represents that it is a leader in community development lending and that it makes loans that address all four categories of community development, including affordable housing, economic development, stabilization and revitalization, and community services. In addition to its lending activities, Chemical Bank represents, it offers a number of retail products targeted at helping LMI customers.

B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

Chemical represents that the proposed transaction would strengthen the ability of the current offices of Bank of Holland and Bank of Northern Michigan to meet the convenience and needs of the communities they serve by leveraging the products and the managerial and financial resources of Chemical Bank. Chemical Bank currently has a rating of "outstanding" from its most recent CRA examination, and Chemical represents that it would bring its commitment to CRA and its resources to meet the convenience and needs of the communities currently served by Bank of Holland and Bank of Michigan, which both maintain "satisfactory" CRA ratings.

Chemical further represents that following the merger, the banking products and services of Bank of Holland and Bank of Northern Michigan would be shifted to Chemical Bank, which would continue to provide high-quality financial products to the customers and communities currently served by Bank of Holland and Bank of Northern Michigan. Bank of Holland and Bank of Northern Michigan have focused primarily on commercial lending for small and mid-sized businesses and on providing personal banking services to their owners and executives. Following the merger, consumers in the communities served by Bank of Holland and Bank of Northern Michigan would be able to take advantage of a broader array of personal banking products and services offered by Chemical Bank, including portfolio mortgage loans, consumer loans, and deposit accounts. Chemical also states that commercial lenders would be able to benefit from treasury management products and the higher lending limit of Chemical Bank following the merger. In addition, the customers of Bank of Holland and Bank of Northern Michigan would gain access to a broad range of trust and wealth-management products and services, which are not currently offered by either bank.

Chemical represents that it does not expect that Chemical Bank would discontinue any services or products currently offered by Bank of Holland or Bank of Northern Michigan. In

instances where a product or service of Bank of Holland or Bank of Northern Michigan duplicates one offered by Chemical Bank, those accounts would be migrated to the Chemical Bank product.

Although Chemical plans to consolidate two of Bank of Northern Michigan's branches with nearby Chemical Bank branches following the merger, Bank of Holland and Bank of Northern Michigan customers nevertheless would benefit from having a larger network of banking offices throughout Michigan. Customers of Bank of Holland and Bank of Northern Michigan would be able to bank at any of Chemical Bank's branch offices in that extensive network, which would extend from Michigan's southernmost tier of counties to the tip of Michigan's Lower Peninsula.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Chemical, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Chemical Bank, Bank of Holland, and Bank of Northern Michigan, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Act Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the BHC Act and the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."[26]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[27] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[28]

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation of the proposed transaction, Chemical would have approximately $8.7 billion in consolidated assets and would not be likely to

[26] Sections 604(d) and (f) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

[27] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[28] For further discussion of the financial stability standard, *see Capital One Financial Corporation,* FRB Order 2012-2 (February 14, 2012).

pose systemic risks. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board has determined that considerations relating to financial stability are consistent with approval.

Establishment of Branches

Chemical Bank has applied under section 9 of the FRA to establish branches at the current locations of Bank of Holland and Bank of Northern Michigan. The Board has assessed the factors it is required to consider when reviewing an application under that section.[29] Specifically, the Board has considered Chemical Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.[30] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Chemical and Chemical Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than October 31, 2015, unless such period is extended for good cause by the Board or the Reserve Bank acting pursuant to delegated authority.

By order of the Board of Governors, effective April 20, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[29] 12 U.S.C. § 322; 12 CFR 208.6.

[30] In addition, upon consummation of the proposed transaction, Chemical Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

Appendix A

Branches to Be Acquired by Chemical Bank

The Bank of Holland
1. 150 Central Avenue, Holland, Michigan 49423
2. 16930 Robbins Road, Suite 120, Grand Haven, Michigan 49417
3. 51 Ionia SW, Grand Rapids, Michigan 49503

The Bank of Northern Michigan
4. 406 Bay Street, Petoskey, Michigan 49770
5. 130 South Union, Traverse City, Michigan 49036

Appendix B

Chemical Bank/Bank of Holland/Bank of Northern Michigan Banking Markets in Michigan Consistent with Board Precedent and DOJ Bank Merger Guidelines

Bank	Rank	Amount of Deposits	Market Deposit Shares (percent)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Grand Rapids, Michigan – includes Kent County (excluding Oakfield and Spencer townships); Thornapple, Irving, Carlton, Yankee Springs, Rutland and Hastings townships in Barry County; Casanovia township in Muskegon County; Salem, Dorr and Leighton townships in Allegan County; Jamestown, Georgetown, Blendon, Allendale, Tallmadge, Polkton, Wright and Chester townships in Ottawa County, all of Michigan.						
Chemical Bank Pre-Consummation	6	820.4 mil.	5.8			
Lake Michigan (Bank of Holland)	17	146.8 mil.	1			
Chemical Bank Post-Consummation	5	967.2 mil.	6.8	1104	12	25
Muskegon-Grand Haven, Michigan – includes Muskegon County (excluding Casanovia township); Grand Haven, Spring Lake, Crockery and Robinson townships in Ottawa County, all of Michigan.						
Chemical Bank Pre-Consummation	11	30.4 mil.	1.4			
Lake Michigan (Bank of Holland)	14	14.0 mil.	0.7			
Chemical Bank Post-Consummation	11	44.4 mil.	2.1	1527	2	13
Petoskey, Michigan – includes Charlevoix County, Emmet County (excluding Bliss, Carp Lake and Wawatam townships); Burt, Toscorara, Mentor and Wilmot townships in Cheboygan County; Banks township in Antrim County, all of Michigan.						
Chemical Bank Pre-Consummation	10	56.3 mil.	4.7			
Lake Michigan (Bank of Northern Michigan)	2	196.6 mil.	16.5			
Chemical Bank Post-Consummation	1	252.9 mil.	21.2	1346	157	9
Traverse City, Michigan – includes Antrim County (excluding Banks township); Benzie County; Grand Traverse County; Kalkaska County; Leelanau County, evelopmentsall of Michigan.						
Chemical Bank Pre-Consummation	2	449.0 mil.	15.5			
Lake Michigan (Bank of Northern Michigan)	9	96.9 mil.	3.3			
Chemical Bank Post-Consummation	2	555.9 mil.	18.8	1308	104	14

Deposit data are as of June 30, 2014. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

BB&T Corporation
Winston-Salem, North Carolina

Order Approving the Acquisition of a Bank Holding Company
FBR Order No. 2015–15 (June 3, 2015)

BB&T Corporation ("BB&T"), Winston-Salem, North Carolina, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to merge with The Bank of Kentucky Financial Corporation ("Kentucky Financial") and thereby acquire

[1] 12 U.S.C. § 1842.

The Bank of Kentucky, Inc. ("Kentucky Bank"), both of Crestview Hills, Kentucky. Following the proposed acquisition, Kentucky Bank, a nonmember bank, would be merged into BB&T's subsidiary nonmember bank, Branch Banking and Trust Company ("Branch Bank"), also of Winston-Salem.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 62141 (2014)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

BB&T, with consolidated assets of approximately $186.8 billion, is the 18th largest insured depository organization in the United States, controlling approximately $129.0 billion in consolidated deposits, which represent approximately 1.1 percent of the total amount of deposits of insured depository institutions in the United States. BB&T controls Branch Bank, which operates in Alabama, Florida, Georgia, Indiana, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia. Branch Bank is the third largest insured depository institution in North Carolina, controlling approximately $54.6 billion in deposits, and the fourth largest insured depository institution in Kentucky, controlling approximately $4.1 billion in deposits, which represent 16.1 and 5.8 percent, respectively, of the total deposits of insured depository institutions in those states.[4]

Kentucky Financial, with consolidated assets of approximately $1.9 billion, is the 395th largest depository organization in the United States, controlling approximately $1.6 billion in deposits, which represent less than 1 percent of nationwide deposits. Kentucky Financial controls Kentucky Bank, which operates in Kentucky and Ohio. Kentucky Bank is the 10th largest insured depository institution in Kentucky, controlling approximately $1.5 billion in deposits, which represent 2.2 percent of the total deposits of insured depository institutions in that state. In Ohio, Kentucky Bank is the 227th largest insured depository institution, controlling approximately $30.5 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, BB&T would remain the 18th largest depository organization in the United States, with consolidated assets of approximately $188.7 billion, which represent 0.9 percent of the total amount of assets of insured depository institutions in the United States. BB&T would control total deposits of approximately $130.7 billion, which represent 1.1 percent of the total amount of deposits of insured depository institutions in the United States. In Kentucky, BB&T would become the second largest depository organization, controlling deposits of approximately $5.7 billion, which represent 8 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than the home state of the bank holding company without regard to

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[2] The merger of Kentucky Bank into Branch Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 18(c) of the Federal Deposit Insurance Act (the "Bank Merger Act"). 12U.S.C.§1828(c). The FDIC approved the bank merger on February 6, 2015.

[3] 12 CFR 262.3(b).

[4] National asset and deposit data are as of December 31, 2014. State deposit data are as of June 30, 2014. In this context, insured depository institutions include commercial banks, savings banks, and savings and loan associations.

whether the transaction is prohibited under state law.[5] Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[6] In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[7]

For purposes of the BHC Act, the home state of BB&T is North Carolina, and Kentucky Financial's home state is Kentucky.[8] Kentucky Bank is also located in Ohio. BB&T is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA") rating.[9] Kentucky has a five-year age requirement,[10] Ohio has no minimum age requirement,[11] and Kentucky Bank has been in existence for more than five years.

On consummation of the proposed transactions, BB&T would control 1.1 percent of the total amount of deposits in insured depository institutions in the United States. In addition, the combined organization would control approximately 8 percent of the total amount of deposits of insured depository institutions in Kentucky Financial's home state, Kentucky.[12] There are no other states in which BB&T and Kentucky Financial have overlapping banking operations. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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.[13]

Branch Bank and Kentucky Bank do not compete directly in any banking market. Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of

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[5] 12 U.S.C. § 1842(d)(1)(A).

[6] 12 U.S.C. § 1842(d)(1)(B).

[7] 12 U.S.C. § 1842(d)(2)(A), (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7).

[8] *See* 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

[9] 12 U.S.C. §§ 2901-2908. There are no state community reinvestment laws applicable to this case.

[10] Ky. Rev. Stat. Ann. § 286.3-920.

[11] Ohio Rev. Code Ann. § 1115.05.

[12] Kentucky imposes a 15-percent limit on the total amount of in-state deposits that a single banking organization may control. Ky. Rev. Stat. Ann. § 286.3-900.

[13] 12 U.S.C. § 1842(c)(1).

resources in any relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

BB&T and Branch Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange.[14] The asset quality, earnings, and liquidity of Branch Bank and Kentucky Bank are consistent with approval, and BB&T appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of BB&T, Kentucky Financial, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by BB&T, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking and anti-money-laundering laws.

BB&T, Kentucky Financial, and their subsidiary depository institutions are each considered to be well managed. BB&T's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of BB&T have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered BB&T's plans for implementing the proposal. BB&T has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. BB&T has conducted comprehensive due diligence and is devoting significant financial and other resources to develop a detailed integration plan and timeline for this proposal. BB&T would implement its existing compliance and risk-management systems and programs at the combined organization, and these

[14] As part of the proposed transaction, each share of Kentucky Financial common stock would be converted into a right to receive cash and BB&T common stock, based on an exchange ratio. BB&T has the financial resources to fund the transaction.

are considered acceptable from a supervisory perspective. In addition, BB&T's and Kentucky Financial's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and BB&T plans to integrate Kentucky Financial's existing management and personnel in a manner that augments BB&T's management.[15]

Based on all the facts of record, including BB&T's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of BB&T and Kentucky Financial in combatting money-laundering activities, are consistent with approval.

Convenience and Needs 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. In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether there is a reasonable basis to conclude that the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.[16] The Board also considers the banks' overall compliance record and recent fair lending examinations, the supervisory views of examiners, other supervisory information, and comments received on the proposal. Other information the Board may consider includes the institution's business model, the institution's marketing and outreach plans, the development and monitoring of business goals and initiatives, and the organization's plans following consummation.

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[17] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.[18] In addition to complying with the requirements of the CRA, fair lending and other consumer protection laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or other prohibited bases.

The Board also considered information provided by the public during the comment period. The Board received one comment from a commenter who objected to the proposal on the basis of Branch Bank's and Kentucky Bank's lending records to LMI and minority borrowers, based on 2013 data reported by the banks under the Home Mortgage Disclosure Act ("HMDA"), for Branch Bank in the Louisville, KY-IN ("Louisville") Multi-State Metropolitan Statistical Area ("MSA"), Dallas-Plano-Irving ("Dallas") MSA, and Houston-Sugarland-Bay Town ("Houston") MSA assessment areas; and for Kentucky Bank in

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[15] For instance, in order to provide BB&T's existing management with further insight into serving the needs of the communities currently served by Kentucky Financial, BB&T would invite certain representatives from Kentucky Financial to serve on two new advisory bodies: a regional advisory board and a Northern Kentucky Community Development Committee.

[16] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

[17] 12 U.S.C. § 2901(b).

[18] 12 U.S.C. § 2903.

the Cincinnati-Middletown ("Cincinnati") Multi-State MSA assessment area. The commenter also criticized Branch Bank's branch distribution in LMI areas in the Dallas MSA and Houston MSA assessment areas.

HMDA data reflecting certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas can raise concern about the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly and equitably. However, other information critical to an institution's credit decisions is not available from HMDA data.[19] Consequently, HMDA disparities must be evaluated in the context of other information regarding the lending record of an institution.

The Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[20] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[21] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Branch Bank. Branch Bank was assigned an overall "Outstanding" rating by the FDIC at its most recent CRA performance evaluation, as of May 19, 2014 ("Branch Bank Evaluation").[22] Branch Bank received "Outstanding" ratings for the Investment Test and the Service Test and a "High Satisfactory" rating for the Lending Test. Examiners found that Branch Bank made an excellent level of qualified investments and extensive use of innovative investments to support community development initiatives. The Board has consulted with the FDIC regarding the Branch Bank Evaluation.

In evaluating the Lending Test, examiners found that Branch Bank's overall lending levels reflected good responsiveness to assessment area credit needs and that Branch Bank made a high percentage of its loans within its assessment areas, reflecting adequate penetration. Examiners also found that the bank's distribution of borrowers reflected good penetration among retail customers of different income levels and business customers of different sizes. Examiners noted that Branch Bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, LMI individuals, and

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[19] Other data relevant to a fair lending analysis could include, for example, information on credit history problems, debt-to-income ratios, and loan-to-value ratios. Moreover, HMDA data do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness.

[20] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[21] 12 U.S.C. § 2906.

[22] The Branch Bank Evaluation was released to the public on June 1, 2015, and was conducted using Large Bank CRA Examination Procedures. Examiners reviewed loans reported, pursuant to HMDA and CRA data collection requirements (geographic distribution and borrower distribution), in 2011, 2012, and 2013. The evaluation period for community development lending, innovative and flexible practices, qualified investments, and community development services was January 1, 2011, through December 31, 2013. The branch office distribution was as of December 31, 2013. The Branch Bank Evaluation covered Branch Bank's 108 assessment areas located in 11 states and five multi-state MSAs: North Carolina, Alabama, Georgia, Florida, Kentucky, Maryland, South Carolina, Tennessee, Texas, Virginia, West Virginia, the Charlotte, NC-SC ("Charlotte") Multi-State MSA, the Columbus, GA-AL ("Columbus") Multi-State MSA, the Kingsport-Bristol, TN-VA ("Kingsport") Multi-State MSA, the Louisville Multi-State MSA, and the Washington, DC-MD-VA-WV ("Washington DC") Multi-State MSA. The Branch Bank Evaluation included a full-scope review of 48 of these assessment areas, including all five multi-state MSAs, which captured approximately 70 percent or more of the total lending and deposit activity for each state.

very small businesses. Examiners also noted that the bank was a leader in making community development loans during the review period. Branch Bank's community development loans were made for a variety of purposes, including financing affordable housing for LMI individuals, promoting economic development by partnering with community development organizations, and supporting various statewide lending consortiums. In addition, examiners noted that Branch Bank offered affordable housing loans through several federal and state government programs.

In the Louisville Multi-State MSA assessment area, an area on which the commenter focused, examiners rated Branch Bank's Lending Test performance as "Outstanding," noting that its lending levels reflected excellent responsiveness to assessment area credit needs. The geographic distribution of the bank's home mortgage and small business lending was good. Branch Bank's borrower distribution among retail customers of different income levels was excellent and among businesses of different sizes was good. Examiners noted that the bank made extensive use of innovative and flexible lending practices, and that Branch Bank was a leader in making community development loans in the assessment area.

In Texas, another area on which the commenter focused, Branch Bank was assigned an overall "Satisfactory" rating by the FDIC. In the Dallas MSA assessment area, examiners noted that Branch Bank's lending reflected good responsiveness to assessment area credit needs. The geographic distribution of the bank's home mortgage lending was good, and its small business loans reflected excellent penetration throughout the assessment area. Branch Bank's distribution of HMDA loans among individuals of different income levels and among businesses of different sizes was adequate. Examiners noted that the bank made extensive use of innovative and flexible lending practices and that Branch Bank originated a relatively high level of community development loans in the assessment area. Branch Bank also funded a small-business retail facility in a low-income census tract, providing for economic development and job creation. In the Houston MSA assessment area, examiners noted that Branch Bank's lending reflected adequate responsiveness to assessment area credit needs. The geographic distribution of the bank's home mortgage and small business lending was adequate. Examiners noted that the bank made extensive use of innovative and flexible lending practices and that Branch Bank originated a relatively high level of community development loans in the assessment area.

In evaluating the Investment Test, examiners found that Branch Bank had an excellent level of qualified community development loan investments and grants, and its volume of qualified investments was significant. The bank extended qualified investments, often in a leadership position and not routinely provided by private investors, at a high level throughout its assessment areas. Examiners noted that Branch Bank's investment test performance was "Outstanding" throughout a significant number of states and multi-state MSAs, and its performance was rated "High Satisfactory" in several others.[23] Examiners also found the bank to be a leader in affordable housing tax credit investments and that the bank provided innovative investments that exhibited excellent responsiveness to assessment area needs. Examiners also noted that Branch Bank's level of qualified investments relative to its operations in the Houston MSA and Louisville Multi-State MSA assessment areas was excellent and good, respectively.

[23] Examiners found that the bank's performance under the Investment Test was "Outstanding" in North Carolina, Virginia, Florida, South Carolina, Georgia, Texas, WestVirginia, and Alabama, as well as in the multi-state MSAs of Kingsport and Columbus. Examiners also noted Branch Bank's investment test performance was "High Satisfactory" in Maryland, Tennessee, and Kentucky, as well as in the multi-state MSAs of Washington DC, Charlotte, and Louisville.

In evaluating the Service Test, examiners noted that Branch Bank's overall branch distribution in Florida, Georgia, North Carolina, Tennessee, and Virginia provided a good level of accessibility to LMI individuals and areas and that its branch distribution in West Virginia provided excellent accessibility to LMI areas.[24] Examiners further noted that in the substantial majority of the remaining assessment areas, the branch distribution, by geography, was at least adequate. Examiners also found that the bank offered several services designed to meet the convenience and needs of the assessment areas, particularly for LMI geographies and individuals. Examiners indicated that the bank was a leader in providing community development services throughout its assessment areas. Examiners noted that bank management and employees provided financial advice and assistance to many community development organizations.

In the Dallas MSA assessment area, an area on which the commenter focused, Branch Bank operates five of its 25 branches in LMI tracts, and an additional 12 branches are adjacent to or within one mile of an LMI tract. Seven of those branches are located in tracts in which a majority of the population are minority individuals ("majority minority tracts"). Of the 13 branches Branch Bank operates in the Houston MSA assessment area, three are located in an LMI tract, and an additional five branches are located adjacent to or within one mile of an LMI tract. Six of those branches are located in majority minority tracts. In the Louisville Multi-State MSA assessment area, eight of the 27 Branch Bank branches are located in an LMI tract, and an additional nine branches are adjacent to or within one mile of an LMI tract. Five of those branches are located in majority minority tracts.

In addition, Branch Bank asserted that it has a strong record of community development lending and investment to meet community reinvestment needs. Branch Bank stated that it continued to make a high level of community development loans and qualified community development investments to the communities it serves. In addition, Branch Bank indicated that its associates have provided more than 1,850 qualified community development service activities within their local communities and that it has employed community development specialists to serve as liaisons between the community and the bank to facility community development loans, services, and investment opportunities throughout its footprint.

CRA Performance of Kentucky Bank. Kentucky Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC in November 2013 ("Kentucky Bank Evaluation"). Kentucky Bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for both the Investment Test and the Service Test.[25]

In evaluating Kentucky Bank's performance under the Lending Test, examiners concluded that Kentucky Bank's lending levels reflected good responsiveness to its assessment area's credit needs. Examiners found that a high percentage of Kentucky Bank's loans were originated in its assessment area, and the geographic distribution of its loans reflected good

[24] Examiners noted that Branch Bank demonstrated an "Outstanding" record regarding the Service Test in the Louisville Multi-State MSA, among other state and multi-state MSAs. As of December 31, 2013, the bank operated 870 branches in North Carolina, Virginia, and Florida, together accounting for approximately 48 percent of the bank's branches. Consequently, examiners placed more weight on the institution's performance in North Carolina, Virginia, and Florida.

[25] The Kentucky Bank Evaluation was prepared using the interagency evaluation procedures for large institutions. The Lending Test included a review of all home mortgage loans and small business loans reported under regulatory requirements for 2011 and 2012 and a review of all community development loans from May 23, 2011, through November 18, 2013. The Investment Test and the Service Test covered the period from May 23, 2011, through November 18, 2013. The Kentucky Bank Evaluation included a full-scope review of the Cincinnati Multi-State MSA, including Boone, Campbell, Kenton, Grant, Gallatin, and Pendleton counties, all of Kentucky, and Hamilton County, Ohio.

penetration throughout its assessment area. Examiners noted that Kentucky Bank's distribution of borrowers reflected good penetration among retail customers of different income levels and business customers of different sizes. Examiners also found that Kentucky Bank made a relatively high level of community development loans and that it made use of innovative and flexible lending practices in order to serve the credit needs of its assessment area.

In evaluating Kentucky Bank's performance under the Investment Test, examiners found that Kentucky Bank had an adequate level of qualified community development investments and grants. Examiners noted that Kentucky Bank exhibited adequate responsiveness to credit and community economic development needs.

In evaluating Kentucky Bank's performance under the Service Test, examiners noted that Kentucky Bank's delivery systems were reasonably accessible to essentially all portions of its assessment area and were not adversely affected by the opening and closing of branches. Examiners also noted that Kentucky Bank provided an adequate level of community development services throughout its assessment area, and that services do not vary in a way that inconveniences portions of its assessment area, particularly LMI geographies and individuals.

BB&T's Fair Lending Program. The Board has consulted with the FDIC, which is the appropriate federal banking agency for Branch Bank, regarding its evaluation of compliance with fair lending laws and regulations by Branch Bank. In January 2015, the FDIC approved an application by Bank Branch to acquire 42 Citibank branches in Texas under the Bank Merger Act. The commenter in this case raised similar allegations in that application, criticizing BB&T's lending record and branch distribution in the Dallas and Houston MSAs. As a result of that comment, the FDIC investigated BB&T's lending activity and branch distribution in the Dallas and Houston MSAs as part of its review of BB&T. During their investigation of those MSAs, FDIC examiners reviewed BB&T's policies and procedures, conducted an analysis of the HMDA and commercial lending data, and conducted a comparative file review. Following its review, the FDIC approved the acquisition of the 42 Citibank branches on January 30, 2015. In connection with the approval, the FDIC directed Branch Bank to develop and submit a strategic plan. Branch Bank submitted a strategic plan to the FDIC, which provided for a semi-annual review of Branch Bank's enterprise-wide branching strategy, lending distributions, and marketing efforts.[26] The FDIC deemed the plan acceptable on February 3, 2015, and, subsequently, approved the merger of Kentucky Bank into Branch Bank.

BB&T has established policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. BB&T's Fair Lending Compliance Group is responsible for engaging in an ongoing risk evaluation for BB&T's lending and operational lines of business. The Fair Lending Compliance Group's ongoing risk evaluation includes a list of risk indicators, such as the consideration of consumer and regulatory complaints. BB&T provides online fair lending training for staff, including, but not limited to, underwriters, loan officers, and customer service and collection personnel, with information related to the various aspects and nuances of current fair lending legislation.

BB&T reviews its marketing programs and campaigns for appropriate coverage and inclusion for minority as well as non-minority oriented media and geographies. Prior to issuance, BB&T requires a fair lending review and signoff of all advertising and marketing programs and material to confirm compliance with applicable federal and state fair lending

[26] As required by the FDIC, the plan was developed in the context of available aggregate and peer data and demographics and safe and sound lending considerations and evaluated performance in majority minority census tracts, as well as performance among individual racial and ethnic groups.

laws. BB&T's Fair Lending Compliance Risk Managers conduct annual monitoring for each lending line of business. BB&T performs additional reviews for products, promotions, and other bank operations to confirm fair lending compliance. BB&T performs regular fair lending analyses, including transactional and pricing regression, minority penetration, and population data.

Branch Bank argues that, in the Louisville Multi-State MSA assessment area, the percentage of mortgage loan applications received from and originated to minority borrowers significantly exceeds those of aggregate lenders in 2013.[27] Branch Bank stated that it is a recent entrant to both the Dallas and Houston banking markets and received relatively few applications for mortgage loans. Branch Bank represents that it has developed plans to increase outreach efforts to strengthen mortgage loan activity to LMI and minority borrowers and communities in the Dallas MSA and Houston MSA assessment areas and would also do so in the Cincinnati Multi-State MSA, the banking market served by Kentucky Bank. Branch Bank stated that to assist a broader scope of borrowers to gain access to mortgage credit, it offers mortgage loans with flexible features. Branch Bank also states that it is an active small business lender throughout the Louisville Multi-State MSA, Dallas MSA, and Houston MSA assessment areas.

Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization. In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. BB&T represents that the proposal would benefit customers of all profiles in the communities it serves by offering an increased number of products and services. Branch Bank offers various products that are unavailable through Kentucky Bank, such as deposit products designed for youth and senior citizens, prepaid accounts with debit cards, community checking for civic and nonprofit organizations, and online loan applications and loan fulfilment, among other products. Additionally, Kentucky Bank customers would have access to these additional financial products through a significantly larger network of financial centers and ATMs.

Conclusion on Convenience and Needs Considerations. The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, the approval by the FDIC of the underlying Bank Merger Act application and the FDIC's fair lending review of Branch Bank, information provided by BB&T, confidential supervisory information, and the public comment on the proposal. Based on its consideration of that information, the Board believes that there is a reasonable basis on which to conclude that BB&T is helping to meet the credit needs of the communities it serves and that the proposal would result in public benefits, and concludes that the convenience and needs factor is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[28]

[27] The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular MSA or metropolitan division. In this context, aggregate lending is considered an indicator of the lending opportunities in the geographic area in which the bank is located.

[28] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[29] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[30]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves the acquisition of approximately $1.9 billion in total assets. Upon consummation, BB&T would have $188.7 billion in total assets and would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than $2 billion in assets, or that results in a firm with less than $25 billion in consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[31] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by BB&T with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection

[29] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[30] For further discussion of the financial stability standard, *see Capital One Financial Corporation,* FRB Order 2012-2 (February 14, 2012).

[31] The commenter requested that the Board hold public hearings on the proposal. Section3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Richmond, acting under delegated authority.

By order of the Board of Governors, effective June 3, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Sterling Bancorp
Montebello, New York

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2015–16 (June 15, 2015)

Sterling Bancorp ("Sterling"), Montebello, New York, a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Hudson Valley Holding Corporation ("Hudson Valley"), and thereby indirectly acquire its subsidiary bank, Hudson Valley Bank, National Association ("Hudson Valley Bank"), both of Yonkers, New York. Following the proposed acquisition, Hudson Valley Bank would be merged into Sterling's subsidiary bank, Sterling National Bank ("Sterling Bank"), Montebello, New York.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 74091 (2014)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Sterling, with consolidated assets of approximately $7.4 billion, is the 140th largest insured depository organization in the United States, controlling approximately $5.2 billion in deposits.[4] Sterling controls Sterling Bank, which operates in New York and New Jersey. Sterling Bank is the 25th largest insured depository institution in New York, controlling deposits of approximately $5.0 billion, which represent less than 1 percent of the total deposits in insured depository institutions in that state.[5]

Hudson Valley, with consolidated assets of approximately $3.1 billion, is the 263rd largest insured depository organization in the United States, controlling approximately $2.8 billion in deposits. Hudson Valley controls Hudson Valley Bank, which operates only in New

1 12 U.S.C. § 1842.

2 The merger of Hudson Valley Bank into Sterling Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC"), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

3 12 CFR 262.3(b).

4 Asset and nationwide deposit-ranking data are as of December 31, 2014, unless otherwise noted.

5 State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

York. Hudson Valley Bank is the 38th largest insured depository institution in New York, controlling less than 1 percent of the total deposits in insured depository institutions in that state.

On consummation of the proposal, Sterling would become the 108th largest depository organization in the United States, with consolidated assets of approximately $10.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Sterling would control total deposits of approximately $8.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, Sterling would become the 21st largest depository organization, controlling deposits of approximately $7.8 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[6] The statute also prohibits the Board from approving a proposal 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 communities to be served.[7]

Sterling and Hudson Valley have subsidiary depository institutions that compete directly in the Metropolitan New York City banking market ("New York City market").[8] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market ("market deposits") that Sterling would control upon consummation of the proposal;[9] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"), after consummation of the proposal;[10] and other characteristics of the market.

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6 12 U.S.C. § 1842(c)(1).

7 *Id.*

8 The New York City market is defined as Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Mercer, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren counties, all in New Jersey; Monroe and Pike counties, both in Pennsylvania; Fairfield County, Connecticut; Bridgewater, Canaan, Cornwall, Kent, New Milford, North Canaan, Roxbury, Salisbury, Sharon, Warren, and Washington townships, including the cities of Cornwall Bridge, Falls Village, Lakeville, Marble Dale, New Preston, Salisbury, and Washington Depot, all in Litchfield County, Connecticut; and Ansonia, Beacon Falls, Derby, Milford, and Seymour townships in New Haven County, Connecticut.

9 Deposit and market share data are as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

10 Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the New York City market. On consummation of the proposal, the New York City market would remain moderately concentrated, as measured by the HHI. There would be only a minimal change in the HHI, and 251 competitors would remain in the market.[11]

The DOJ has advised the Board that consummation of the proposal would not be likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the New York City banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

Sterling and Sterling Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.[12] The asset quality, earnings, and liquidity of Sterling Bank and Hudson Valley Bank are consistent with approval, and Sterling appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review

in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

[11] Sterling operates the 27th largest depository institution in the New York City market, which includes portions of New Jersey. Sterling controls approximately $5.1 billion in deposits in this market, which represent less than 1 percent of market deposits. Hudson Valley operates the 37th largest depository institution in the same market, controlling approximately $2.8 billion in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Sterling would become the 22nd largest depository institution in the market, controlling approximately $8.0 billion in deposits, which represent less than 1 percent of market deposits. The HHI for the New York City market would increase by one point to 1371.

[12] As part of the proposed transaction, each share of Hudson Valley common stock would be converted into a right to receive Sterling common stock, based on a fixed exchange ratio. Sterling has the financial resources to fund the exchange.

of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Sterling, Hudson Valley, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Sterling, the Board's supervisory experiences with Sterling and Hudson Valley and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking and anti-money-laundering laws.

Sterling, Hudson Valley, and their subsidiary depository institutions are each considered to be well managed. Sterling's existing risk-management program, and its directorate and senior management, are considered to be satisfactory. The directors and senior executive officers of Sterling have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Sterling's plans for implementing the proposal. Sterling is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Sterling would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Sterling's and Hudson Valley's management have the experience and resources that should allow the combined organization to operate in a safe and sound manner, and Sterling plans to integrate Hudson Valley's existing management and personnel in a manner that augments Sterling's management.[13]

Based on all the facts of record, including Sterling's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Sterling and Hudson Valley in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the convenience and needs of the communities to be served. In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[14] The Board also considers the banks' overall compliance record, recent fair lending examinations and other supervisory assessments; the supervisory views of examiners; other supervisory information; and comments received on the proposal. Other information the Board may consider includes the institu-

[13] On consummation, Sterling will increase from 13 to 15 the number of seats on its board of directors. Eleven directors currently serving on Sterling's board of directors and four directors nominated by Hudson Valley's board of directors will serve on the board of the combined organization. The Chief Executive Officer and the Chief Financial Officer of Sterling will continue to serve in their roles following the merger. In addition, Sterling Bank will establish a paid advisory board, comprised of other members of Hudson Valley's board of directors who wish to serve and other individuals appointed by Sterling. The advisory board will monitor Sterling Bank's business in certain markets to support the board of directors of Sterling and Sterling Bank.

[14] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

tion's business model, the institution's marketing and outreach plans, its development and monitoring of business goals and initiatives, and the organization's plans following consummation.

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[15] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.[16] In addition to complying with the requirements of the CRA, fair lending and other consumer protection laws require all lending institutions to provide applicants with equal access to credit, regardless of the applicant's race, ethnicity, or certain other characteristics.

The Board received two comments from a single commenter who objected to the proposal principally on the basis of Sterling Bank's record of extending home mortgage credit to minority individuals in the New York-Wayne-White Plains, New York-New Jersey Metropolitan Division ("New York City MSA") and the Nassau-Suffolk Metropolitan Division ("Nassau-Suffolk MD"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[17] for 2013. The commenter expressed concerns that, based on 2013 HMDA data, Sterling Bank was not meeting the credit needs of minority individuals in the communities served by the bank.[18] The commenter also contended that Sterling Bank's HMDA data are "irregular." The commenter noted that the bank reported three withdrawn and three incomplete applications for refinance loans to African Americans in the New York City MSA and no denials, suggesting that the bank is prescreening minority borrowers.[19]

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly and equitably. However, other information critical to an institution's credit decisions is not available from HMDA data.[20] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Sterling Bank and Hudson Valley Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC, confidential supervisory

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[15] 12 U.S.C. § 2901(b).

[16] 12 U.S.C. § 2903.

[17] 12 U.S.C. § 2801 *et seq.*

[18] The commenter also alleged that Hudson Valley Bank was not meeting the credit needs of minorities in its communities, based on 2013 HMDA data. Sterling represented that Hudson Valley Bank is primarily a commercial lender and does not have a material mortgage program. Mortgage loans represented approximately 14 percent of the bank's overall lending portfolio as of December 31, 2014. Sterling represented that Hudson Valley Bank makes only a modest number of in-house mortgage originations.

[19] Sterling asserted that three loan applications were withdrawn at the prospective borrowers' request because they did not wish to continue the transaction and that the three other applications were deemed incomplete because the prospective borrowers did not provide the requested property, asset, or income documentation needed by the bank to make a lending decision.

[20] Other data relevant to a fair lending analysis could include, for example, information on credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost). Moreover, HMDA data do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any applicant's creditworthiness.

information, information provided by Sterling, and the public comments received on the proposal.

A. Sterling Bank's Business and Response to Comments

Sterling Bank is primarily a commercial lender and does not have a large residential mortgage loan operation. Residential mortgage loans represented approximately 11 percent of the bank's overall lending portfolio in 2014.[21] Sterling acknowledged that the bank's percentage of HMDA-reportable mortgage loans to African American and Hispanic borrowers was lower than the aggregate's percentage in the New York City MSA in 2013.[22] However, Sterling argued that this lower percentage was due to the bank's focus on commercial lending and the highly competitive nature of the New York City market. Sterling indicated that, as a commercial lender, Sterling Bank provides home mortgage loans primarily as an accommodation to its commercial lending customers, originating most of its mortgages in response to customer inquiries in connection with commercial lending relationships. Sterling Bank did not engage in significant marketing efforts for residential mortgage lending in 2013.

B. Records of Performance under the CRA

The Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[23] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[24] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount

[21] Sterling's commercial lending, including commercial mortgage and commercial and industrial loans, represented in the aggregate approximately 84 percent of Sterling Bank's overall lending portfolio in 2014.

[22] The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a given market. In this context, aggregate lending is considered a potential indicator of the lending opportunities in the geographic area in which the bank is located.

[23] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[24] 12 U.S.C. § 2906.

of home mortgage loans to low-, moderate-, middle-, and upper income individuals;[25] the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Consequently, the Board considers the overall CRA rating and the rating on the lending test to be important indicators, when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

CRA Performance of Sterling Bank. Sterling Bank was assigned an overall rating of "Satisfactory" by the OCC at its most recent CRA performance evaluation as of January 2014 ("Sterling Bank Evaluation").[26] Sterling Bank received "Low Satisfactory" ratings for both the Lending Test and Investment Test and a "High Satisfactory" rating for the Service Test. Examiners found that Sterling Bank's lending levels reflected adequate responsiveness to the credit needs of its assessment area, that it engaged in a relatively high level of community development lending involving loans that had an affordable housing or other community development purpose, and that it made a substantial majority of its home mortgage loans and small loans to businesses and farms within its assessment area. The Board has consulted with the OCC regarding the Sterling Bank Evaluation.

In evaluating the Lending Test, examiners found that Sterling Bank's geographic distribution of loans, including home mortgage loans and small business loans, reflected adequate penetration throughout the assessment area. The bank's penetration of loans among borrowers of different income levels and businesses of different sizes was adequate, although examiners noted some weaknesses with respect to certain types of lending. Examiners found that Sterling Bank made a relatively high level of community development loans for a variety of purposes, including the construction and development of affordable housing units for LMI individuals and senior citizens, the promotion of economic development and job creation through Small Business Administration ("SBA") programs, and the stabilization of LMI areas by financing local businesses. Examiners noted that Sterling Bank had a good record of serving the credit needs of the most economically disadvantaged areas in its assessment area, LMI individuals, and small businesses.

In evaluating the Investment Test, examiners found Sterling Bank to have an adequate level of qualified community development investments and grants, although examiners noted that performance could be improved in certain areas. The bank exhibited adequate responsiveness to credit and community economic development needs in the form of affordable housing, and occasionally used innovative and/or complex investments to support commu-

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[25] Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

[26] The Sterling Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed HMDA-reportable and small business loans for the period January 1, 2011, through September 30, 2013. The evaluation period for community development loans, services, and investments was November 1, 2010, through January 20, 2014. The Sterling Bank Evaluation included a full-scope review of the bank's assessment area, the entirety of which is within the New York-Newark-Jersey City, NY-NJ-PA Multistate Metropolitan Statistical Area and is composed of Nassau-Suffolk MD; New York City MSA; Poughkeepsie-Newburgh-Middletown MSA; Kingston MSA; and New York State Non-MSA, defined as the towns of Mamakating, Forestburgh, Thompson and Fallsburg, all in Sullivan County, New York. Examiners placed more weight on their review of the New York City MSA due to the significant number of lending and community development activities conducted in that metropolitan division during the evaluation period, and because a significant majority of census tracts in the assessment area are located in the New York City MSA.

Sterling National Bank and Provident Bank merged on October 31, 2013. For all but community development investments, the OCC evaluated Provident Bank's CRA activities. The OCC considered outstanding community development investments made by legacy Sterling National Bank after January 1, 2012.

nity development initiatives. Examiners noted that the bank supported a nonprofit organization promoting economic development in underserved urban and rural areas in New York state, which principally benefitted women, minorities, and LMI individuals trying to start or expand their businesses, as well as several other community development organizations. Sterling Bank also made investments and grants to organizations to provide and support affordable housing and community services to LMI individuals in its assessment area.

In evaluating the Service Test, examiners found that Sterling Bank participated in a number of community development services. The bank actively partnered with homeownership counseling agencies and provided financial literacy seminars to LMI individuals regarding first-time home buying experiences. Examiners noted that Sterling Bank participated in Federal Home Loan Bank of New York ("FHLBNY") programs aimed at providing down-payment assistance to first-time homebuyers and facilitating affordable housing construction, rehabilitation, and development. Examiners found the bank's retail delivery systems were reasonably accessible in essentially all portions of its assessment area.

CRA Performance of Hudson Valley Bank. Hudson Valley Bank was assigned an overall rating of "Satisfactory" by the OCC at its most recent CRA performance evaluation as of May 2013 ("Hudson Valley Bank Evaluation").[27] The bank received a "Low Satisfactory" rating for the Lending Test and "High Satisfactory" ratings for both the Investment Test and Service Test.

In evaluating the Lending Test, examiners found that Hudson Valley Bank's lending levels reflected adequate responsiveness to the credit needs of its New York assessment area, although examiners noted areas for improvement with respect to certain mortgage and small business lending. The bank's level of community development loans was considered excellent. In New York, examiners found that Hudson Valley Bank's geographic distribution of home purchase loans and home refinance loans was good, and the geographic distribution of multi-family loans was excellent. The bank's market share of multi-family loans originated in LMI geographies was higher than the bank's overall market share. Examiners noted that, during the evaluation period, the bank originated community development loans to construct, renovate, and fund operations of learning facilities, nursing homes, hospitals, and affordable housing for LMI individuals.

In evaluating the Investment Test, examiners found that Hudson Valley Bank demonstrated good responsiveness to the credit and community economic development needs within its New York assessment area by making investments targeting affordable housing. During the evaluation period, the bank (1) made investments in several school districts to educate and support children within the bank's assessment area, the majority of whom lived in LMI households, and (2) retained investments that provided credit to businesses that would not otherwise meet the requirements for traditional bank financing.

In evaluating the Service Test, examiners found that Hudson Valley Bank provided a high level of community development services through its offerings of financial and technical

[27] The Hudson Valley Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and small business loans for the period January 1, 2010, through December 31, 2012. The evaluation period for community development loans, investments, and service activities was June 7, 2010, through May 6, 2013. The Hudson Valley Bank Evaluation included a full-scope evaluation of the bank's assessment area in the state of New York, which consists of Westchester, Bronx, Rockland, Manhattan, and a portion of Brooklyn counties; and a limited-scope evaluation of Hudson Valley Bank's assessment areas in Connecticut, which consist of all of Fairfield County and a portion of New Haven County. Examiners placed greater weight on the bank's performance in New York because a majority of its activities are concentrated there.

expertise to LMI individuals and small businesses. The bank also worked with various nonprofit organizations that provide affordable housing for LMI families, promote small business ventures, and educate young LMI individuals on the importance of financial planning and stability.

Sterling's Efforts since the Sterling Bank Evaluation. Following the January 2014 Sterling Bank Evaluation, Sterling Bank adopted a more robust, firm-wide CRA program ("CRA Plan") to increase market penetration and outreach in the bank's assessment area to more effectively meet the credit needs of the communities it serves. The CRA Plan establishes revised measurement criteria for the bank's CRA performance, refocuses the bank's investment strategy to include targeted assessment area investments and community development investments, sets forth goals for identifying new initiatives on CRA-related activities, and institutes an enterprise-wide data gathering initiative to track all CRA-related activity across the organization. The plan outlines specific activities within its assessment area on which the bank plans to focus, including increased marketing and community outreach; financial seminars; and increased mortgage and small business lending in LMI tracts, including to women-owned small businesses.

The CRA Plan is administered by the bank's CRA Officer, and the bank's CRA Oversight Committee monitors progress toward the plan's goals and recommends periodic changes, as appropriate. The status of CRA-related activities and progress in fulfilling the bank's strategic goals is periodically reported to executive management as well as the Enterprise Risk and Audit committees of the bank's board of directors. Sterling represented that the CRA Plan will be updated annually, and goals will be updated to reflect the strategic plan for each business unit, as well as for the bank as a whole.

Sterling represented that Sterling Bank met or exceeded the CRA Plan's 2014 goals, and that the bank has established updated CRA goals and initiatives for 2015. Sterling represented that, since the Sterling Bank Evaluation, the bank has made community development loans and investments focused on supporting the construction or financing of affordable housing and hospitals within its assessment area. Sterling has also made contributions to provide educational programs that benefit LMI and minority individuals, including donations to support schools serving minority and LMI students and to help those students move on to higher education, and hosting a number of seminars on homeownership in LMI areas within its assessment area. The bank makes charitable donations to nonprofit community groups within the New York City and New Jersey areas through its charitable foundation and has provided support for fundraising events and provided grants focusing on education initiatives.

Sterling has hosted a number of financial seminars on homeownership in LMI areas within its assessment area, and its CRA Plan includes a focus on hosting seminars on elder financial abuse, financial literacy, homeownership counseling, and first-time home buying; and on launching a program aimed at increasing lending to women-owned small businesses while providing access to networking, education, and capital. Further, Sterling Bank staff responsible for small business development have been attending community seminars and discussing small business opportunities in the bank's assessment area and intend to continue such outreach efforts.

Sterling Bank offers a suite of products to address the credit needs of LMI borrowers, including FHA, Veterans Administration, and Fannie Mae loan products, and participates in the FHLBNY's First Time Homebuyers Program. Sterling Bank has also partnered with community groups that provide homeowner-related services in LMI communities in New York City and provided funding for the development and preservation of affordable housing in the suburbs around New York City. Sterling represented that it has engaged in vari-

ous outreach efforts within its assessment area, including marketing efforts, engagement with community groups, and efforts to offer educational programming to LMI communities within this assessment area regarding products offered by the bank. Sterling Bank conducted a direct-mail solicitation for the bank's home improvement loan product to homeowners in all LMI census tracts in their assessment area in December 2014 and intends to conduct similar efforts in 2015.

In addition, Sterling Bank recently added a new sales team with experience in direct lending to state and local governments, not-for-profit healthcare, and higher educational institutions, and expects to expand its efforts in lending to those groups. Sterling Bank offers small business credit products through the SBA's 504 and 7(a) programs, which benefit small for-profit and non-for-profit businesses. Sterling Bank lending staff actively participate in community events specifically targeted at small business owners. Sterling Bank also works with all of the New York State Small Business Development Centers throughout its community footprint, which provide information regarding the process of small business financing and opportunities.

C. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Sterling Bank and Hudson Valley Bank in complying with fair lending and other consumer protection laws. As part of its evaluation, the Board reviewed Sterling Bank's and Hudson Valley Bank's records of performance under fair lending laws, the comments received on the proposal and Sterling's response, the OCC's views regarding Sterling Bank's fair lending policies and procedures, and other confidential supervisory information. The Board also conferred with the OCC concerning the comments received on the proposal.

The Board has consulted with the OCC regarding its evaluation of compliance with fair lending laws and regulations by Sterling Bank and Hudson Valley Bank. The OCC recently reviewed the compliance programs of Sterling Bank and Hudson Valley Bank, focusing on the institutions' fair lending risk. The OCC had no supervisory concerns regarding either bank's compliance with fair lending laws and regulations.

As explained above, Sterling Bank has determined to increase its marketing and outreach efforts to better serve the needs of its communities and has adopted its revised CRA Plan. Although the bank intends to remain primarily a commercial lender, it expects to increase its outreach efforts for residential mortgages. Sterling Bank also stated that it will continue pursuing the other community development and CRA-related initiatives set forth in its revised CRA Plan. Sterling plans to reassess the goals and objectives in its CRA Plan to determine if any adjustments are necessary to reflect the acquisition of Hudson Valley.

Sterling Bank's Fair Lending Program. Sterling and Sterling Bank have established policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. These policies and procedures have been reviewed in the examination process by the OCC, which considered them satisfactory. Sterling Bank intends to implement these policies and procedures across the combined organization following consummation of the transaction.

Sterling Bank maintains an audit program for compliance with these programs and procedures, and provides compliance training and education for all employees, including making additional training required for employees engaged in mortgage loan origination, processing, underwriting, and credit decisionmaking. The training includes programs on the bank's policies and procedures and on how to identify and prevent abusive or predatory lending.

Sterling Bank has established a fair lending program that is reviewed and approved annually by the Enterprise Risk Management Committee of the board of directors. Sterling Bank's Compliance Risk Management Department ("Compliance Department") is responsible for managing the bank's fair lending compliance program, including the assessment of fair lending compliance and any resulting remediation activity. The Compliance Department regularly assesses fair lending compliance through a monitoring and testing regime and oversees the resulting remediation activity to ensure all findings are effectively mitigated. The Compliance Department also conducts quarterly fair lending risk assessments to identify and measure risks in the bank's lending processes and conducts statistical analyses to detect practices that could result in disparate treatment or pricing discrimination involving loan applicants.

Sterling Bank maintains a secondary review process for all denied consumer, residential, and small business loan applications to ensure that all qualified applicants are approved. This second review is conducted to ensure that the bank's fair lending standards are applied fairly and uniformly to all applicants, that all possible avenues of approval have been explored prior to formal denial, and that the application was not denied based on any prohibited basis. In the event of a recommendation for denial or counter-offer of a loan application, two senior managers, such as a senior credit officer and a senior underwriter, must review the application independently. In addition, before making an extension of credit, a member of the bank's secondary marketing department reviews the terms of the loan, in particular loan pricing. In the event of non-compliance with the bank's policies, an appropriate adjustment to pricing will be made.

D. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. Sterling represented that the proposal would provide customers of the combined organization access to an expanded branch network across the New York metropolitan area and would offer additional or expanded services to current Sterling Bank and Hudson Valley Bank customers, including existing specialty finance and deposit products not offered to current customers of the other institution. Sterling asserted that the combined organization would be better able to serve larger, more diverse clients, particularly in the middle market segment, and the potential cost savings generated by the integration of the two institutions would provide opportunities to pass those savings on to their customers. Further, Sterling stated that the combined organization would be strengthened by the complementary aspects of the two entities' businesses, including customer focus, geographic coverage, business orientation, and compatibility of the companies' management and operating styles, as well as the combined experience and expertise of their respective management and employees, resulting in a stronger and more stable franchise.

E. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA; the institutions' records of compliance with fair lending and other consumer protection laws; consultations with the OCC; confidential supervisory information; information provided by Sterling, including Sterling's representations concerning its CRA Plan; and the public comments on the proposal. Based on that review, the Board believes that Sterling is helping to meet the credit needs of the communities it serves and that the proposal would result in public benefits. Accordingly, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[28]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[29] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[30]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Sterling would have approximately $10.6 billion in consolidated assets and, by any of a number of alternative measures of firm size, Sterling would not be likely to pose systemic risks. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[31] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the

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[28] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

[29] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[30] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

[31] The commenter twice requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately

BHC Act. The Board's approval is specifically conditioned on compliance by Sterling with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York acting pursuant to delegated authority.

By order of the Board of Governors, effective June 15, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Merchants & Farmers Bancshares, Inc.
Leesville, Louisiana

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2015–17 (June 15, 2015)

Merchants & Farmers Bancshares, Inc. ("M&F") has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire Vernon Bancshares, Inc. ("Vernon"), and thereby indirectly acquire its subsidiary bank, The Vernon Bank ("Vernon Bank"), all of Leesville, Louisiana. Following the proposed acquisition, Vernon Bank, a state nonmember bank, would be merged into M&F's subsidiary state nonmember bank, Merchants & Farmers Bank and Trust Company ("M&F Bank"), Leesville, Louisiana.[2]

represent their views. The Board has considered the commenter's requests in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's requests do not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposal are denied.

The commenter also twice requested an extension of the comment period. The Board provides a public comment period for an application to provide interested persons the opportunity to submit information and views related to the statutory factors it must consider under the BHC Act. The Board's Rules of Procedure ("Rules") also establish a framework, based on the schedules followed by many courts, that limits iterative responses between applicants and commenters. The Board's Rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter's requests for additional time to comment do not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the requests for an extension of the comment period are denied.

[1] 12 U.S.C. § 1842(a)(5).

[2] The merger of Vernon Bank into M&F Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 18(c) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c). The FDIC approved the merger on March 25, 2015.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 9720 (2015)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

M&F, with consolidated assets of approximately $320.8 million, is the 2099th largest insured depository organization in the United States.[4] M&F Bank operates only in Louisiana and is the 47th largest depository institution in that state, controlling deposits of approximately $252.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in Louisiana.[5]

Vernon, with consolidated assets of approximately $78.6 million, is the 5037th largest insured depository organization in the United States. Vernon controls Vernon Bank, which is the 113th largest depository institution in Louisiana. Vernon Bank, which operates only in Louisiana, controls deposits of approximately $69.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, M&F would become the 1688th largest depository organization in the United States, with consolidated assets of approximately $399.4 million, which represent less than 1 percent of the total assets of insured depository institutions in the United States. M&F Bank would control total deposits of approximately $315.0 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Louisiana, M&F would become the 36th largest depository organization, controlling deposits of approximately $321.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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 communities to be served.[6]

M&F's and Vernon's subsidiary depository institutions compete directly in the Vernon/Beauregard area, Louisiana banking market ("Vernon/Beauregard banking market").[7] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market ("market deposits") that M&F would control upon

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[3] 12 CFR 262.3(b).

[4] Nationwide deposit, asset, and ranking data are as of December 31, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings and loan associations.

[5] State deposit, market share, and ranking data are as of June 30, 2014, unless otherwise noted.

[6] 12 U.S.C. § 1842(c)(1).

[7] The Vernon/Beauregard banking market is defined as Vernon Parish and the northern half of Beauregard Parish, both of Louisiana.

consummation of the proposal;[8] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[9] and other characteristics of the market.

In the Vernon/Beauregard banking market, the change in concentration level and the concentration level on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines. M&F Bank is the largest insured depository institution in the Vernon/Beauregard banking market, controlling deposits of approximately $182.6 million, which represent approximately 25.8 percent of market deposits. Vernon Bank is the fifth largest insured depository institution in the market, controlling deposits of approximately $69.2 million, which represent approximately 9.7 percent of market deposits. On consummation of the proposal, M&F Bank would remain the largest depository institution in the Vernon/Beauregard banking market, controlling deposits of approximately $251.7 million. The market concentration level in the Vernon/Beauregard banking market as measured by the HHI would increase by 503 points, from 1889 to 2392, and the market share of the combined entity would represent approximately 35.5 percent of market deposits.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the market.[10] Several factors indicate that the increase in concentration in the Vernon/Beauregard banking market, as measured by the HHI, and the market share of the combined organization overstate the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of two active credit unions, Barksdale Federal Credit Union ("Barksdale Credit Union"), Bossier City, Louisiana, and Navy Federal Credit Union ("Navy Federal"), Vienna, Virginia, in the Vernon/Beauregard banking market and determined that the activities of the credit unions exert a competitive influence that mitigates, in part, the potential effects of the proposal.[11] Each of these credit unions offers a wide range of consumer banking products, operates street-level branches, and has membership criteria that include a majority of the residents in the Vernon/Beauregard

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[8] Deposit and market share data are as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989), and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[9] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

[10] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and the resulting level of concentration in, a banking market. *See NationsBank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

[11] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *Chemical Financial Corporation*, FRB Order No. 2015-13 (April 20, 2015); *Central Bank of Audrain County*, FRB Order No. 2014-17 (October 17, 2014); *Chemical Financial Corporation*, FRB Order No. 2014-16 (September 30, 2014); *ANB Bank*, FRB Order No. 2014-14 (September 11, 2014); *Old National Bancorp,* FRB Order No. 2014-13 (July 14, 2014); *First Interstate BancSystem, Inc.*, FRB Order No. 2014-11 (June 30, 2014); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012–12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012–9 (August 30, 2012); and *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011).

banking market.[12] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in estimating market influence.[13] Adjusting to reflect competition by these credit unions in the market, the market concentration level in the Vernon/Beauregard banking market as measured by the HHI would increase by 389, from a level of 1582 to 1971, and the market share of M&F resulting from the transaction would increase in the market from 22.7 percent to 31.2 percent.

After consummation of the proposal, the merged entity would face competition from nine competitors in the market, some with a significant presence in the market. The second and third largest competitors in the market would control approximately 21.3 percent and 17.5 percent of market deposits, respectively, and the fourth largest competitor in the market would control approximately 11.0 percent of market deposits, when weighting the deposits of Barksdale Credit Union and Navy Federal at 50 percent.

The record also indicates that the Vernon/Beauregard banking market may be attractive for entry and expansion by bank competitors. In 2008, Navy Federal entered the market, and the fourth largest bank competitor in the market is expanding its presence in the market by opening a second branch.

The DOJ conducted a review of the potential competitive effects of the merger and has advised the Board that consummation would not be likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Vernon/Beauregard banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future pros-

[12] Notably, the membership criteria of both Barksdale Credit Union and Navy Federal include, among others, active and retired military personnel and their families. As the largest employer in the Vernon/Beauregard banking market is the United States Army Base at Fort Polk, and because a significant population of active and retired military personnel and their family members reside in the Vernon/Beauregard banking market, a majority of the residents in the banking market are eligible to join these credit unions.

[13] Weighting the deposits at 50 percent takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

pects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

M&F and Vernon are both well capitalized and would remain so on consummation of the proposal. The transaction is structured as an all cash deal, with each share of Vernon being purchased directly, based upon the agreed price.[14] The asset quality, earnings, and liquidity of M&F and Vernon are consistent with approval, and M&F appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of M&F, Vernon, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by M&F, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking and anti-money-laundering laws.

M&F, Vernon, and their subsidiary depository institutions are each considered to be well managed. M&F's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of M&F have substantial knowledge of and experience in the banking and financial services sectors.[15]

The Board also has considered M&F's plans for implementing the proposal. M&F would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, M&F's and Vernon's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and M&F plans to integrate Vernon's existing management and personnel in a manner that augments M&F's management.

Based on all the facts of record, including M&F's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of M&F and Vernon in combatting money-laundering activities, are consistent with approval.

Convenience and Needs 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 Community Reinvestment Act ("CRA").[16] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[17] and

[14] M&F would fund the transaction with available cash on hand and through the liquidation of marketable securities. M&F has the resources to effect the proposed transaction.

[15] The senior management of M&F and M&F Bank would remain the same after consummating the acquisition.

[16] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

[17] 12 U.S.C. § 2901(b).

requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[18]

The Board has considered all the facts of record, including reports of examination of the CRA performance of M&F Bank and Vernon Bank, information provided by M&F, and confidential supervisory information.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[19] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[20] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of M&F Bank. M&F Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC as of June 2012 ("M&F Bank Evaluation").[21] Examiners determined that the bank's average quarterly net loan-to-deposit ratio was reasonable given the bank's asset size, financial condition, and assessment area credit needs. In addition, examiners found that the bank exhibited a good record of lending within the assessment area, with a majority of bank's loans made within the assessment area. Examiners also noted that the bank's geographic distribution of lending reflected a satisfactory penetration and loan dispersion throughout the assessment area. Further, the bank's lending distribution to borrowers reflected good responsiveness to businesses of different sizes and individuals of different income levels, particularly LMI borrowers, as well as good performance in meeting the credit needs of small businesses in the assessment area.

CRA Performance of Vernon Bank. Vernon Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC in March 2011 ("Vernon Bank Evaluation").[22] Examiners determined that the bank's average quarterly net loan-to-deposit ratio was satisfactory given the bank's resources and assessment area credit needs. Examiners noted that a substantial majority of the bank's loans were made within its assessment area, demonstrating the bank's willingness to meet the credit needs of its assessment area. Further, examiners found that the bank's geographic distribution of loans throughout the assessment area was reasonable. Examiners also noted that the bank's distribution of loans reflected reasonable penetration among businesses of different sizes and

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[18] 12 U.S.C. § 2903.

[19] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[20] 12 U.S.C. § 2906.

[21] The M&F Bank Evaluation was conducted using Small Institution CRA Examination Procedures, and examiners reviewed the bank's lending activity from April 23, 2007, through June 5, 2012. The M&F Bank Evaluation included a full-scope review of Vernon Parish and Calcasieu Parish, both of Louisiana. Examiners gave more weight to the Vernon Parish non-MSA (Metropolitan Statistical Area), based on the percentages of M&F Bank's total loans, deposits, and banking offices located in the Vernon Parish.

[22] The Vernon Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed the bank's lending activity from February 6, 2006, through March 7, 2011. The Vernon Bank Evaluation included an evaluation of Vernon Parish.

individuals of different income levels, as well as reasonable performance in meeting the credit needs of small businesses in the assessment area.

B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

M&F represents that the proposal would provide customers of the combined organization access to an expanded branch network and would offer additional or expanded services to current Vernon Bank customers, including expanded access to more ATM locations and extended branch hours. M&F also states that the combined organization's larger lending limit would allow M&F to make larger commercial loans to its customers. Further, M&F represents that M&F Bank will continuously monitor the CRA performance of the combined entity in order to ensure that the organization's obligations thereunder are met.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by M&F, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of M&F Bank and Vernon Bank, review of examination reports, and consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[23]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[24] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution

[23] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

[24] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[25]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, M&F would have approximately $399.4 million in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by M&F with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Atlanta acting under delegated authority.

By order of the Board of Governors, effective June 15, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[25] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

Order Issued Under Federal Reserve Act

The Bank of Versailles
Versailles, Missouri

Order Approving Establishment of a Branch
FBR Order No. 2015–14 (May 7, 2015)

The Bank of Versailles ("BOV"), Versailles, Missouri, a state member bank, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[1] and the Board's Regulation H[2] to establish a branch at 76 Grand Point Boulevard in Sunrise Beach, Missouri (the "Sunrise Beach branch").

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's Rules of Procedure.[3] The time for submitting comments has expired, and the Board has considered the notice and all comments received in light of the factors specified in the FRA.

BOV is the 109th largest depository institution in Missouri, controlling approximately $197 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.[4] BOV's main office is in Versailles, Missouri, and BOV has three additional branches in Missouri.[5]

Under the Board's Regulation H, which implements section 9 of the FRA,[6] the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA");[7] and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.

The Board has considered the application in light of these factors and a public comment received from two individuals regarding the proposal. The commenters objected to the proposal, alleging that, because BOV was unable to provide the commenters with certain documents they requested and, also, failed to maintain certain customer information, it fails to comply with the recordkeeping and reporting requirements of the Bank Secrecy Act ("BSA").

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of BOV, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, and information provided by BOV. BOV is well capitalized and would remain so on consummation of the proposal.

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1 12 U.S.C. § 321 *et seq.*

2 12 CFR 208.

3 12 CFR 262.3(b).

4 Data are as of June 30, 2014. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

5 BOV's branches are located in Camden and Morgan counties.

6 12 CFR 208.6(b).

7 12 U.S.C. § 2901 *et seq.*

After considering all the facts of record, the Board concludes that the financial history and condition, capital adequacy, and future earnings prospects of BOV are consistent with approval of the proposal. The Board also has reviewed BOV's proposed investment in the Sunrise Beach branch and concludes that the investment is consistent with regulatory limitations on investment in bank premises.[8]

In considering BOV's managerial resources, the Board has reviewed BOV's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with BOV and BOV's record of compliance with applicable banking laws, including anti-money-laundering laws. In addition, the Board has considered the comment on the proposal. The commenters allege that BOV does not comply with the recordkeeping requirements of the BSA and that BOV does not follow the customer identification requirements of the BSA. BOV was unable to comply with portions of the commenters' request due to a temporary computer failure, which resulted in the loss of some data that could not be retrieved from document imaging systems.[9] BOV also asserts that it is in compliance with BSA requirements and that it follows the applicable customer identification requirements of the BSA.

BOV is considered to be well managed. Prior to the filing of this application, the Federal Reserve Bank of Kansas City ("Reserve Bank") conducted a review of account activity and account statements pertaining to commenters' business account at BOV, including the bank president's administration of this account, concurrent with a regularly scheduled examination. The review investigated allegations raised by commenters regarding recordkeeping and the administration of this account. Examiners reviewed samples of account statements provided by BOV and considered the administration of the commenters' business account to be appropriate. Examiners also concluded that BOV's BSA/anti-money-laundering compliance program was satisfactory. In addition, examiners confirmed that BOV has management information systems that capture relevant customer identification data at the time of account opening.

Based on this review and all the facts of record, the Board concludes that the financial and managerial factors, as well as the records of effectiveness of BOV in combatting money-laundering activities, are consistent with approval of the proposal.

Convenience and Needs Considerations

The Board also has considered the convenience and needs of the community to be served, taking into account BOV's performance under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation.[10] In addition, the CRA requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[11]

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[8] 12 CFR 208.21(a).

[9] The commenters are former business partners of the current president of BOV in a failed real estate venture. The commenters requested from BOV certain bank account records related to the venture as part of their ongoing personal bankruptcy court proceedings. The court denied commenters' motion to compel BOV to produce all documents related to the business accounts of the failed real estate venture. Instead, BOV was directed to produce a sample of the documents commenters requested.

[10] 12 U.S.C. § 2901(b).

[11] 12 U.S.C. § 2903.

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of that institution.[12] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[13] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[14]

The Board has considered all the facts of record, including reports of examination of the CRA performance of BOV and confidential supervisory information. BOV was assigned an overall "satisfactory" rating at its CRA performance evaluation by the Reserve Bank as of February 27, 2012. BOV was evaluated under the Small Bank Examination procedures, which consider factors such as BOV's loan-to-deposit ratio and lending inside its assessment area.

Examiners reviewed a sample of residential real estate and commercial loans originated between December 2009 and November 2011.

Examiners found that BOV was reasonably responsive to the credit needs of its assessment area. Examiners noted that BOV extended the majority of its loans inside its assessment area and that its distribution of loans to LMI borrowers was reasonable. Examiners also noted that BOV's lending to small businesses was excellent, penetrating all income levels.

BOV represents that the proposed Sunrise Beach branch would provide public benefits by enabling customers living in the Sunrise Beach area to access banking services more conveniently. Currently, customers living in Sunrise Beach must cross a toll bridge to access the nearest BOV branch and are several miles away from a bank branch of any kind. The proposed branch would be conveniently located in the Sunrise Beach community.

Based on all the facts of record and for the reasons described in this order, the Board concludes that the convenience and needs factor, including BOV's CRA performance, is consistent with approval of the application.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[15] The Board's approval is specifically conditioned on BOV's compliance with all commitments made to the Board in connection with the proposal as well as all conditions imposed in this order. The commitments and conditions relied on by the Board are deemed to be conditions imposed in writing in connection

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[12] S*ee Interagency Questions and Answers Regarding Community Reinvestment*, 5 *Fed. Reg.* 11642, 11665 (2010) ("Interagency Q&As on CRA").

[13] 12 U.S.C. § 2906.

[14] *See Interagency Q&As on CRA*, 75 *Fed. Reg.* 11642 (2010).

[15] The commenters on this proposal request that the Board hold a public hearing on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 262.3(e). The Board has considered the commenters' request in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. In addition, the request does not demonstrate why the written comment does not present the commenters' views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

Approval of this application is also subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank acting under authority delegated by the Board.

By order of the Board of Governors, effective May 7, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Federal Reserve
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Legal Developments: Third Quarter, 2015

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

CIT Group, Inc.
Livingston, New Jersey

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2015–20 (July 19, 2015)

CIT Group, Inc. ("CIT Group"), Livingston, New Jersey, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] and its subsidiary, Carbon Merger Sub LLC, New York, New York, have requested the Board's approval under section 3 of the BHC Act[2] to acquire IMB Holdco LLC ("IMB Holdco") and thereby indirectly acquire OneWest Bank, National Association ("OneWest Bank"), both of Pasadena, California. Immediately following the proposed acquisition, CIT Group's subsidiary bank, CIT Bank, Salt Lake City, Utah, would be merged into OneWest Bank, with OneWest Bank being the surviving entity.[3]

CIT Group, with consolidated assets of approximately $47.9 billion, is the 42nd largest insured depository organization in the United States, controlling approximately $15.9 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[4] CIT Group controls CIT Bank, which operates a single, nonretail banking office in Salt Lake City, Utah, soliciting nationwide deposits through an Internet-based deposit-taking platform. CIT Bank is the 10th largest insured depository institution in Utah, with approximately 3.1 percent of the total deposits in insured depository institutions in that state.

IMB Holdco, with total consolidated assets of $21.8 billion, is the 70th largest insured depository organization in the United States, controlling approximately $14.1 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. IMB Holdco controls OneWest Bank, which operates solely in California. OneWest Bank is the 13th largest insured depository institution in California, with approximately 1.4 percent of the total deposits in insured depository institutions in that state.

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1 12 U.S.C. § 1841 *et seq.*

2 12 U.S.C. § 1842.

3 The merger of CIT Bank into OneWest Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). Upon consummation of the bank merger, CIT Group intends to change the name of the combined bank to CIT Bank, National Association.

4 Asset and nationwide deposit-ranking data are as of December 31, 2014, unless otherwise noted. State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings and loan associations.

On consummation of this proposal, CIT Group would become the 41st largest insured depository organization in the United States by deposits, controlling approximately $30 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in the United States. CIT Group would become the 36th largest depository organization in the United States by assets, with consolidated assets of approximately $70 billion. Because CIT Bank and OneWest Bank do not have overlapping operations, the combined bank would continue to rank as the 10th and 13th largest insured depository institution in Utah and California, respectively.

Public Comment on Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (79 *Federal Register* 51333 (August 28, 2014) and 80 *Federal Register* 7595 (February 11, 2015)) and in accordance with the Board's Regulation Y and Rules of Procedure.[5] The time for submitting comments has expired. The Board extended the initial period for public comment to accommodate the broad public interest in this proposal, providing interested persons until February 26, 2015, a total period of approximately six months, to submit written comments.

In light of the significant public interest in the proposal, the Board held a public meeting in Los Angeles, California, to provide interested persons an opportunity to present oral comments on the factors that the Board must review under the BHC Act.[6] Approximately 111 individuals provided oral testimony at the public meeting, a subset of which also submitted written comments.[7] In total, approximately 2,364 individuals and organizations submitted comments on the proposal orally, in writing, or both. Commenters included community groups, nonprofit organizations, customers of the two banking organizations, a member of Congress, and other interested organizations and individuals.

A large number of commenters supported the proposal.[8] Many of these commenters contended that the proposal would benefit communities in California, including through increased employment, business development opportunities, and access to resources and services provided by the combined institution. Commenters also commended OneWest Bank for its commitment to local communities and described favorable experiences with the small business, community development, and mortgage programs of the OneWest organization. In addition, commenters praised CIT Group and IMB Holdco's charitable contributions and noted that officers and employees of these institutions frequently provide valuable resources and services to community organizations.

A significant number of commenters either opposed the proposal, requested that the Board approve the proposal only subject to certain conditions, or expressed concerns about the proposal.[9] Many commenters questioned whether the proposal would result in public ben-

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5 12 CFR 225.16(b); 12 CFR 262.3(b).

6 The public meeting was held jointly by the Board and the OCC on February 26, 2015, at the Los Angeles Branch of the Federal Reserve Bank of San Francisco.

7 The Board permitted commenters who requested to participate in the public meeting but were unable to attend to have their written comments presented by other participants at the meeting.

8 Approximately 2,177 commenters supported the proposal, of which approximately 2,093 commenters submitted substantially identical form letters. Of these commenters, approximately 51 commenters provided oral comments in support of the proposal.

9 Approximately 187 commenters opposed the proposal. Of these commenters, approximately 39 commenters submitted individualized written comments, and approximately 88 commenters submitted substantially identical form letters. Approximately 60 persons provided oral comments in opposition to the proposal. Two commenters, the California Reinvestment Coalition and National People's Action, submitted petitions in opposition to the proposal, with the names of approximately 15,559 and 6,500 individuals, respectively.

efits, arguing that both organizations are the successors to failed institutions and have received significant government assistance since 2008. Commenters also expressed concerns about the impact of the proposal on the financial stability of the U.S. banking or financial system given that the combined organization would have more than $50 billion in assets. In addition, commenters expressed concerns about the level of CIT Bank's small business lending in certain markets and argued that CIT Bank should invest more in the communities in which it accepts Internet deposits.

A significant number of comments in opposition to the proposal related to OneWest Bank. Many commenters criticized the mortgage lending, servicing, and foreclosure practices of OneWest Bank, including with respect to its home equity conversion mortgage loan ("reverse mortgage loan") products.[10] Commenters alleged that OneWest Bank, among other things, engaged in wrongful foreclosures, deprived consumers of their property, unfairly denied mortgage modifications or engaged in harmful servicing tactics during the loss mitigation process, deceived mortgage borrowers and failed to inform them of their rights, and foreclosed improperly upon the houses of nonborrowing spouses.

Many commenters also raised concerns about OneWest Bank's performance under the Community Reinvestment Act ("CRA")[11] and the bank's compliance with fair lending laws and regulations. In this regard, commenters alleged that OneWest Bank does not meet the needs of low- and moderate-income ("LMI") and minority communities in its product offerings, charitable contributions, small business lending, branch locations, and marketing. A number of commenters alleged that there are racial disparities in the bank's small business lending and its origination and servicing of certain mortgage products.

A number of commenters expressed concerns regarding the impact of the proposal on financial stability, asserting that the proposal would result in an institution with greater than $50 billion in assets that would be "too big to fail." Some commenters alleged that CIT Group is materially interconnected with the economy and with other companies that are important to the stability of the financial system. Commenters also raised concerns about the amount of assets at the combined organization that would not have observable market prices.

In evaluating the statutory factors under the BHC Act, the Board considered the information and views presented by all commenters, including information presented at the public meeting and in written submissions. The Board also considered all the information presented in the application and supplemental filings by CIT Group, various reports filed by the relevant companies, publicly available information, and other information and reports. In addition, the Board consulted with the relevant financial supervisory agencies and reviewed confidential supervisory information, including examination reports on the depository institution holding companies and the depository institutions involved. After a review of all the facts of record, and for the reasons discussed in this order, the Board has concluded that the statutory factors it is required to consider under the BHC Act are consistent with approval of the proposal.

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[10] Commenters alleged that the number of consumer complaints the bank has received concerning reverse mortgage loans are indicative of issues with its lending and servicing practices regarding this product.

[11] 12 U.S.C. § 2901 *et seq.*

Factors Governing Board Review of the Transaction

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of banks.[12] These factors include 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 effectiveness of the involved institutions in combatting money-laundering activities; the convenience and needs of the communities to be served, including the records of performance under the CRA of the insured depository institutions involved in the transaction; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system. In proposals involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits as a percentage of the total deposits controlled by insured depository institutions in the United States and in relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[13] Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[14] In addition, the Board may not approve an interstate application if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[15]

For purposes of the BHC Act, the home state of CIT Group is Utah, and OneWest Bank's home state is California.[16] CIT Group is well capitalized and well managed under applicable law, and CIT Bank has a satisfactory CRA rating. There are no minimum age requirements under California law that apply to CIT Group's acquisition of IMB Holdco and OneWest Bank.[17]

On consummation of the proposed transaction, CIT Group would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the

[12] 12 U.S.C. § 1842(c).

[13] 12 U.S.C. § 1842(d)(1)(A).

[14] 12 U.S.C. § 1842(d)(1)(B).

[15] 12 U.S.C. § 1842(d)(2)(A), (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

[16] *See* 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A national bank's home state is the state in which the main office of the bank is located.

[17] The only age requirement under California state law concerns interstate bank mergers where the surviving bank is an out-of-state bank. *See* Cal. Fin. Code § 1685(a). However, this age requirement is not applicable to the proposed transaction, which involves mergers of holding companies and an interstate bank merger where the surviving bank will be a national bank that maintains its main office in California.

United States. In addition, the combined organization would control $14.1 billion (or approximately 1.4 percent) and $13.9 billion (or approximately 3.1 percent) of the total amount of deposits of insured depository institutions in California and Utah, respectively, which are the two states in which the combined organization would have operations upon consummation of the proposal. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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.[18]

CIT Group and IMB Holdco do not directly compete in any retail banking market. Based on all the facts of record, including the differences in business models, products, and methods for providing services to customers, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.[19]

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

CIT Group and CIT Bank are well capitalized, and the combined organization would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange.[20] The asset quality, earnings, and liquidity of CIT Bank and OneWest Bank are consistent with approval, and CIT Group appears to have adequate resources to absorb the costs of the

[18] 12 U.S.C. § 1842(c)(1)(B).

[19] The Department of Justice has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

[20] As proposed, IMB Holdco would ultimately be merged into CIT Group, and each IMB Holdco ownership interest would be converted into a right to receive CIT Group common stock and cash, based on an exchange ratio. CIT Group has the financial resources to fund the exchange.

proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that CIT Group has sufficient financial resources to effect the proposal.[21]

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of CIT Group, IMB Holdco, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by CIT Group, the Board's supervisory experiences with CIT Group and IMB Holdco and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking and anti-money-laundering laws.

CIT Group, IMB Holdco, and their subsidiary depository institutions are each considered to be well managed. CIT Group's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of CIT Group have substantial knowledge and experience in the banking and financial services sectors.

The Board also has considered CIT Group's plans for implementing the proposal. CIT Group is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. CIT Group would implement its risk-management policies, procedures, and controls at the combined organization, which would be supplemented to address the additional business lines and risks associated with IMB Holdco's and OneWest Bank's operations, and these are considered acceptable from a supervisory perspective. In addition, management of CIT Group and IMB Holdco has the experience and resources that should allow the combined organization to operate in a safe and sound manner,[22] and CIT Group plans to integrate OneWest Bank's existing management and personnel in a manner that augments CIT Group's management.[23]

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[21] Some commenters alleged that CIT Group plans to pay dividends to shareholders before becoming subject to enhanced prudential standards pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1376, 1423–32 (2010), codified at 12 U.S.C. § 5365, and the Board's Regulation YY, 12 CFR Part 252. The Board has considered the financial resources of the combined organization, including the effect of anticipated capital distributions, and concludes that financial considerations are consistent with approval.

[22] Commenters alleged that CIT Group would pay excessive compensation to the executives from IMB Holdco and OneWest Bank who would become executives of the combined organization. CIT Group has the resources to pay the proposed compensation, and the level of compensation does not raise safety and soundness concerns. In determining incentive compensation for executives at IMB Holdco and OneWest Bank, as well as those at CIT Group, the applicant also is expected to follow the guidance issued by the Board regarding incentive compensation. *See Guidance on Sound Incentive Compensation Policies*, 75 *Federal Register* 36396 (June 25, 2010).

In addition, some commenters expressed concerns regarding the combined organization's managerial resources to comply with enhanced prudential standards pursuant to section 165 of the Dodd-Frank Act and the Board's Regulation YY. CIT Group has the financial and managerial resources to comply with the Board's regulations implementing section 165 of the Dodd-Frank Act, and the Board will monitor CIT Group's compliance with these regulations through the supervisory process.

[23] On consummation, the chairman of IMB Holdco and a director of OneWest Bank would be added to CIT Group's board of directors. In addition, the chairman of the boards of IMB Holdco and OneWest Bank would hold the senior executive officer positions of vice chairman of CIT Group and chairman of the combined bank, while the president of IMB Holdco and OneWest Bank would become a co-president of CIT Group and president and chief executive officer of the combined bank.

Some commenters expressed concerns about CIT Group's managerial resources to service residential mortgages and reverse mortgage loans, given CIT Group's relative lack of experience in mortgage servicing. As mentioned above, CIT Group plans to integrate OneWest Bank's existing management and personnel in a manner that augments CIT Group's management and capacity consistent with the combined organization's scope of activities, and CIT Group has devoted substantial resources to planning for the integration of OneWest Bank's business operations.

Based on all the facts of record, including CIT Group's supervisory record, managerial and operational resources, and plans for operating the combined institutions after consummation, and comments received on the proposal,[24] the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of CIT Group and IMB Holdco in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.[25] In addition, the Board considers the banks' overall compliance record, the results of recent fair lending examinations and other supervisory assessments; the supervisory views of examiners; other supervisory information; and comments received on the proposal. The Board also may consider the applicant institution's business model, marketing and outreach plans, plans following consummation, and any other information the Board deems relevant.

In considering this proposal, the Board has considered all the facts of record, including reports of examination of the CRA performance of CIT Bank and OneWest Bank, the fair lending and compliance records of both banks, confidential supervisory information, information provided by CIT Group, and public comments received on the proposal. The Board also consulted with the Consumer Financial Protection Bureau ("CFPB") and the OCC concerning their evaluations of OneWest Bank's compliance with fair lending and consumer protection laws and regulations and the comments received on the proposal. The CFPB did not identify any supervisory concerns regarding OneWest Bank.[26] The OCC considered the comments opposing the proposal, including allegations against OneWest Bank, as part of the OCC's review of the proposed merger of OneWest Bank and CIT Bank and has approved the bank merger.

A. Summary of Public Comments on Convenience and Needs

As noted above, the Board held a public meeting to facilitate receiving comments on the proposal from interested members of the public. A significant number of comments were submitted, orally and/or in writing, through this process.

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[24] Commenters expressed concern about the level of racial and ethnic diversity among OneWest Bank's employees and officers and about OneWest Bank's efforts to do business with minority-owned suppliers. However, other commenters praised OneWest Bank's diversity, stating that minority individuals represented a good proportion of the makeup of OneWest Bank's employees and executives and that the combined bank would include representatives from Hispanic, Asian, and African American communities on its board of directors and would establish spending targets with women and minority-owned businesses. The Board believes that these contentions and concerns are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 223 n.31 (2004); *see also Western Bancshares, Inc.* v. *Board of Governors*, 480F.2d 749 (10th Cir. 1973) ("*Western Bancshares*").

[25] 12 U.S.C. § 1842(c)(2).

[26] Several commenters represented that they had filed complaints with the CFPB regarding OneWest Bank's mortgage foreclosure practices.

Many commenters supported the proposal.[27] These commenters generally believed that the CIT Group and OneWest Bank organizations provide valuable services to their communities. In particular, commenters contended that the proposal would result in a strong bank that would support the retention and creation of jobs in the communities it serves. Commenters also contended that the proposal would expand opportunities for LMI and minority borrowers and businesses by increasing access to credit and fostering partnership opportunities between the combined organization and groups that serve LMI and minority individuals. These commenters also praised OneWest Bank and its management for the bank's community outreach efforts and support for various community development programs and initiatives, including programs that help provide mortgage counseling for minority borrowers, mentoring for at-risk youth, and services and assistance for service-disabled veterans. Commenters also noted OneWest Bank's support for school, faith-based, arts, and financial literacy programs, many of which target minority and LMI individuals.

The Board received a large number of comments opposing the proposal on the basis of the CRA records of the involved institutions. A significant number of comments alleged that CIT Bank is not meeting its obligations to help meet the credit needs of all the communities across the United States from which it collects deposits through its Internet-based deposit-taking platform.[28] Many commenters also expressed concerns that the combined organization's future performance under the CRA will not be commensurate with the combined bank's size and capacity.

The Board also received a significant number of comments that were critical of OneWest Bank's CRA performance record, including its "low satisfactory" rating on the Investment Test in its most recent CRA evaluation. Commenters criticized the number of branches maintained by OneWest Bank in LMI census tracts and the level of loans to businesses with less than $1 million in annual revenues extended by OneWest Bank. Additionally, commenters alleged that the bank's community development lending and investment activities have not been adequately responsive to community credit needs.[29] Commenters also alleged racial disparities in OneWest Bank's lending activities. Some commenters alleged that OneWest Bank made a disproportionately low number of home mortgage loans to Asian and African American borrowers in the Los Angeles, California, area based on data reported for 2012 under the Home Mortgage Disclosure Act of 1975 ("HMDA").[30]

A significant number of commenters alleged that OneWest Bank's mortgage servicing and foreclosure practices and policies harmed consumers and did not comply with legal requirements, including those of the California Homeowner Bill of Rights.[31] In particular, commenters alleged that OneWest Bank failed to keep accurate records and paperwork related to mortgage loans as part of the loan modification and foreclosure processes; unfairly

[27] A number of commenters alleged that OneWest Bank inappropriately solicited public comments in support of the application, including by providing financial incentives. The Board invites comments from all members of the public that have an interest in the application. The Board considers all timely and substantive comments on an application without regard to the commenters' motivation for supporting or opposing the application.

[28] For example, one commenter alleged that CIT Bank has collected a significant amount of deposits from Monroe County, New York, but has provided only minimal small business lending in the area, with none of the lending going to businesses with annual revenues of less than $1 million.

[29] Commenters alleged that, compared to its peers, OneWest Bank has a low level of charitable contributions as a percentage of deposits and that only a small percentage of the bank's charitable contributions are directed towards supporting affordable housing. Moreover, commenters alleged that OneWest Bank has no multifamily loan product to support affordable housing development.

[30] 12 U.S.C. § 2801 *et seq.*

[31] 2012 Cal. Stat. 2314 (codified in scattered sections of Cal. Civ. Code).

accelerated loans and denied loan modifications;[32] failed to provide a single point of contact to assist borrowers; pursued foreclosure proceedings against borrowers during the loan modification process; inappropriately advised borrowers to default on their loans in order to qualify for loan modification programs and subsequently foreclosed on the defaulted loans; and failed to inform consumers of their rights at the time of reverse mortgage loan origination, maturity, or default. Commenters also alleged that OneWest Bank prohibited the spouse and other related parties to deceased reverse mortgage loan borrowers from satisfying the mortgage and retaining the property, and improperly required the estates of reverse mortgage loan borrowers to record trusts in public property records. Commenters also contended that OneWest Bank inflated property appraisals and thereby frustrated the efforts of the surviving spouse and heirs of deceased reverse mortgage loan borrowers to keep their family homes.[33] Some commenters also alleged that OneWest Bank has allowed its stock of foreclosed real property to fall into disrepair and thereby has contributed to blight in, and adversely affected, the relevant communities.

B. The Businesses of the Involved Institutions

CIT Group is primarily a commercial lender that provides financing, leasing, and advisory services to middle market companies in North America in a variety of industries, and equipment financing and leasing to companies worldwide in the transportation industry. CIT Group is among the largest originators of Small Business Administration ("SBA") 7(a) loans, which help start-up and existing small businesses. Consistent with the consolidated organization's business focus, CIT Bank offers commercial credit products to middle market companies in various industries throughout the United States, with commercial and industrial loans making up approximately 70 percent, while residential real estate loans making up only 3 percent, of the bank's total loan portfolio.[34] While CIT Bank does not make a significant amount of small business loans within its Salt Lake City, Utah, assessment area, almost 9 percent of CIT Bank's small business loans originated nationally were originated to businesses located in LMI census tracts.

IMB Holdco and OneWest Bank were organized to acquire assets and assume deposits of the failed IndyMac Bank, F.S.B. ("IndyMac"), from the Federal Deposit Insurance Corporation ("FDIC").[35] OneWest Bank operates throughout Southern California, providing a broad range of traditional retail and commercial banking products and services through a network of 73 branches. Currently, approximately 60 percent of total loans at OneWest Bank are loans obtained from the acquisitions of IndyMac and two other institutions from the FDIC.[36] OneWest Bank has been focusing its efforts on transforming from a thrift to a commercial bank.[37] Most of the loans originated by OneWest Bank through its own opera-

[32] For example, commenters alleged that, on the basis of performance data reported by servicers participating in the Home Affordable Modification Program ("HAMP"), OneWest Bank was more likely to foreclose on its borrowers than other banks.

[33] Under regulations of the Department of Housing and Urban Development, when a reverse mortgage loan is due and payable (e.g., after the death of the borrower), a surviving nonborrowing spouse can elect to satisfy the mortgage and retain the property securing the loan for the lesser of the unpaid principal balance or 95 percent of the property's appraised value. *See* 26 CFR 206.125(a); Department of Housing and Urban Development, Mortgagee Letter No. 2015-15 (June 12, 2015), available at portal.hud.gov/hudportal/documents/huddoc?id=15-15ml.pdf.

[34] CIT Bank, Consolidated Report of Condition and Income, at 18 (data as of March 31, 2015).

[35] OneWest Bank also acquired assets and assumed deposits of two failed depository institutions, La Jolla Bank, FSB, of Rancho Santa Fe, and First Federal Bank of California, F.S.B., of Santa Monica, all in California.

[36] Although one-to-four family residential loans represent approximately 55 percent of total loans, many of these loans were acquired in the acquisitions mentioned above.

[37] OneWest Bank also has sold its third-party residential mortgage servicing rights, exited the prepaid card business, and continues to explore a sale of Financial Freedom Acquisition LLC ("Financial Freedom"), a subsidiary of OneWest Bank engaged in the reverse mortgage loan business.

tions have focused on commercial lending and commercial real estate lending, although the bank continues to offer retail and consumer products and services.

C. Records of Performance under the CRA

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[38] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[39] In addition to compliance with the requirements of the CRA, fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of the applicant's race, ethnicity, or certain other characteristics.

The Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance of the relevant institutions.[40] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[41] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans, as applicable, in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper income individuals;[42] the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Consequently, the Board considers the overall CRA rating assigned to the bank's performance, as well as the bank's rating on the lending test, to be

[38] 12 U.S.C. § 2901(b).

[39] 12 U.S.C. § 2903.

[40] *See Interagency Questions and Answers Regarding Community Reinvestment,* 75 *Federal Register* 11642, 11665 (March 11, 2010).

[41] 12 U.S.C. § 2906.

[42] Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.,* 12 CFR 228.22(b)(3).

important indicators, when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

CRA Performance of CIT Bank. CIT Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 18, 2013 ("CIT Bank Evaluation").[43] Examiners noted that the bank originated an adequate amount of community development loans, which supported affordable housing, revitalization, and stabilization in the bank's assessment area.[44] Examiners also found the level of qualified investments and grants to be responsive to the community development needs of the bank's assessment area and broader statewide area. Examiners found CIT Bank's provision of community development services to be adequate.[45] Examiners did note, however, that CIT Bank made only limited use of innovative or complex qualified investments.

CIT Bank's efforts since the 2013 CRA Evaluation. Since the CIT Bank Evaluation, CIT Bank has implemented an FDIC-approved CRA strategic plan that CIT Group contends includes measurable goals to obtain an outstanding CRA rating.[46] CIT Group stated that CIT Bank increased its community development loans and investment activities in 2013 and 2014 to a level that exceeded the target level needed to obtain an outstanding CRA rating under the strategic plan.[47] Similarly, CIT Group reported that the level of community development services provided by CIT Bank's employees in 2013 and 2014 exceeded the target number of hours needed to obtain an outstanding CRA rating.

CIT Group noted that the organization is a major commercial lender and helps meets the credit needs of the communities it serves, consistent with its business focus, through, among other things, small business lending. CIT Group is the largest originator of SBA 7(a) loans in the United States and also originates SBA 504 certified development company program loans. These loans help start-up and existing small businesses with financing guaranteed for a variety of general business purposes and encourage economic development within a community by providing small businesses with long-term, fixed-rate financing to acquire major fixed assets for expansion or modernization. Moreover, the CIT organization has been among the top small business lenders in the United States and has targeted its lending to, among others, women-, veteran-, and minority-owned businesses.

CRA Performance of OneWest Bank. OneWest Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of February 6, 2012

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[43] CIT Bank is a limited purpose bank for purposes of the CRA and was evaluated under the community development test. The evaluation period for the CIT Bank Evaluation was from November 15, 2010, through December 31, 2012. Examiners reviewed the level of CIT Bank's qualified community development loans, investments, grants, and services in the bank's designated assessment area of Salt Lake County, Utah. Examiners also evaluated the qualified community development activities of CIT Group over the same evaluation period.

[44] Several commenters criticized CIT Bank for designating Salt Lake County, Utah, as its CRA assessment area while soliciting deposits nationwide. Under the CRA, depository institutions delineate their own assessment areas, subject to certain criteria, and examiners investigate whether the examined institution's assessment areas comply with these criteria. *See, e.g.,* 12 CFR 228.41. In addition, when examining a limited purpose bank such as CIT Bank under the CRA, examiners consider community development activities engaged in by the bank outside its assessment areas if the bank has adequately addressed the needs of its assessment areas. *See, e.g.,* 12 CFR 228.25(e).

[45] The bank's employees volunteered their skills and expertise to the credit committees and boards of a number of local nonprofit organizations that primarily served the needs of LMI families in the assessment area.

[46] The CRA regulations provide that the appropriate federal banking agency will assess a bank's record of meeting the credit needs of its assessment areas under a strategic plan if, among other things, the bank invites public comment on the plan and the plan is approved by such agency. The FDIC approved CIT Bank's strategic plan dated January 2013, pursuant to 12 CFR 345.27.

[47] CIT Bank reported that it made its community investments in nonprofit organizations focusing on supporting affordable housing; alleviating poverty, homelessness, and unemployment; promoting community development; and providing foreclosure counseling.

("OneWest Bank Evaluation").[48] OneWest Bank received a "High Satisfactory" rating for the Lending Test, a "Low Satisfactory" rating on the Investment Test, and a "High Satisfactory" rating on the Service Test.[49] Examiners noted that OneWest Bank's geographic distribution of loans was excellent and that the bank's community development lending performance was good.

Examiners noted that OneWest Bank's overall lending levels reflected adequate responsiveness to assessment area credit needs given the bank's business strategy, volume of lending, and competition.[50] Examiners found that the bank's geographic distribution of home mortgage loans, home refinance lending, and home purchase lending was excellent, and that the bank's distribution of multifamily lending was good. Examiners also noted that OneWest Bank exhibited good community development lending performance. Examiners found that the bank engaged in a high volume of community development lending that addressed identified community needs and made extensive use of flexible and innovative lending products, primarily a large offering of loss mitigation programs throughout all assessment areas.

Examiners rated the bank's performance under the Investment Test as "Low Satisfactory," with the dollar volume of qualifying investments, grants, and donations being viewed as adequate.[51] Nevertheless, examiners noted that the bank's investment activities exhibited good responsiveness to the credit and community development needs of the Los Angeles AA.[52] Moreover, examiners noted the bank's commitment to help meet identified community development needs, including through the bank management's role in leading the "Steps to Success" program, which promotes financial literacy among LMI and at-risk youth in the Los Angeles AA. Examiners called the program "innovative" and "the only one of its kind."

In evaluating the Service Test, examiners found that the bank's branch distribution in its assessment areas was good, with 13 percent of all branches located in LMI census tracts.

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[48] The OneWest Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for the OneWest Bank Evaluation was from March 19, 2009, through September 30, 2011. At the request of OneWest Bank's management, examiners also considered HMDA-reportable loans originated by Financial Freedom.

[49] The OneWest Bank Evaluation included a full-scope assessment review of the Los Angeles–Long Beach–Glendale, California Metropolitan Division ("LosAngeles AA"). A limited-scope review was performed in the Oxnard–ThousandOaks–Ventura, California Metropolitan Statistical Area ("MSA"); the Riverside–San Bernardino–Ontario, California MSA; the San Diego–Carlsbad–SanMarcos, California MSA; and the Santa Ana–Anaheim–Irvine, California Metropolitan Division.

[50] With respect to the Lending Test, examiners placed more weight on OneWest Bank's performance in the Los Angeles AA. Examiners noted that while the bank held a 4.72 percent market share by total dollars of deposits in the Los Angeles AA, it only held a 0.23 percent market share of HMDA loans. Examiners found this disparity to be reasonably explained on two bases. First, the Los Angeles AA saw high competition in mortgage lending, as several major banks were the dominant home mortgage lenders in the area. Second, the bank's business focus was on improving the performance of existing loans through modification programs, such as HAMP, rather than on loan origination.

[51] Some commenters alleged that OneWest Bank has a poor record of charitable donations compared to peer institutions. The Board notes that neither the CRA nor the agencies' implementing rules require that institutions engage in charitable giving.

[52] For example, within the Los Angeles AA, the bank invested in Low Income Housing Tax Credits ("LIHTC") that helped fund an affordable housing project and placed deposits with nine different minority-owned financial institutions. *See* 26 U.S.C. § 42.

Commenters criticized OneWest Bank for investing primarily in CRA-qualifying mortgage-backed securities and not making equity equivalent investments. In addition, a number of commenters alleged that CIT Group and OneWest Bank provided grants to organizations in return for their support of the merger proposal and refused to invest in or lend to organizations that opposed the proposal. The CRA does not require that institutions meet the credit needs of the communities they serve by making equity equivalent investments and does not authorize the federal banking agencies to direct a bank's community development investment or lending activities to specific groups, individuals, projects, or types of investments.

Examiners noted that the operating hours of the bank's branches were generally similar at all locations, regardless of the income level of the geography. Examiners observed that, during the evaluation period in the Los Angeles AA, OneWest Bank provided a relatively high level of community development services that were responsive to a variety of community development needs and that the bank's board and management had developed relationships to ensure continued innovative and sustainable community development services.[53]

OneWest Bank's efforts since the 2012 CRA Evaluation. CIT Group represented that since OneWest Bank's last CRA evaluation, the bank increased its community development lending almost tenfold. In terms of services, OneWest Bank employees have provided numerous hours of community service since 2011. OneWest Bank also has partnered with Operation HOPE, a nonprofit entity that teaches financial literacy, to create the Hope Inside program, which offers small business counseling at OneWest Bank's Northridge, California, branch office. In addition, OneWest Bank has more than doubled its amount of LIHTC commitments, and the bank's affordable housing investments have resulted in the creation of numerous affordable housing units. OneWest Bank also has provided grants that have allowed numerous individuals to receive homebuyer education and foreclosure prevention counseling.

CRA Efforts of the Combined Organization. CIT Group represents that the combined bank would implement a community benefits plan to help meet the needs of the combined bank's CRA assessment areas.[54] Under that plan, the combined bank would extend $3.8 billion in CRA-reportable lending in its assessment areas; meet or exceed peer benchmarks for lending to LMI borrowers and in LMI census tracts; achieve Preferred Lender status under the SBA Preferred Lenders Program; develop a small business loan and technical assistance referral program to refer businesses to community development financial

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[53] Technical and financial assistance provided included fundraising, financial education, and service on various boards of directors with organizations whose primary focus was providing assistance to LMI individuals. The bank also provided education to customers seeking loan modifications through videos and information posted on the bank's website.

Some commenters criticized OneWest Bank for not providing checking accounts for LMI consumers, alleging that OneWest Bank requires that customers make an initial deposit of at least $100 and maintain a $1,000 deposit balance to receive paper account statements without paying a monthly fee. CIT Group represents that the combined bank will reduce its affordable checking account opening balance requirement to $25.

Some commenters urged OneWest Bank to commit to waiving ATM fees for public assistance recipients. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes the costs charged for them.

[54] A number of commenters criticized CIT Group's CRA plan for the combined bank, alleging that the CRA plan sets lower CRA activity goals than commitments made by other banks operating in southern California. A commenter alleged that CIT Group underreported the combined bank's California deposits, thereby making it more difficult to compare the combined bank's proposed CRA activities with that of other depository institutions. Another commenter alleged that the CRA plan for the combined organization proposes fewer CRA activities than had been committed by the proposed president and chief executive officer of the combined bank during his service as an executive at another financial institution.

The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841(1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

Some commenters alleged that OneWest Bank is performing poorly compared to the goals set in the bank's existing CRA strategic plan. This plan is not intended to form the basis for the OCC's evaluation of the combined bank's CRA performance pursuant to 12 CFR 25.27. The OCC will examine the combined bank under the CRA lending, investment, and service tests applicable to large banks.

Commenters expressed concerns that the combined bank's CRA assessment areas will not include the entire area from which the combined bank solicits deposits. As noted above, CIT Bank solicits, and the combined bank expects to solicit, deposits nationwide through the Internet. As noted above, under the CRA, depository institutions delineate their own assessment areas, subject to certain criteria, and examiners investigate whether the examined institution's assessment areas comply with these criteria. *See, e.g.,* 12 CFR 228.41.

institutions; and develop a policy to prefer nonprofit organizations when selling certain real estate and distressed loans originated by the combined bank.

CIT Group also represents that the combined bank would make CRA qualified investments at a level of 8 percent of tier 1 deployed capital and would donate $5 million annually to nonprofit organizations that provide or support affordable housing, education, financial literacy, workforce development, health and human services to LMI individuals, programs for at-risk youth, and technical assistance for small business owners. In addition, CIT Group stated that the combined bank would locate 15 percent of its branches and ATMs in LMI census tracts and would provide 2,100 hours of CRA volunteer service.

CIT Group has represented that OneWest Bank's commercial and consumer lending platforms would complement CIT Group's small and middle market financing platforms. CIT Group further asserts that the proposal would accelerate CIT Group's transformation into a more traditional commercial banking organization with a balanced retail and commercial operation that includes OneWest Bank's traditional retail branch deposit-funding base.

In response to allegations regarding CIT Bank's CRA performance, CIT Group noted that CIT Bank received a "Satisfactory" rating in its most recent CRA public evaluation. Moreover, CIT Group stated that the enhanced lending and earning capacity of the combined organization would improve its ability to meet its CRA obligations.

OneWest Bank's activities in LMI communities largely reflect the branch network of the institutions whose assets and liabilities OneWest Bank has acquired. Since its formation, OneWest Bank has taken steps to increase its presence in LMI communities, including through partnerships with businesses located in these communities.

OneWest Bank's small business lending to businesses with less than $1 million in revenues is in line with peer institutions. Moreover, OneWest Bank is a significant participant in the SBA's 504 Loan Program, which provides financing for major fixed assets such as equipment and real estate; these SBA loans tend to be larger in size and, consequently, tend to be made to businesses with more than $1 million in annual revenues. Moreover, CIT Group is one of the largest SBA lenders.

In response to commenters' contention that OneWest Bank has a poor record in mortgage foreclosures and reverse mortgage loan servicing, OneWest Bank argued that many of the alleged mortgage servicing issues relate back to practices engaged in by IndyMac prior to OneWest Bank's acquisition of IndyMac assets from the FDIC as receiver of IndyMac. OneWest Bank also noted that, as part of a mortgage foreclosure Consent Order with the OCC, the bank remediated harms resulting from past deficiencies in connection with the Independent Foreclosure Review and instituted extensive changes to its residential mortgage servicing and foreclosure activities to ensure that these activities are conducted in a safe and sound manner going forward.[55]

[55] The Consent Order resulted from interagency on-site reviews of several mortgage servicing companies, including OneWest Bank, that found critical weaknesses in these servicers' mortgage servicing and foreclosure processes that resulted in unsafe and unsound practices. OneWest Bank and the Office of Thrift Supervision entered into the order on April 13, 2011, relating to the bank's mortgage servicing and foreclosure activities. In connection with OneWest Bank's conversion into a national bank, the order's terms were fully incorporated into a Consent Order issued by the OCC against OneWest Bank on March 11, 2014.

Between April 2011 and April 2012, the OCC and the Board issued enforcement actions against 15 mortgage loan servicers in addition to OneWest Bank for deficient practices in mortgage loan servicing and foreclosure processing. In addition to mandating the correction of servicing practices, the actions required the servicers to hire independent consultants to conduct file reviews to determine if borrowers suffered financial injury and were eligible for financial remediation.

As part of its approval of the bank merger, the OCC has required the combined bank to submit a revised public CRA plan, with input from members of the public, for the OCC's review and written determination of no supervisory objection.[56] In particular, the plan must, among other things, provide details concerning the actions the bank will take to ensure that on a prospective basis the bank is helping to meet the credit needs of its assessment area, including details regarding affordable multifamily housing lending, small business lending in LMI geographies, and investments targeted towards LMI geographies and individuals. The revised plan also must contain measurable annual goals and timetables for the achievement of those goals. In addition, the bank must provide reports to the OCC indicating the results of the bank's efforts to implement the plan.[57]

Branching. Some commenters criticized OneWest Bank's distribution of branches in low-income census tracts, alleging that two of OneWest Bank's 73 branches were in such census tracts. As noted in the OneWest Bank Evaluation, OCC examiners found that 11 middle- and upper-income branches in the bank's assessment areas have at least 33 percent or more LMI family population, and that OneWest Bank serves a larger portion of the LMI population due to the large percentage of LMI families residing in the various census tracts.

Some commenters alleged that OneWest Bank has a disproportionately low number of branches in minority neighborhoods. OneWest Bank's branch network was inherited from IndyMac and two other failed depository institutions. OneWest Bank's policy on branching recognizes the potential impact of any branch openings, closures, consolidations, and relocations on minority residents.

Several commenters expressed concerns about OneWest Bank's record of branch closings, alleging that OneWest Bank's branch closings in the last five years have had a disproportionately negative effect on LMI and minority neighborhoods. In the OneWest Bank Evaluation, OCC examiners noted that the bank's closing and opening of branches in the assessment areas receiving full-scope reviews did not adversely affect the accessibility of branches, particularly in LMI geographies. During the evaluation period, OneWest Bank consolidated three branches and relocated one branch, all within upper-income census tracts. Moreover, the Board has considered the fact that federal banking law provides a specific mechanism for addressing branch closings, including the provision of notice to the public and the appropriate federal supervisory agency before the branch is closed.[58]

A commenter criticized CIT Group for not committing to open new branches in underserved neighborhoods, and a number of commenters expressed concerns that planned

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[56] Some commenters expressed concerns that the combined bank would seek to serve LMI neighborhoods using technology and mobile banking rather than through branches and ATMs. In addition, a number of commenters requested that the combined bank introduce more products targeted to LMI customers. The revised plan is required to describe how the combined bank's alternative systems for delivering retail banking services will effectively provide needed retail banking services in LMI geographies or to LMI individuals. In addition, as noted above, although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available, the CRA does not require an institution to provide any specific products or services.

[57] The OCC is also requiring the combined bank to submit a comprehensive business plan for the agency's prior written determination of no supervisory objection. The business plan must, among other things, address the lending activities in which the bank plans to engage (along with the relevant credit policies and procedures to address all aspects of credit underwriting, credit administration, and loan portfolio management) and provide a plan to meet identified goals and objectives (along with target dates and an identification of processes, personnel, and control systems).

[58] *See* 12 U.S.C. § 1831r-1, as implemented by the *Joint Policy Statement Regarding Branch Closings*, 64 *Federal Register* 34844 (June 29, 1999). The Joint Policy Statement requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

branch consolidations by the combined bank would have a negative effect on LMI neighborhoods. OneWest Bank expects to complete four branch relocations in 2015. One branch was relocated from an upper-income census tract to a middle-income census tract, two branches will be relocated from middle-income census tracts to moderate-income census tracts, and one branch will move to a new location within its low-income census tract. The federal banking supervisory agencies evaluate a bank's record of opening and closing branches, particularly branches located in LMI geographies or primarily serving LMI individuals, as part of the CRA examination process.[59]

D. Fair Lending Compliance

The Board has considered the records of CIT Bank and OneWest Bank in complying with fair lending and other consumer protection laws.[60] As part of its evaluation, the Board reviewed CIT Bank's and OneWest Bank's records of performance under fair lending laws, the comments received on the proposal, CIT Group's responses, and other supervisory information.

Fair Lending Allegations and Response. As noted, commenters alleged that OneWest Bank made a disproportionately low number of home mortgage loans to Asian and African American borrowers in the Los Angeles, California, area, based on 2012 HMDA data. A commenter alleged that in 2012 and 2013, OneWest Bank made a disproportionately low dollar amount of its SBA loans in California to African American-owned businesses. It was also alleged that in 2012, OneWest Bank did not originate any single family mortgage purchase loans or home improvement loans to African American borrowers in the Los Angeles area.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[61] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

In response to these concerns, OneWest Bank argued that OneWest Bank, particularly in 2012, engaged in limited new loan originations. In particular, the bank made only 81 single-family mortgage purchase originations nationwide in 2012. OneWest Bank also contended that 2013 HMDA data on single-family mortgage loan refinancing in the Los Angeles assessment area demonstrate that, in that period, the bank had an 87.3-percent approval rate for African-American applicants, which exceeded its approval rate for white applicants.[62] In 2013, 78 percent of OneWest Bank's small business loans were made in major-

[59] *See, e.g.,* 12 CFR 228.24(d)(2). In addition, the Board notes that the OCC, as the primary federal supervisor of the combined bank, will continue to review the bank's branch closing record in the course of conducting CRA performance evaluations.

[60] A number of commenters alleged that OneWest Bank accelerated foreclosure proceedings or otherwise retaliated against commenters who opposed the proposal. OneWest Bank has represented that it has not retaliated against any commenters and has not changed its processes for servicing mortgage loans. Regarding each alleged case of retaliation, the bank has provide the OCC with confidential information to show that there were legitimate reasons for its actions. The OCC has reviewed and assessed the adequacy of the bank's responses and did not conclude that these allegations justified denial of the bank merger involved in this proposal.

[61] Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[62] As noted in the OneWest Bank Evaluation, OneWest Bank held a 4.72-percent market share by total dollars of deposits in the Los Angeles AA but only held a 0.23 percent market share of HMDA loans. Examiners found

ity-minority census tracts. In addition, Asian-owned banks and other lenders attract a significant portion of the applications from Asian borrowers in California and, as a result, the lending patterns to Asian borrowers in California may reflect a competitive mortgage lending market rather than discriminatory lending practices.[63]

CIT Group's and OneWest Bank's Fair Lending Program. CIT Group and OneWest Bank have both instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. CIT Group has stated that, on consummation, CIT Group's existing risk-management framework would be implemented at the combined organization and OneWest Bank's existing fair lending program would be implemented at the combined bank, supplemented appropriately to reflect the organizations' new business profile.

OneWest Bank provides fair lending training and education for all employees. The training includes programs on the bank's policies and procedures as well as applicable fair lending laws.

The two organizations' legal and compliance risk-management programs include a fair lending risk assessment that is updated annually or more frequently, based on material changes to the bank's strategy, operations, products, or services. OneWest Bank's assessment includes an evaluation of the risk of OneWest Bank's lending activities, along with an assessment of the quality of the controls and the resulting residual risk. Through the risk assessment, OneWest Bank identifies areas of higher fair lending risk and conducts targeted compliance reviews of these areas.

OneWest Bank's Fair and Responsible Lending Department conducts an annual comparative file review. In this review, the Department evaluates loan files for mortgage applicants in protected classes against loan files for similarly situated applicants who are not in a protected class to detect possible disparate treatment with respect to credit decisions and pricing. CIT Group represents that OneWest Bank's comparative file reviews have not identified concerns related to discrimination against applicants in protected classes.

OneWest Bank maintains a secondary review process for all denied mortgage loan applications to ensure that all qualified applicants are approved. This second review is conducted to ensure that the bank's fair lending standards are applied fairly and uniformly to all applicants, that all possible avenues of approval have been explored prior to formal denial, and that the applicant was not denied based on any prohibited basis.

E. Mortgage Loan Servicing, Modification, and Foreclosure Practices

As noted, a large number of commenters expressed concerns about OneWest Bank's mortgage servicing, loan modification, and foreclosure processing activities, with some making assertions about individual wrongful treatment and suggesting an overall practice of wrongful conduct such as failure to maintain foreclosed property in minority neighborhoods.[64] The issues raised by the commenters relating to OneWest Bank's mortgage servicing, loan modification, and foreclosure processing activities are of concern to the Board. In evaluating the issues raised by the commenters, the views of the bank's primary regulators

this disparity to be reasonably explained on two bases. First, the Los Angeles AA saw high competition in mortgage lending, as several major banks were the dominant home mortgage lenders in the area. Second, the bank's business focus was on improving the performance of existing loans through modification programs, such as HAMP, rather than on loan origination.

[63] *See Umpqua Holdings Corporation*, FRB Order No. 2014-2 at 23 n.46 (April 1, 2014).

[64] In particular, some commenters alleged that OneWest Bank's foreclosure practices disproportionately affected minority individuals, senior citizens, and women.

are particularly important considerations to the Board because of the primary regulator's proximity to, and access to information regarding, the institution.

The Board has consulted OneWest Bank's primary federal banking regulator, the OCC. Issues raised by the commenters relating to OneWest Bank's mortgage servicing, loan modification, and foreclosure processing activities were addressed as part of a review of the bank's compliance with a Consent Order issued by the OCC against OneWest Bank relating to mortgage servicing and foreclosure practices. Specifically, the OCC reviewed the mortgage servicing and the initiation and handling of foreclosure proceedings by OneWest Bank as part of the agency's assessment of the bank's compliance with the Consent Order, including the bank's implementation of appropriate policies and procedures. Under the Consent Order, OneWest Bank was required, among other things, to have an independent consultant review and identify borrowers financially harmed by the bank's deficient practices in mortgage servicing and foreclosure processing, and to provide remediation to harmed borrowers.

To accomplish this, OneWest Bank was required to retain an independent consultant to conduct comprehensive reviews of the bank's foreclosure activity to identify whether borrowers whose mortgages were serviced by the bank and whose homes were in the foreclosure process during 2009 or 2010 ("in-scope borrowers") suffered financial injury because of servicer errors, omissions, or other deficiencies.[65] The review for OneWest Bank encompassed an in-scope population of more than 192,000 borrower loan files.[66] Once the reviews of borrowers' foreclosure actions had been completed, the independent consultant determined the number of injured borrowers who were eligible for compensation, and OneWest Bank made payments to injured borrowers.[67] As of June 30, 2015, OneWest Bank borrowers have received payments totaling approximately $12.25 million, which represent approximately 96 percent of the bank's total expected remediation of approximately $12.8 million.

In addition, to address shortcomings with its mortgage servicing and foreclosure processing activities, OneWest Bank was required, among other things, to implement (i) acceptable action plans to ensure effective mortgage servicing, foreclosure, and loss mitigation activities; (ii) a satisfactory compliance program to ensure that mortgage servicing and foreclosure operations comply with all applicable legal requirements; (iii) third-party vendor quality control policies and procedures to ensure adequate oversight of any third-party service providers that perform foreclosure or related functions;[68] and (iv) a plan to ensure the

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[65] Under the Independent Foreclosure Review, before proceeding with the file reviews, the banking organizations submitted proposals outlining the independent consultants they wished to engage, which were subject to nonobjection determinations by the regulators. The independent consultants' engagement letters were subject to extensive review and revision prior to acceptance by the agencies. The servicers, including OneWest Bank, also were required to contact all in-scope borrowers and provide them with the opportunity to request a review of their foreclosure action by an independent consultant to determine whether the borrower suffered financial injury because of errors by their servicer and potentially receive remediation.

[66] The in-scope population included residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by OneWest Bank that had been pending at any time from January 1, 2009, to December 31, 2010, as well as residential foreclosure sales that occurred during this time period.

[67] The appropriate amount of compensation to be provided to borrowers was based on financial remediation guidance issued by the regulators for general categories of harm and was not intended to replace the type of specific finding of actual harm or losses that might be determined by a court. *See* Press Release, Board of Governors of the Federal Reserve System, Agencies Release Financial Remediation Guidance, Extend Deadline for Requesting a Free Independent Foreclosure Review to September 30, 2012, (June 21, 2012), available at www.federalreserve.gov/newsevents/press/bcreg/20120621a.htm.

[68] As part of the compliance plan, OneWest Bank was required to implement acceptable policies and procedures for outsourcing foreclosure or related functions such as property management of real estate acquired through or in lieu of foreclosure, to ensure that the bank's mortgage servicing and foreclosure activities are conducted in a safe and sound manner.

timely delivery of accurate information to borrowers in foreclosure, loss mitigation, and loan modification activities.

The OCC has conducted targeted examinations of OneWest Bank's efforts to satisfy the terms of the Consent Order, including efforts to develop a compliance program for the bank's servicing and foreclosure operations and to implement effective policy and procedural changes to achieve compliance with the provisions of the Consent Order; commitment of resources to address and correct identified servicing deficiencies; and completion of the Independent Foreclosure Review. Based on these examinations and other supervisory information, the OCC determined that OneWest Bank had satisfied all of the requirements related to its mortgage servicing and foreclosure processing activities and had a program and associated policies and procedures that are satisfactory from a supervisory perspective. Consequently, the OCC lifted the Consent Order[69] effective July 14, 2015.[70] In addition, the OCC has approved the merger of OneWest Bank and CIT Bank on July 21, 2015.

F. Additional Information on Convenience and Needs to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.[71] CIT Group represents that the proposal would provide customers of the combined organization access to an expanded suite of products and services that are not currently available from either organization on a standalone basis. For example, CIT Group represents that IMB Holdco's existing customers would have access to CIT Group's wider suite of business financing products, such as small-ticket leasing, commercial lending, and factoring products. In addition, CIT Group represents that CIT Group's existing customers would have access to OneWest Bank's deposit and cash management services, and CIT Group's smaller business customers would have access to additional products and services

[69] IMB Holdco is subject to a Consent Order overseen by the Board that requires enhanced oversight of mortgage servicing and foreclosure processing. The Board is monitoring the sustainability of the remediation implemented by IMB Holdco to comply with the Consent Order. CIT Group, as IMB Holdco's successor, would become subject to the Consent Order upon consummation of the proposed transaction and has stated that it would comply with the requirements of the Consent Order.

[70] A number of commenters urged CIT Group to commit to the Board to improve its mortgage servicing and foreclosure practices.

Commenters also noted several other judicial proceedings to which OneWest Bank is a party that allege wrongful conduct by OneWest Bank relating to mortgage foreclosure and servicing, including dual tracking. In addition, some commenters noted a lawsuit filed against OneWest Bank under the False Claims Act, 31 U.S.C. § 3729 *et seq., United States ex rel. Fisher* v. *OneWest Bank, FSB,* No.1:12-cv-09352-CM (S.D.N.Y.2015), alleging that OneWest Bank made false certifications regarding consumer disclosures in connection with the HAMP loan modification program. The case was voluntarily dismissed without prejudice by the relator.

[71] As noted above, a number of commenters alleged that the proposal would not provide a clear or significant public benefit. Many of these commenters suggested that the involved institutions' receipt of public assistance—i.e., loss-share agreements with the FDIC in the case of OneWest Bank and a default by CIT Group on funds received under the Troubled Asset Relief Program Capital Purchase Program ("TARP CPP")—indicate that the proposal should result a higher that usual showing of public benefits. In addition, a number of commenters criticized CIT Group's plans to use OneWest Bank's tax attributes to reduce CIT Group's taxable income. Commenters also alleged that the transfer of OneWest Bank's loss-share agreements from IMB Holdco to CIT Group serves no public purpose.

The FDIC's administration of its authorities as receiver of failed depository institutions, including its decisions to enter into loss-share agreements with purchasing institutions and any transfer of these agreements in subsequent merger transactions, is a subject solely within the purview of the FDIC. Similarly, the decision to provide assistance to a banking organization through the TARP CPP, the permissible use of tax attributes to reduce taxable income, and a Bankruptcy Court's decision to confirm a plan of reorganization that eliminates the obligation to repay the TARP CPP assistance, are solely within the purview of the Department of the Treasury and the relevant Bankruptcy Court, respectively. The Board believes that these matters are not within the Board's limited jurisdiction to adjudicate and do not relate to factors that the Board may consider when reviewing an application under the BHC Act. *See Western Bancshares*.

from OneWest Bank's lending platform. Further, CIT Group stated that the combined organization would be strengthened by the complementary aspects of the two entities' businesses—namely, CIT Group's nationwide small and middle-market commercial lending and leasing platform and OneWest Bank's regional commercial and consumer branch banking platform—resulting in a stronger and more stable franchise.

G. Conclusion on Convenience and Needs Considerations

The Board recognizes that this proposal represents a sizeable expansion by CIT Group. Accordingly, an important component of the Board's review of the proposal has been its consideration of the effects of the proposal on the convenience and needs of all communities served by CIT Group, IMB Holdco, and OneWest Bank.

In conducting its review, the Board has weighed the concerns expressed by the commenters in light of all the facts of record, including the overall CRA records of CIT Bank and OneWest Bank, and the Board's consultations with OneWest Bank's supervisors, the OCC and CFPB. A significant number of commenters have expressed support for the proposal based on the records of CIT Bank and OneWest Bank in helping to serve the banking needs of their entire communities, including LMI areas. Other commenters have expressed concerns about specific aspects of CIT Bank's and OneWest Bank's records of performance under the CRA in their current service areas and have expressed reservations about whether the combined organization would be responsive to the banking and credit needs of all of its communities, especially in southern California. Commenters also have expressed concerns about OneWest Bank's compliance with the law and its treatment of borrowers in its mortgage servicing and foreclosure activities. The Board has considered these concerns and weighed them against the overall CRA records of CIT Bank and OneWest Bank; the institutions' records of compliance with fair lending and other consumer protection laws; consultations with the CFPB and OCC; confidential supervisory information; information provided by CIT Group, including its responses to comments; and the public comments on the proposal.

Based on that review, the Board believes that the proposed acquisition of OneWest Bank by CIT Group would result in public benefits and that the convenience and needs factor is consistent with approval. The Board expects the CIT Group to engage in activities that help to meet the credit needs of the communities CIT Group serves at a level commensurate with the expanded size and scope of the combined organization, consistent with safe and sound lending practices. The Board also expects CIT Group to support the combined bank in developing a comprehensive business plan and providing a more detailed CRA plan required by the OCC in connection with its approval of the merger between OneWest Bank and CIT Bank. The Board, along with other federal supervisors, will monitor these developments through the examination process.

Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[72]

As discussed above, a number of commenters expressed concerns regarding the effect of the proposal on financial stability. These commenters generally asserted that the proposal

[72] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

would result in a too-big-to-fail institution given that the combined organization would have more than $50 billion in assets. Commenters also alleged that CIT Group is materially interconnected with the economy and with other companies that are important to the stability of the financial system.[73]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[74] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[75]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. Both the acquirer and the target are predominately engaged in retail commercial banking activities.[76] The combined organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress.[77] In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Request for Additional Public Meetings

Several commenters requested that the Board hold public meetings on the proposal in cities other than Los Angeles. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the

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[73] Commenters also raised concerns about the amount of assets without observable market prices at the combined organization.

[74] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system ("USFS").

[75] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

[76] As noted, CIT Group is primarily a commercial lender, and OneWest Bank is primarily a retail bank engaged in residential mortgage activities.

[77] CIT Group does not currently engage, and as a result of this transaction would not engage, in business activities or participate in markets to a degree that would pose significant risk to other institutions in the event of financial distress of the combined entity. In addition, the combined entity's shares of USFS intrafinancial system assets and liabilities are each less than 1 percent. Moreover, the Board has considered the amount of assets at the combined organization that would not have observable market prices and believes that these asset levels would not meaningfully contribute to the complexity of the USFS or make the combined organization materially vulnerable to financial market distress.

bank to be acquired make a timely written recommendation of denial of the application.[78] The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to provide testimony and submit comments on the proposal. As noted above, the Board and the OCC held a public meeting on the application, at which 111 persons gave testimony. Persons who could not attend in person were permitted to have their written comments presented by other participants at the meeting. Commenters submitted numerous written comments that the Board has considered in acting on the proposal. The requests do not identify disputed issues of fact material to the Board's decision that would be clarified by a further public meeting. In addition, the requests do not demonstrate why written comments do not present the commenters' views adequately or why a further meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that public meetings in cities other than Los Angeles are not required or warranted in this case. Accordingly, the requests for further public meetings on the proposal are denied.

In addition, several commenters requested a further extension of the comment period for the proposal. The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time.[79] The commenters' requests for additional time do not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend further the public comment period.[80]

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has con-

[78] 12 U.S.C. § 1842(b); 12 CFR 225.16(e).

[79] 12 CFR 262.25(b)(2).

[80] A number of commenters requested that the Board delay action on the proposal until (i) CIT Group commits to a community reinvestment plan negotiated with community groups, (ii) the FDIC makes public the results of its audit of OneWest Bank's compliance with the bank's loss-share agreements, (iii) certain commenters receive responses from federal and state agencies under applicable freedom of information laws, (iv) OneWest Bank halts foreclosing upon the property of certain reverse mortgage loan borrowers, or (v) the Board and the OCC verify that OneWest Bank offered loan modifications to all qualified borrowers before foreclosing on the borrower's property and collecting loss-share payments from the FDIC.

The Board believes that the record in this case does not warrant postponement of its consideration of the proposal. During the application process, the Board has accumulated a significant record, including reports of examination, supervisory information, public reports and information, and significant public comment. The Board believes this record is sufficient to allow it to assess the factors it is required to consider under the BHC Act. The BHC Act and the Board's rules establish time periods for consideration and action on proposals such as the current proposal. Moreover, as discussed more fully above, the CRA requires the Board to consider the existing record of performance of an organization and does not require that the organization enter into contracts or agreements with others to implement its CRA programs. For the reasons discussed above, the Board believes that commenters have had ample opportunity to submit their views and, in fact, they have provided ample written submissions and oral testimony that have been considered by the Board in acting on the proposal. Based on a review of all the facts of record, the Board concludes that delaying consideration of the proposal, granting another extension of the comment period, or denying the proposal on the grounds discussed above, including for informational insufficiency, is unwarranted.

The Board received multiple comments alleging that the Board's consideration of the proposal is precluded by the existence of a lawsuit filed against OneWest Bank under the False Claims Act. *United States ex rel. Beekman* v. *IndyMac Federal Bank, F.S.B.*, No. 9:12-cv-81138-JIC (S.D.Fla. 2015). This case has been dismissed with prejudice for failure to meet the applicable pleading standard.

sidered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by CIT Group with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York, acting under delegated authority.

By order of the Board of Governors, effective July 19, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Robert deV. Frierson
Secretary of the Board

Banner Corporation
Walla Walla, Washington

Elements Merger Sub, LLC
Walla Walla, Washington

Order Approving the Acquisition of a Bank Holding Company
FRB Order N. 2015–23 (September 3, 2015)

Banner Corporation ("Banner") and Elements Merger Sub, LLC ("Merger Sub"), a wholly owned subsidiary of Banner, both of Walla Walla, Washington (together, "Applicants"), have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire Starbuck Bancshares, Inc. ("Starbuck"), Seattle, and thereby indirectly acquire its subsidiary, AmericanWest Bank, Spokane, both of Washington. Under the proposal, Starbuck would be merged into Merger Sub and AmericanWest Bank would be merged into Banner's wholly owned subsidiary, Banner Bank, also of Walla Walla; Merger Sub and Banner Bank would be the surviving entities.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (80 *Federal Register* 6517 (2015)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Banner, with consolidated assets of approximately $5.2 billion, is the 201st largest insured depository organization in the United States, controlling approximately $4.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Banner controls Banner Bank, which

[1] 12 U.S.C. § 1842.

[2] The merger of AmericanWest Bank into Banner Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act. 12 U.S.C. § 1828(c).

[3] 12 CFR 262.3(b).

operates in Washington, Idaho, and Oregon.[4] Banner is the 11th largest depository organization in Washington, controlling approximately $2.9 billion in deposits, the 18th largest insured depository institution in Idaho, controlling approximately $234.5 million in deposits, and the 12th largest insured depository institution in Oregon, controlling approximately $849.0 million in deposits, which represent 2.3, 1.1, and 1.4 percent, respectively, of the total deposits of insured depository institutions in those states.[5]

Starbuck, with consolidated assets of approximately $4.6 billion, is the 213th largest insured depository organization in the United States, controlling approximately $3.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Starbuck controls AmericanWest Bank, which operates in Washington, California, Idaho, Oregon, and Utah. Starbuck is the 16th largest depository organization in Washington, controlling approximately $1.2 billion in deposits, the 21st largest insured depository institution in Idaho, controlling approximately $173.1 million in deposits, and the 15th largest insured depository institution in Oregon, controlling approximately $388.2 million in deposits, which represent 0.9, 0.8, and 0.6 percent, respectively, of the total deposits of insured depository institutions in those states.

On consummation of the proposal, Banner would become the 124th largest depository organization in the United States, with consolidated assets of approximately $9.8 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Banner would become the eighth largest depository organization in Washington, controlling approximately $4.0 billion in deposits, the 15th largest insured depository institution in Idaho, controlling approximately $407.6 million in deposits, and the 10th largest insured depository institution in Oregon, controlling approximately $1.2 billion in deposits, which represent 3.3, 2.0, and 2.0 percent, respectively, of the total amount of deposits of insured depository institutions in those states.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[6] Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[7] In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 30 percent or more of the total deposits of insured depository institutions

[4] Banner also controls Islanders Bank, Friday Harbor, Washington, which operates three branches in Washington.

[5] Nationwide data and rankings are as of June 30, 2015. State data and rankings are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings and loan associations.

[6] 12 U.S.C. § 1842(d)(1)(A).

[7] 12 U.S.C. § 1842(d)(1)(B). For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7). Section 3(d) of the BHC Act applies to the acquisition by a bank holding company of a bank with the same home state as the bank holding company to the extent that the bank operates branches outside its home state.

in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[8]

For purposes of the BHC Act, the home state of Banner is Washington and AmericanWest Bank's home state is Washington.[9] AmericanWest Bank is also located in California, Idaho, Oregon, and Utah. Banner is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act rating.[10] California and Utah do not have minimum age requirements that would apply to this transaction,[11] and Idaho and Oregon do not have minimum age requirements.[12]

On consummation of the proposed transactions, Banner would control less than 1 percent of the total amount of deposits in insured depository institutions in the United States. In addition, the combined organization would control approximately 3.3 percent of the total amount of deposits of insured depository institutions in AmericanWest Bank's home state, Washington. Banner and AmericanWest Bank also have overlapping banking operations in Idaho and Oregon, and the combined organization would control approximately 2.0 percent of the total amount of deposits of insured depository institutions in each of those states.[13] Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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.[14]

Banner Bank and AmericanWest Bank compete directly in the Idaho-Washington banking market of Lewiston, the Oregon banking market of Roseburg, the Washington-Idaho banking market of Spokane, the Washington-Oregon banking market of Walla Walla, and the Washington banking markets of Richland-Kennewick-Pasco, Seattle, Sunnyside, and Yakima.

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[8] 12 U.S.C. § 1842(d)(2)(A), (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch.

[9] *See* 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

[10] 12 U.S.C. §§ 2901-2908.

[11] California imposes minimum age requirements only on the acquisition of a bank that is organized under the laws of California or that maintains its main office in California. Cal. Fin. Code §§ 147(a), 1685. The Board consulted with the Utah Department of Financial Institutions, which advised that the Utah minimum age requirements would not apply to the acquisition of a depository institution whose home state is not Utah but that has branches in Utah. Utah Code §§ 7-1-103(14), -703(7).

[12] Idaho Code § 26-1605; and Or. Rev. Stat. § 713.270.

[13] Neither Idaho nor Oregon impose a deposit cap or concentration limit.

[14] 12 U.S.C. § 1842(c)(1).

A. Competitive Effects in the Banking Markets

The Board has reviewed the competitive effects of the proposal in the banking markets in which Banner Bank and AmericanWest Bank compete. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of the total deposits in insured depository institutions in the markets ("market deposits") that would be controlled by Banner Bank and AmericanWest Bank;[15] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[16] other characteristics of the markets; and, as discussed below, commitments made by Banner to divest one AmericanWest Bank branch in the Walla Walla banking market.

Banking Markets Within Established Guidelines. Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Lewiston, Spokane, Roseburg, Richland-Kennewick-Pasco, Seattle, and Yakima banking markets.[17] On consummation of the proposal, the Lewiston, Spokane, Richland-Kennewick-Pasco, Seattle, and Yakima banking markets would remain moderately concentrated, and the changes in market concentrations would be well within the DOJ Bank Merger Guidelines and Board precedent. The Roseburg banking market would remain highly concentrated, as measured by the HHI, and the change in the HHI in the market would be small. In each of these banking markets, numerous competitors would remain.

Banking Markets Warranting Special Scrutiny. The structural effects that consummation of the proposal would have in the Sunnyside and Walla Walla banking markets[18] warrant a detailed review because the concentration levels on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Sunnyside Banking Market. Using the initial competitive screening data, Banner is the fourth largest depository organization in the Sunnyside banking market, controlling approximately $56.5 million in deposits, which represent 11.4 percent of market deposits.

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[15] Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2014, updated to reflect changes in ownership due to subsequent mergers and based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[16] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission have issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[17] These six banking markets and the competitive effects of the proposal in these markets are described in the Appendix.

[18] The Sunnyside banking market is defined as the southeastern corner of Yakima County and southwestern Benton County, including Grandview, Granger, Mabton, Outlook, Prosser, and Sunnyside, all of Washington. The Walla Walla banking market is defined as the Walla Walla metropolitan area in Walla Walla County and the southern portion of Columbia County, including College Place, Dayton, Dixie, Garrett, Waitsburg, Walla Walla, and Walla Walla East, all of Washington, and the northeastern corner of Umatilla County, including Milton-Freewater, both of Oregon.

Starbuck is the second largest depository organization in the market, controlling approximately $87.0 million in deposits, which represent 17.5 percent of market deposits. On consummation, the combined entity would be the second largest depository organization in the Sunnyside banking market, controlling approximately $143.5 million in deposits, which would represent approximately 28.9 percent of market deposits. The HHI in this market would increase by 399 points, from 1804 to 2203.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Sunnyside banking market.[19] Factors indicate that the increase in concentration in the Sunnyside banking market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. One thrift institution in the market has a commercial and industrial loan portfolio similar to those of commercial banks in the Sunnyside banking market,[20] as measured in terms of the ratios of those types of loans to total loans and assets.[21] The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, two community credit unions exert a competitive influence in the Sunnyside banking market. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.[22] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

With the deposits of the thrift weighted at 100 percent and the two credit unions at 50 percent, the Sunnyside banking market appears to be only moderately concentrated, both before and after the transaction. Upon consummation of the merger, Banner would control approximately 25.2 percent of market deposits, the HHI would increase by 302 points to a level of 1743, a level which would be within the DOJ Bank Merger Guidelines, and 10 depository organizations would continue to operate in the Sunnyside banking market, including one insured depository institution with a market share of more than 25 percent.

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[19] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase and the resulting level of concentration in a banking market. *See NationsBank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

[20] The standard treatment of thrifts in the competitive analysis is to give their deposits 50-percent weighting to reflect their limited lending to small businesses relative to banks' lending levels. However, the Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. *See, e.g., Banknorth Group, Inc.*, 75 *Federal Reserve Bulletin* 703 (1989). Where, as here, the facts and circumstances of a banking market indicate that a particular thrift serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products, the Board has concluded that competition from such a thrift closely approximates competition from a commercial bank and that deposits controlled by the institution should be weighted at 100 percent in market-share calculations. *See, e.g., River Valley Bancorp*, FRB Order No. 2012-10 (October 17, 2012); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); and *Banknorth Group, Inc., supra*.

[21] This thrift institution has a ratio of commercial and industrial loans to assets of more than 5 percent, which is comparable to, or greater than, the ratio for some commercial banks in the market and greater than the ratio for some thrift institutions that the Board has previously found to be full competitors of commercial banks. *Id.*

[22] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012–12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012–9 (August 30, 2012); *United Bankshares, Inc.*, (order dated June 30, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporations, supra: Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

Walla Walla Banking Market. Using the initial competitive screening data, Banner is the second largest depository organization in the Walla Walla banking market, controlling approximately $382.5 million in deposits, which represent 31.1 percent of market deposits. Starbuck is the third largest depository organization in the market, controlling approximately $111.2 million in deposits, which represent 9.1 percent of market deposits. On consummation, the combined entity would be the largest depository organization in the Walla Walla banking market, controlling approximately $493.7 million in deposits, which would represent approximately 40.2 percent of market deposits. The HHI in this market would increase by 563 points, from 2401 to 2964. To mitigate the potentially adverse competitive effects of the proposal in the Walla Walla banking market, Banner has committed to divest one branch, accounting for a total of approximately $27.4 million in deposits, to a competitively suitable institution.[23]

The Board has also considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the market. In the Walla Walla banking market, the competitive effects are mitigated by several factors. Two community credit unions exert a competitive influence in the banking market. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market. The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in estimating market influence.

After accounting for the branch divestiture and weighting the deposits of the two credit unions at 50 percent, Banner would control approximately 34.6 percent of market deposits and the HHI would increase by 327 points to a level of 2367. In addition, 10 other competitively active insured depository organizations would remain, eight of which have more than one branch in the Walla Walla market.

Moreover, recent entry and expansionary activity suggests that the market is attractive to potential competitors. Two depository organizations have entered the Walla Walla banking market de novo since 2012, one of which is in the process of opening a second branch in the market, and another existing competitor opened a new branch in 2010.

B. Views of Other Agencies and Conclusion on Competitive Consideration

The DOJ conducted a review of the potential competitive effects of the merger and has advised the Board that consummation would not likely have a significantly adverse effect on competition in any relevant banking market, including Sunnyside and Walla Walla. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, including the proposed divestiture commitments, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the eight banking markets in

[23] As a condition of consummation of the proposed merger, Banner has committed that it would execute, before consummation of the proposed merger, a sales agreement with a competitively suitable banking organization. Banner also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, Banner has committed that, if the proposed divestiture is not completed within the 180-day period, Banner would transfer the unsold branch to an independent trustee, who would be instructed to sell the branch to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. *See, e.g., BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); and *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

which Banner Bank and AmericanWest Bank compete directly, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and future prospects of the institutions involved. In its evaluation of the financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the combined organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Banner and Banner Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction involves the acquisition and merger of a bank holding company and its subsidiary bank and is structured as a cash and share exchange.[24] The asset quality, earnings, and liquidity of Banner Bank and AmericanWest Bank are consistent with approval, and Banner appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that Banner has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Banner, Starbuck, and their insured depository institution subsidiaries, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable consumer protection, banking, and anti-money-laundering laws.

Banner, Starbuck, and their insured depository institution subsidiaries are each considered to be well managed. Banner's existing risk-management program and its directorate and senior management are considered to be satisfactory. The senior executive officers of Banner and Starbuck have substantial knowledge of and experience in the banking sector.

The Board also has considered Banner's plans for implementing the proposal. Banner has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. Banner would implement its existing structure of centralized risk-management at the combined organization, which is considered acceptable from a supervisory perspective. In addition, Banner's and Starbuck's management has

[24] The aggregate consideration to be paid in connection with the proposal would be a fixed amount of cash and an aggregate number of shares of (i) Banner common stock and (ii) a new class of Banner non-voting common stock that would be authorized prior to the completion of the acquisition. Banner has sufficient resources to fund the proposed transaction.

the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Banner plans to integrate Starbuck's existing management and personnel in a manner that augments Banner's management.[25]

Based on all the facts of record, including Banner's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Banner and Starbuck in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[26] In addition, the Board considers the banks' overall compliance record, the results of recent fair lending examinations, and other supervisory assessments; the supervisory views of examiners; and other supervisory information. The Board also may consider the applicant organization's business model, marketing and outreach plans, plans following consummation, and any other information the Board deems relevant.

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[27] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[28] In addition, fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Banner Bank and AmericanWest Bank, the fair lending and compliance records of both banks, the supervisory views of other agencies, confidential supervisory information, and information provided by Banner.

A. Records of Performance under the CRA

The Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[29] The CRA requires that the appropriate federal financial supervisor for a depository

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[25] On consummation, Banner intends to retain certain members of management and most of the employees of Starbuck, including two current executive officers of Starbuck, who would serve in a consulting capacity at Banner, and the current chief financial officer of Starbuck, who would serve as the chief financial officer of Banner Bank for three years after the acquisition.

[26] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

[27] 12 U.S.C. § 2901(b).

[28] 12 U.S.C. § 2903.

[29] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *FederalRegister* 11642, 11665 (2010).

institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[30] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975,[31] in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;[32] the institution's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Consequently, the Board considers the overall CRA rating and the rating on the lending test to be important indicators, when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

CRA Performance of Banner Bank. Banner Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, in March 2013 ("Banner Bank Evaluation"). Banner Bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.[33]

Examiners observed that Banner Bank's overall level of lending reflected good responsiveness to assessment area credit needs. Banner Bank's overall distribution of borrowers reflected good penetration among retail customers of different income levels and businesses and farms of different revenue sizes, and its overall geographic distribution of loans reflected adequate penetration throughout the assessment areas. Examiners noted that Banner Bank exhibited a good record of serving the credit needs of the most economically

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[30] 12 U.S.C. § 2906.

[31] 12 U.S.C. § 2801 *et seq.*

[32] Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

[33] The Banner Bank Evaluation was prepared using the interagency evaluation procedures for Large Institutions. The evaluation period for the Lending Test, Investment Test, and Service Test was from January 1, 2010, through December 31, 2012. The Banner Bank Evaluation included a full-scope review of the Seattle Metropolitan Division ("MD"), Washington, Boise Metropolitan Statistical Area ("MSA"), Idaho, and Lewiston-Clarkston Multi-State MSA, Portland-Vancouver-Beaverton Multi-State MSA, and Oregon non-MSA, all of Oregon, assessment areas and a limited-scope review of the Spokane MSA, Bellingham MSA, Tri-Cities MSA, Wenatchee Non-MSA, Yakima Non-MSA, and Washington Non-MSA, all of Washington, and Idaho Non-MSA, Idaho.

disadvantaged geographies of its assessment areas, low-income individuals, and very small businesses and small farms, consistent with safe and sound banking practices. Examiners also noted that Banner Bank had a relatively high level of community development lending, which was focused on affordable housing, and that it used flexible lending practices in serving assessment area credit needs.

Examiners found that Banner Bank had a significant level of qualified community development investments and grants, particularly those that are not routinely provided by private investors. Examiners noted that total investments doubled in amount since the previous evaluation. Examiners also noted that the bank exhibited good responsiveness to assessment area community development needs and used innovative and complex investments to support community development initiatives.

Examiners concluded that Banner Bank provided a relatively high level of community development services. Examiners noted that Banner Bank's delivery systems were accessible to all portions of its assessment areas and that its record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly with respect to low- and moderate-income geographies and individuals.

CRA Performance of AmericanWest Bank. AmericanWest Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, in September 2012 ("AmericanWest Bank Evaluation"). AmericanWest Bank received "High Satisfactory" ratings for the Lending Test and Investment Test and a "Low Satisfactory" rating for the Service Test.[34]

Examiners observed that AmericanWest Bank's overall level of lending reflected good responsiveness to assessment area credit needs. AmericanWest Bank originated a substantial majority of loans in its assessment areas during the evaluation period. AmericanWest Bank's overall distribution of borrowers reflected good penetration among retail customers of different income levels and businesses and farms of different revenue sizes, and its overall geographic distribution of loans reflected good penetration throughout the assessment areas. Examiners noted that AmericanWest Bank exhibited a good record of serving the credit needs of the most economically disadvantaged geographies of its assessment areas, low-income individuals, and very small businesses and farms, consistent with safe and sound banking practices. Examiners also noted that AmericanWest Bank had an adequate level of community development lending.

Examiners found that AmericanWest Bank had made a significant level of qualified community development investments and grants. Examiners noted that AmericanWest Bank's volume of community development investments and donations showed a marked increase from the previous evaluation. Examiners also noted that the bank exhibited good responsiveness to assessment area community development needs.

Examiners concluded that AmericanWest Bank provided an adequate level of community development services. Examiners noted that AmericanWest Bank's delivery systems were

[34] The AmericanWest Bank Evaluation was prepared using the interagency evaluation procedures for Large Institutions. The evaluation period for the Lending Test was from January 1, 2009, through December 31, 2011, except for community development loans. The Service Test and the review of community development loans covered the period from January 1, 2009, through June 30, 2012. The evaluation period for the Investment Test was from December 22, 2008, through June 30, 2012. The AmericanWest Bank Evaluation included a full-scope review of the Washington Non-MSA, Washington, Idaho Non-MSA, Idaho, and Utah Non-MSA, Utah, assessment areas and a limited-scope review of the Spokane MSA, Yakima MSA, and Kennewick MSA, all of Washington, Coeur d'Alene MSA and Lewiston MSA, both of Idaho, and Salt Lake MSA, Provo MSA, and St. George MSA, all of Utah.

accessible to all portions of its assessment areas and that AmericanWest Bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems.

B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. Applicants state that current customers of Banner Bank and AmericanWest Bank would be able to take advantage of the combined organization's expanded branch network and broader range of financial products. In particular, AmericanWest Bank customers would benefit from access to a wider range of home mortgage products and Banner's small business loan platform. AmericanWest Bank customers would also be able to use Banner's online banking platform and mobile and text banking services. Applicants also state that large commercial customers would benefit from an expanded capital base and funding capabilities following the merger. Applicants represent that they do not expect the proposal to result in any significant reduction to the services or products offered or increases in fees charged to the communities currently served by Banner Bank and AmericanWest Bank.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with other agencies, information provided by Applicants, and confidential supervisory information. Based on that review, the Board concludes that the proposal would result in public benefits and that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[35]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[36] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution

[35] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

[36] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[37]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Banner would have approximately $9.8 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a merger resulting in a firm with less than $25 billion in total consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter unless such period is extended for good cause by the Board or the Federal Reserve Bank of San Francisco, acting under delegated authority.

By order of the Board of Governors, effective September 3, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[37] For further discussion of the financial stability standard, *see Capital One Financial Corporation,* FRB Order No. 2012-2 (Feb. 14, 2012).

Appendix

Banner Bank/AmericanWest Bank Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines

Bank	Rank	Amount of Deposits	Market Deposit Shares (percent)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Idaho-Washington Banking Market of Lewiston — Defined as the Lewiston metropolitan area in Nez Perce County, including Lewiston, both of Idaho, and Asotin County, including Asotin, Clarkston, Clarkston Heights-Vineland, and West Clarkson-Highland, all of Washington						
Banner Bank Pre-Consummation	2	141.2 mil.	17.2			
AmericanWest Bank	10	12.4 mil.	1.5			
Banner Bank Post-Consummation	2	153.6 mil.	18.7	1603	52	10
Oregon Banking Market of Roseburg — Defined as Central Douglas County, including Canyonville, Dillard, Fair Oaks, Glide, Green, Myrtle Creek, Oakland, Riddle, Roseburg, Roseburg North, Sutherlin, Tri-City, and Winston, all of Oregon						
Banner Bank Pre-Consummation	7	22.5 mil.	1.5			
AmericanWest Bank	3	133.3 mil.	8.6			
Banner Bank Post-Consummation	2	155.8 mil.	10	4557	25	6
Washington-Idaho Banking Market of Spokane — Defined as the Spokane metropolitan area in Spokane County, including Airway Heights, Cheney, Dishman, Fairchild Air Force Base, Liberty Lake, Mead, Medical Lake, Opportunity, Spokane, Spokane Valley, and Veradale, all of Washington, and the central western portion of Kootenai County, including Coeur D'Alene, Hayden, Hayden Lake, Post Falls, and Rathdrum, all of Idaho						
Banner Bank Pre-Consummation	7	442.2 mil.	5.2			
AmericanWest Bank	10	140.5 mil.	1.6	1246	16	20
Washington Banking Market of Richland-kennewick-Pasco — Defined as the Tri-Cities area in south central Washington in Benton, Franklin, and Walla Walla counties, including Benton City, Burbank, Connell, Finley, Kennewick, Mesa, Pasco, Richland, Wallula, West Pasco, and West Richland, all of Washington						
Banner Bank Pre-Consummation	5	175.1 mil.	7.8			
AmericanWest Bank	10	104.4 mil.	4.7			
Banner Bank Post-Consummation	3	279.5 mil.	12.5	1034	74	14
Washington Banking Market of Seattle — Seattle metropolitan area in King, Pierce, and Snohomish counties, the southeastern portion of Island County, and Bainbridge Island in Kitsap County, including Alder, Alderton, Alderwood Manor, Algona, Ames Lake, Arlington, Arlington Heights, Artondale, Ashford, Auburn, Bainbridge Island, Baring, Bellevue, Black Diamond, Bonney Lake, Bothell, Bothell East, Bothell West, Boulevard Park, Brier, Browns Point, Bryant, Bryn Mawr-Skyway, Buckley, Bunk Foss, Burien, Camano Island, Canterwood, Canyon Creek, Carbonado, Carnation, Cavalero, Chain Lake, Clear Lake, Clinton, Clover Creek, Clyde Hill, Cottage Lake, Covington, Darrington, Dash Point, Des Moines, Dupont, Duvall, Eastgate, East Hill-Meridian, Eastmont, East Renton Highlands, Eatonville, Edgewood, Edmonds, Elbe, Elk Plain, Enumclaw, Esperence, Everett, Fairwood, Fall City, Federal Way, Fife, Fircrest, Fobes Hill, Fort Lewis, Fox Island, Frederickson, Freeland, Gig Harbor, Gold Bar, Graham, Granite Falls, Hobart, Hunts Point, Index, Inglewood-Finn Hill, Issaquah, Kapowsin, Kenmore, Kent, Kingsgate, Kirkland, Klahanie, La Grande, Lake Bosworth, Lake Cassidy, Lake Forest Park, Lake Holm, Lake Ketchum, Lakeland North, Lakeland South, Lake Marcel-Stillwater, Lake Morton-Berrydale, Lake Roesiger, Lake Stevens, Lake Stickney, Lake Tapps, Lakewood, Langley, Larch Way, Lochsloy, Lynnwood, Machias, Maple Heights-Lake Desire, Maple Valley, Maplewood, Martha Lake, Marysville, May Creek, McChord Air Force Base, McMillan, Meadowdale, Medina, Mercer Island, Midland, Midway, Mill Creek, Mill Creek East, Milton, Mirrormont, Monroe, Monroe North, Mountlake Terrace, Mukilteo, Newcastle, Newport Hills, Normandy Park, North Bend, North Fort Lewis, North Lynwood, North Marysville, North Puyallup, North Sultan, Northwest Stanwood, Orting, Oso, Pacific, Parkland, Picnic Point, Prairie Heights, Prairie Ridge, Purdy, Puyallup, Raft Island, Ravensdale, Redmond, Renton, Riverbend, Riverton, Rosedale, Ruston, Sammamish, Seatac, Seattle, Shadow Lake, Shoreline, Silvana, Silver Firs, Sisco Heights, Snohomish, Snoqualmie, South Hill, South Prairie, Spanaway, Stanwood, Startup, Steilacoom Summit, Sultan, Summit View, Sumner, Sunday Lake, Swede Heaven, Tacoma, Tanner, Three Lakes, Tukwila, Tulalip, Union Hill-Novelty Hill, University Place, Vashon, Vashon Island, Verlot, Waller, Warm Beach, Wauna, White Center, Wilderness Rim, Wilkeson, Wollochet, Woodinville, Woods Creek, Woodway, and Yarrow Point, all of Washington						
Banner Bank Pre-Consummation	14	846.8 mil.	1.0			
AmericanWest Bank	23	281.6 mil.	0.4			
Banner Bank Post-Consummation	11	1.1 bil.	1.4	1274	1	53
Washington Banking Market of Yakima — Defined as the Yakima metropolitan area in Yakima County, including Ahtanum, Cowiche, Eschbach, Gleed, Naches, Selah, Summitview, Terrace Heights, Tieton, Union Gap, and Yakima, all of Washington						
Banner Bank Pre-Consummation	3	269.7 mil.	13.7			
AmericanWest Bank	10	50.2 mil.	2.6			
Banner Bank Post-Consummation	2	319.9 mil.	16.3	1352	70	14

Data and rankings are as of June 30, 2014. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

First Horizon National Corporation
Memphis, Tennessee

Order Approving the Formation of a Bank Holding Company and the Acquisition of a Bank Holding Company
FRB Order No. 2015–24 (September 17, 2015)

First Horizon National Corporation ("First Horizon") and its subsidiary holding company, First Horizon Merger Sub, LLC, both of Memphis, Tennessee (collectively, "Applicants"), have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to acquire TrustAtlantic Financial Corporation ("TrustAtlantic") and thereby indirectly acquire its subsidiary bank, TrustAtlantic Bank, both of Raleigh, North Carolina. Following the proposed acquisition, TrustAtlantic Bank would be merged into First Horizon's subsidiary bank, First Tennessee Bank, N.A. ("First Tennessee Bank"), Memphis, Tennessee.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 891 (2015)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

First Horizon, with consolidated assets of approximately $25.7 billion, is the 61st largest insured depository organization in the United States, controlling approximately $18.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[4] First Horizon controls First Tennessee Bank, which operates in Tennessee, Georgia, Mississippi, North Carolina, and South Carolina. First Horizon is the 59th largest insured depository organization in North Carolina, controlling approximately $179.2 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[5]

TrustAtlantic, with consolidated assets of approximately $469.2 million, is the 1,444th largest insured depository organization in the United States, controlling approximately $388.6 million in deposits, which represent less than 1 percent of nationwide deposits. TrustAtlantic controls TrustAtlantic Bank, which operates only in North Carolina. TrustAtlantic is the 41st largest insured depository organization in North Carolina, controlling $392.4 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, First Horizon would remain the 61st largest depository organization in the United States, with consolidated assets of approximately $26.2 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. First Horizon would control total deposits of approximately $19.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In North Carolina, First Horizon would become the 33rd largest depository organization, controlling deposits of approximately $571.6 million,

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1 12 U.S.C. § 1842.

2 The merger of TrustAtlantic Bank into First Tennessee Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). 12 U.S.C. § 1828(c). The OCC approved the bank merger on September 16, 2015.

3 12 CFR 262.3(b).

4 Asset and nationwide deposit-ranking data are as of March 31, 2015, unless otherwise noted.

5 State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[6] Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[7] In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[8]

For purposes of the BHC Act, First Horizon's home state is Tennessee, and TrustAtlantic's home state is North Carolina.[9] First Horizon is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act rating.[10] North Carolina has no minimum age requirement,[11] and TrustAtlantic Bank has been in existence for more than five years.

On consummation of the proposed transaction, First Horizon would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 1 percent of the total amount of deposits of insured depository institutions in TrustAtlantic's home state of North Carolina, the only state in which First Horizon and TrustAtlantic have overlapping banking operations.[12] Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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

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[6] 12 U.S.C. § 1842(d)(1)(A).

[7] 12 U.S.C. § 1842(d)(1)(B).

[8] 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

[9] *See* 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

[10] 12 U.S.C. §§ 2901–2908. There are no state community reinvestment laws applicable to this case.

[11] *See* N.C. Gen. Stat. § 53-224.19 (permitting interstate merger acquisitions but not imposing an age requirement).

[12] North Carolina does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

the probable effect of the proposal in meeting the convenience and needs of the community to be served.[13]

First Horizon and TrustAtlantic have subsidiary depository institutions that compete directly in only the Raleigh, North Carolina, banking market (the "Raleigh banking market").[14] The Board has considered the competitive effects of the proposal in this market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market ("market deposits") that First Horizon would control;[15] the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[16] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Raleigh banking market. On consummation of the proposal, the Raleigh banking market would remain moderately concentrated, as measured by the HHI. The HHI change would be minimal, and numerous competitors would remain in the market.[17]

The DOJ has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Raleigh banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

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[13] 12 U.S.C. § 1842(c)(1).

[14] The Raleigh banking market is defined as the Raleigh Rand McNally Marketing Area ("RMA") and the non-RMA portions of Franklin, Harnett, Johnston, and Wake Counties, all in North Carolina.

[15] Deposit and market share data are as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[16] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/department-justice-and-federal-trade-commission-issue-revised-horizontal-merger-guidelines.

[17] First Horizon operates the 18th largest depository institution in the Raleigh banking market, controlling approximately $122.8 million in deposits, which represent less than 1 percent of market deposits. TrustAtlantic operates the 13th largest depository organization in the same market, controlling deposits of approximately $344.1 million, which represent 1.4 percent of market deposits. On consummation of the proposed transaction, First Horizon would become the 12th largest depository institution in the market, controlling deposits of approximately $466.9 million, which represent 1.9 percent of market deposits. The HHI for the Raleigh banking market would increase by one point to 1439, and 31 other competitors would remain in the market.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews information on the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information on the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete fully the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

First Horizon and First Tennessee Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction involves the acquisition and merger of a bank holding company, and it is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.[18] The asset quality, earnings, and liquidity of First Tennessee Bank and TrustAtlantic Bank are consistent with approval, and First Horizon appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that First Horizon has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of First Horizon, TrustAtlantic, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Horizon, the Board's supervisory experiences with First Horizon and TrustAtlantic and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

First Horizon, TrustAtlantic, and their subsidiary depository institutions are each considered to be well managed. First Horizon's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of First Horizon have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered First Horizon's plans for implementing the proposal. First Horizon is devoting sufficient financial and other resources to address all aspects of the post-acquisition integration process for this proposal. First Horizon would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, First Horizon's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and First Horizon plans to integrate TrustAtlantic's

[18] As part of the proposed transaction, each share of TrustAtlantic common stock would be converted into a right to receive cash and First Horizon common stock based on a fixed exchange ratio. First Horizon has the financial resources to fund the acquisition.

existing management and personnel in a manner that augments First Horizon's management.

The Board considered a comment on the application criticizing the departure of four commercial lenders from TrustAtlantic shortly after the proposed acquisition by First Horizon was made public. The commenter expressed concern that the departure of four commercial lenders from TrustAtlantic would have a negative impact on First Horizon's future prospects. First Horizon stated that it was informed of the departures and analyzed the impact of such departures on TrustAtlantic's operations. First Horizon also noted that TrustAtlantic has taken steps to hire new commercial lenders and that First Tennessee and TrustAtlantic together have developed a plan to address the employee departures.

Based on all the facts of record, including First Horizon's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of First Horizon and TrustAtlantic in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[19] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[20] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.[21]

In addition, the Board considers the banks' overall compliance record and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board also considers the supervisory assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.[22]

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[19] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

[20] 12 U.S.C. § 2901(b).

[21] 12 U.S.C. § 2903.

[22] The Board has considered that First Horizon will pay $212.5 million related to settling claims brought by the DOJ that certain mortgage loans originated by a mortgage subsidiary between 2006 and 2008 that were insured by the Federal Housing Administration did not meet the agency's certification standards. The mortgage subsidiary has been sold by First Horizon.

A. Public Comments Regarding the Proposal

In this case, the Board received three comments on the proposal from two commenters criticizing the fair lending and CRA performance records of First Tennessee Bank and TrustAtlantic Bank. The OCC received and considered the same comments in connection with its review of the underlying bank merger application.

A commenter objects to the proposal on the basis of First Tennessee Bank's CRA lending record to LMI borrowers throughout its assessment areas, as reflected in the bank's most recent CRA performance evaluation by the OCC, as of January 11, 2010 ("First Tennessee Bank Evaluation"), and, in particular, in the Memphis, Tennessee-Mississippi-Arkansas Multistate Metropolitan Statistical Area ("Memphis MSA"), the Chattanooga, Tennessee-Georgia Multistate Metropolitan Statistical Area ("Chattanooga MSA"), and the Nashville Metropolitan Statistical Area ("Nashville MSA"). This commenter also expresses concerns with First Tennessee Bank's small business lending in the Chattanooga MSA. The commenter also objects to the proposal on the basis of TrustAtlantic Bank's lending record to LMI borrowers in the Wake County assessment area ("Wake County AA") and the Pitt County assessment area ("Pitt County AA"), as reflected in TrustAtlantic Bank's most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of August 22, 2013 ("TrustAtlantic Bank Evaluation"). In addition, the commenter notes that First Tennessee Bank received an overall "Low Satisfactory" rating on the Investment Test in the First Tennessee Bank Evaluation.

A commenter also objects to the proposal on the basis of First Tennessee Bank's lending record to minority borrowers in the Memphis MSA and the Raleigh, North Carolina, Metropolitan Statistical Area ("Raleigh MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[23] for 2013. Another commenter expresses concerns with First Tennessee Bank's record in lending to minority communities in the Chattanooga MSA, the Knoxville Metropolitan Statistical Area ("Knoxville MSA"), the Memphis MSA, and the Nashville MSA, as reflected in HMDA data. This commenter also expresses concern with First Tennessee Bank's lack of collection of HMDA-mandated information regarding the race of potential borrowers in the Chattanooga, Knoxville, Memphis, and Nashville MSAs.

First Tennessee Bank's Business and Response to Comments. First Tennessee Bank's business model has significantly changed since 2008. Prior to 2008, First Tennessee Bank operated as a multistate bank with national lending operations outside of its current retail banking footprint in Georgia, Mississippi, North Carolina, and Tennessee. The bank's national lending operations included financial centers in Texas and Virginia, and an expanded presence in Georgia, as well as an extensive network of mortgage production offices doing business under the name First Horizon Home Loans.

In 2008, First Tennessee Bank divested a majority of its bank branches and exited the national lending business through the sale to an unaffiliated third party of the First Horizon Home Loans business, including approximately 250 mortgage production offices and its loan origination and servicing platforms. These platforms previously had allowed First Tennessee Bank to originate government-guaranteed and conventional home purchase loans that require escrow capabilities. Concurrent with the sale of First Horizon Home Loans, First Tennessee Bank entered into an agreement with a third party, PHH Mortgage Corporation, to permit the bank to provide government-guaranteed home purchase mortgage loans with escrow capabilities in its local communities. Those loans were reflected in

[23] 12 U.S.C. § 2801 *et seq.*

First Tennessee Bank's HMDA report as home mortgage loans originated by First Tennessee Bank. The agreement with PHH Mortgage Corporation expired in 2012 and was not renewed. Subsequently, First Tennessee Bank entered into broker relationships with Quicken Loans, under which the bank's loan specialists assist mortgage applicants who wish to obtain a government-guaranteed loans in completing applications for government-guaranteed and conventional home purchase loans that require escrow capabilities and refer those applications to Quicken Loans for review and processing. First Tennessee Bank does not receive credit under the CRA for any loans originated by Quicken Loans pursuant to the broker relationship. First Tennessee Bank represents that, pursuant to this broker relationship, it provided 7,922 referrals to Quicken Loans from 2012 to 2014, which are not reflected in its HMDA data. First Tennessee Bank represents that it is negotiating correspondent relationships with Quicken Loans and two other third-party lenders to be able to close loans for which it would receive CRA credit. First Tennessee Bank anticipates completing those contract negotiations by the end of November.

First Tennessee Bank currently offers home mortgage loans, as well as refinance and home improvement loans; government-guaranteed loans, however, are only offered through the broker relationship with Quicken Loans. First Tennessee Bank does not accept home loan applications in person at its branch locations; rather, such applications are taken remotely at a centralized lending unit that accepts applications by phone.

First Horizon argues that First Tennessee Bank's performance in home purchase lending to LMI areas in the Memphis MSA, the Chattanooga MSA, and the Nashville MSA was impacted by changes to the bank's business operations, in particular the expiration of its contract with PHH Mortgage Corporation in 2012. Upon the termination of that contract, First Tennessee Bank was no longer able to provide government-guaranteed home purchase mortgage loans in its local communities. First Horizon emphasizes that examiners found the bank's overall home loan originations to be satisfactory in the First Tennessee Bank Evaluation, notwithstanding the change in First Tennessee Bank's business operations and that the number of home purchase loans originated by First Tennessee Bank was low.

First Horizon asserts that the percentages of home loans in First Tennessee Bank's assessment areas, as reflected in the First Tennessee Bank Evaluation, were lower due to the significant changes to the bank's business model that occurred in 2008, as described above. In addition, First Horizon emphasizes that the bank's overall level of home loan originations was found to be satisfactory by examiners in the First Tennessee Bank Evaluation. First Horizon represents that its aggregate lending figures within its assessment areas changed significantly subsequent to the period reviewed in the First Tennessee Bank Evaluation, as the bank had significantly changed its business model at that time. Specifically, First Horizon notes that during the period from 2010 through 2014, most of First Tennessee Bank's home loans were originated within the bank's assessment areas, including 90 percent of the loans originated in its assessment areas in 2014.

In response to a commenter's observation that examiners found the bank's percentage of loans to businesses with revenues of $1 million or less was lower than the percentage of small businesses within the Chattanooga MSA in the First Tennessee Bank Evaluation, First Horizon argues that the percentage of First Tennessee Bank's small business loans in both low-income and moderate-income geographies significantly exceeded the percentages of businesses located in those segments in the assessment area, and that First Tennessee Bank's market share of small loans to businesses in such communities significantly exceeded its overall market share. First Horizon further asserts that First Tennessee Bank has a number of products designed for small business borrowers, including secured term loans, small business credit cards, secured and unsecured lines of credit, and small

business credit products through the Small Business Administration's 504, 7(a), and CAPLines programs that benefit small for-profit and not-for-profit businesses. First Horizon asserts that, to supplement its efforts to serve the needs of small business borrowers, the bank has a marketing alliance with a third-party lender that helps higher-risk small business borrowers obtain credit products. Finally, First Horizon emphasizes that examiners' overall assessment of First Tennessee Bank's record of small business lending was "Satisfactory."

First Horizon argues that TrustAtlantic Bank's distribution of home mortgage loans among various census tracts in the Wake County AA in 2011 and 2012 reflected an overall excellent penetration rate in low- and moderate-income areas. First Horizon further asserts that TrustAtlantic Bank's distribution of home mortgage loans in moderate-income census tracts in the Pitt County AA reflected excellent penetration in 2011 and 2012. Although TrustAtlantic Bank did not originate any home mortgage loans in the low-income census tracts of the Pitt County AA in 2011 and 2012, First Horizon contends that only 0.6 percent of owner-occupied housing in the Pitt County AA is located in the low-income tracts and that aggregate lending constituted only 0.5 percent in those census tracts.

First Horizon asserts, in response to the comment on First Tennessee's performance on the Investment Test in the First Tennessee Bank Evaluation, that its private charitable foundation, established in 1993, has donated substantial amounts to meet community needs, including grants during 2014 to local organizations in the Mid-Atlantic region involved in affordable housing, healthcare, and financial literacy. First Horizon further asserts that it has enhanced its investment activities and those of First Tennessee Bank since the First Tennessee Bank Evaluation, including by providing financing to a Treasury-certified Community Development Financial Institution that provides affordable financing and related development services, investing in the Federal Home Loan Bank of Tennessee (which oversees a grant program for nonprofit agencies to develop affordable housing) and establishing the First Tennessee Housing Corporation to develop affordable multifamily housing. First Horizon also states that First Tennessee Bank made contributions during 2014 to community organizations that have a direct impact on meeting the lending needs of LMI persons in the Raleigh and Winston-Salem communities in North Carolina.

First Horizon asserts that the bank's ability to collect information on the ethnicity, race, and sex of applicants, a focus of a comment, is impacted by its current lending strategy, in which it takes loan applications only through a process using a centralized call center. First Horizon asserts that, although the bank follows specific processes through its loan origination process to request the required information on the ethnicity, race, and sex of applicants in its loan application process, it cannot require an applicant to provide the information.

First Horizon states that its analysis of applications by census tracts indicates a close correlation between its lending activities and the ownership opportunities based on owner-occupied housing units and rental housing in such census tracts, and that the HMDA data ratios cited by the commenters do not accurately reflect First Tennessee Bank's compliance with fair lending laws. In this respect, First Horizon notes that the lack of information on the ethnicity, race, and sex of applicants resulting from its home mortgage application processes makes comparisons between racial or ethnic groups unreliable. First Horizon also notes that its business model, in which it does not currently offer government-guaranteed home purchase loans, results in significantly fewer home purchase loans as compared to competitors and in significantly fewer home purchase loans by first-time home buyers, both of which factors contribute to the disparities noted by commenters. In addition, First Horizon contends that it has a comprehensive fair lending compliance program to ensure compliance with fair lending laws.

B. Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.[24] In this case, the Board considered the supervisory views of and information provided by the OCC, the FDIC, and the Consumer Financial Protection Bureau ("CFPB").

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[25] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable), in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;[26] the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[27]

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[24] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

[25] 12 U.S.C. § 2906.

[26] Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

[27] Other data relevant to a fair lending analysis could include, for example, information on credit history problems, debt-to-income ratios, and loan-to-value ratios (the reasons most frequently cited for a credit denial or higher credit cost).

Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of First Tennessee Bank. First Tennessee Bank was assigned an overall "Satisfactory" rating in the First Tennessee Bank Evaluation. First Tennessee Bank received a "High Satisfactory" rating for both the Lending Test and the Service Test, and a "Low Satisfactory" rating for the Investment Test. The Board has consulted with the OCC regarding the First Tennessee Bank Evaluation.

Examiners found First Tennessee Bank's community development lending to be a good and positive factor in those assessment areas in which the bank maintained an ongoing presence. Examiners also noted that First Tennessee Bank had an adequate level of qualified investments based on the investment opportunities and dollar volume of investments made in the assessment areas and provided a good level of community development services in those assessment areas in which First Tennessee Bank maintained an ongoing presence.[28]

Examiners found that the bank's overall lending activity reflected good responsiveness to the bank's deposit market share and assessment area credit needs, with a good distribution of home mortgage loans by income level or geography, as well as a good distribution of loans to borrowers of different income levels and businesses of different sizes.[29] Examiners found that, although the bank could improve the distribution of home purchase loans in LMI areas, its overall geographic distribution of loans in the bank's assessment areas was good when the geographic distribution of loans to small businesses, home improvement loans, and home refinance loans were included. Examiners found that First Tennessee Bank's geographic distribution of small business loans in LMI areas was excellent, but that the bank could improve its borrower distribution of such loans in the Chattanooga MSA. Examiners noted that the bank originated a majority of its loans within its designated assessment areas during the review period.

Examiners noted that, in assessment areas in which First Tennessee Bank maintained an ongoing presence, its level of community development loans was good and a positive factor that reflected responsiveness to varying needs in the assessment areas. For example, examiners noted that the bank's record of originating community development loans in both the Chattanooga MSA and the Memphis MSA during the evaluation period was good and had a positive impact on the bank's lending test and that the record reflected a variety of community development purposes, including affordable housing, community services targeted to LMI individuals, economic development, and revitalization and stabilization of LMI areas of the bank's assessment areas.

First Tennessee Bank's community development lending activities included providing financing to support construction of student housing at a historically black college and university, financing for a baseball stadium in a formerly blighted community, making a loan to construct a workforce training center for people with special needs, and helping sev-

[28] The First Tennessee Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed HMDA-related mortgage loan data and CRA-reportable small business lending activity reported by First Tennessee Bank from January 1, 2004, to December 31, 2009, and reviewed community development loans, investments, services, and retail services from January 1, 2005, to December 31, 2009. The OCC reviewed a majority of the bank's assessment areas using an evaluation period of approximately 12 to 24 months. This shorter evaluation period was used because First Tennessee Bank ceased its presence in many assessment areas prior to the end of 2009.

[29] Examiners placed greater weight on the bank's performance in three assessment areas (the Memphis MSA, the Chattanooga MSA, and the state of Tennessee), as these areas represented the bank's most significant markets in terms of deposit concentrations, lending, investments, and service activity.

eral small communities recover from disasters by extending loans for infrastructure and essential equipment. In addition, First Tennessee Bank worked with local organizations to meet unique lending needs, for example, by partnering with the Business Expansion Funding Corporation, a community development corporation in North Carolina, to extend a loan under the Small Business Administration's Section 504 loan program to a small business in Wake County, North Carolina, that was anticipated to create many new jobs in the local community.

Examiners found that First Tennessee Bank had an adequate level of qualified community development investments based on the investment opportunities and dollar volume of investments made in First Tennessee Bank's assessment areas. During the evaluation period, First Tennessee Bank's total investments consisted primarily of Low Income Housing Tax Credit investments, and examiners found that these investments were very responsive to affordable housing needs and required considerable management time and expertise to monitor the bank's investment portfolio. Examiners noted that First Tennessee Bank had an adequate volume of community development investments in the Memphis MSA that addressed the need for affordable housing and community services for LMI individuals.

Examiners observed that First Tennessee Bank's branch locations were accessible in the assessment areas in which the bank maintained an ongoing presence. Examiners noted that the bank provided a good level of community development services in the Memphis MSA and Chattanooga MSA, with a good distribution of bank branches in both low- and moderate-income geographies. Examiners also noted that First Tennessee Bank had a good level of community development services in the Memphis MSA and a high level of community development services in the Chattanooga MSA.

First Tennessee Bank's Efforts Since the First Tennessee Bank Evaluation. First Horizon asserts that, since the First Tennessee Bank Evaluation, First Tennessee Bank has been an active partner in numerous community development initiatives to meet the needs of its local communities in the areas of lending, investments, and services. First Tennessee Bank has made community development loans that support affordable housing, economic development, stabilization and revitalization, and community services. Such lending activities included making community development loans for the purpose of providing childcare, education, and access to health and other social services for LMI individuals and minority individuals in the communities it serves, as well as financing small businesses to promote growth and economic development in a number of the LMI communities it serves. First Horizon asserts that it established a target of originating up to 30 percent of its mortgage loans to LMI borrowers or in LMI geographies, with a heightened focus on the Chattanooga, Memphis, Raleigh, and Wake County assessment areas. In furtherance of this goal, First Horizon notes that it has been engaged in discussions with third-party mortgage lenders to establish relationships that would permit First Tennessee Bank to originate government-guaranteed mortgage loans and conventional home mortgage purchase loans that require escrow capabilities. First Tennessee Bank also has partnered with Operation Hope to provide credit counseling, budgeting, and other financial empowerment training to individuals who earn less than $50,000 per year and has committed to establishing at least ten locations in which such services will be provided over the next two years. First Horizon further contends that it periodically reviews its branch strategy to ensure that First Tennessee Bank's branch delivery system serves its customers throughout its local communities, including LMI areas. As described above, First Tennessee Bank also has continued developing its small business product offerings under the Small Business Administration's 504, 7(a), and CAPLines programs, and the bank has stated that it will recruit a targeted Small Business Administration business development officer by the end of 2015 to market its Small Business Administration programs. The Bank also has committed to originating

30 percent of its loans to small businesses in LMI geographies throughout all of its current assessment areas.

First Horizon asserts that First Tennessee Bank has made community development investments for the purpose of providing safe and affordable housing, childcare, education, and access to health and other social services for LMI individuals and minority individuals in the communities it serves. First Horizon also maintains that First Tennessee Bank contributed to projects to revitalize and stabilize distressed communities across its assessment areas. First Horizon notes that its total qualified investments declined in 2013 and 2014 due to the reduction in the availability of Low Income Housing Tax Credit investments in those years as a result of the condition of the housing market. In addition, First Horizon represents that First Tennessee Bank has committed to invest at least one percent of its Tier 1 capital on an annual basis to community development activities.

First Horizon represents that First Tennessee Bank's community development service activities have included acting as the financial sponsor for a number of activities to promote financial literacy. In addition, First Horizon asserts that First Tennessee Bank employees have provided thousands of hours of volunteer services to support consumers and civic organizations.

CRA Performance of TrustAtlantic Bank. The TrustAtlantic Bank Evaluation was conducted by the FDIC using the Intermediate Small Bank CRA Examination Procedures.[30] TrustAtlantic Bank was assigned a "Satisfactory" rating in the TrustAtlantic Bank Evaluation, with ratings of "Satisfactory" for the Lending Test and "Outstanding" for the Community Development Test.[31] Examiners noted that TrustAtlantic Bank provided for the credit needs and economic development of the assessment areas in a manner consistent with its size, financial capacity, location, and local economic conditions.[32] The Board has consulted with the FDIC, the primary supervisor of TrustAtlantic Bank, regarding the TrustAtlantic Bank Evaluation.

Examiners noted that the bank originated a majority of its loans within its assessment area, demonstrating reasonable performance. Examiners found that the bank's geographic distribution of home mortgage loans reflected an excellent penetration rate in LMI areas in both the Wake County AA and Pitt County AA and that small business loans reflected a marginally reasonable dispersion throughout the Wake County AA and an excellent dispersion throughout the Pitt County AA. Examiners also found that the bank's distribution of loans to borrowers reflected an overall reasonable distribution among individuals of different income levels and businesses of different sizes. Nevertheless, examiners concluded that the bank had room to improve its performance in home mortgage lending to LMI borrowers in the Wake County AA and Pitt County AA.

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[30] The lending test applicable to intermediate small banks specifically evaluates the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; the percentage of loans and other lending-related activities located in the bank's assessment areas; the bank's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of the bank's loans; and the bank's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. *See, e.g.*, 12 CFR 228.26(b).

[31] Examiners reviewed the bank's commercial and residential lending activity from June 30, 2012, to June 30, 2013. These products were selected for analysis because they represented 52 percent and 29 percent, respectively, of the bank's loan portfolio.

[32] The TrustAtlantic Bank Evaluation reviewed the bank's two assessment areas, including include Wake County, which is part of the three-county Raleigh-Cary Metropolitan Statistical Area, and Pitt County, which encompasses the entire Greenville Metropolitan Statistical Area, both in North Carolina.

Examiners noted that TrustAtlantic Bank's community development performance demonstrated excellent responsiveness to the community's development needs in its assessment areas. Examiners also found that TrustAtlantic Bank provided an adequate level of community development services through its employee involvement in community development organizations.

Views of Other Regulators and OCC Approval of the Bank Merger. The Board has consulted with the OCC, the primary supervisor of First Tennessee Bank, in connection with the OCC's review of the proposed merger of First Tennessee Bank and TrustAtlantic Bank, which is a substantive part of the proposal before the Board. The OCC received comments substantially identical to the comments submitted to the Board and conducted a review of these comments as they pertain to the two banks, taking into consideration the HMDA data cited by the commenters; First Tennessee Bank's CRA, consumer compliance, and fair lending records; the bank's marketing outreach to African Americans and Hispanics and in LMI communities; and other community outreach efforts. The OCC found that although First Tennessee Bank's performance under the CRA was satisfactory, the First Tennessee Bank Evaluation and public comment on the proposal identified areas for improvement for the bank in North Carolina, specifically with respect to First Tennessee Bank's provision of products and services to LMI individuals and in LMI geographies, to minority individuals within its assessment areas, and in First Tennessee Bank's Investment Test performance.

After a full review of the proposal, including consideration of the public comments, the OCC determined that the proposal met the standards of the Bank Merger Act and approved the proposal applying the same standards as must be reviewed by the Board under the BHC Act. As a condition to approving the Bank Merger Act application, the OCC required First Tennessee Bank to develop a CRA Plan within 90 days of the OCC's action on the bank merger that contains measureable annual goals and timetables to achieve the discrete goals discussed in the CRA Plan. This plan is designed to ensure that First Tennessee Bank addresses weaknesses in its performance and implements a program suitable to the increased size and complexity that results from consummation of this proposal.

C. Public Benefits of the Proposal

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. One commenter expressed concern that First Horizon has not demonstrated how the proposal would result in clear public benefits.

First Horizon represented that the proposal would improve convenience for customers by providing them with a broader range of financial products and services through an expanded branch network. First Horizon represented that customers of TrustAtlantic Bank would have access to additional deposit products, including wholesale and retail lockbox and a more advanced remote deposit capture product; disbursement products with fraud protection; purchase and payroll cards; electronic bill pay; more sophisticated wire transfer and ACH systems; mobile banking; credit cards and debit cards that can be reissued within branch offices; financial planning for individuals and families; investment management; a full service trust department; and a larger legal lending limit. According to First Horizon, TrustAtlantic Bank's customers also would benefit from First Tennessee Bank's broader expertise in specialized segments including larger commercial segments not currently served by TrustAtlantic Bank and industry segments such as healthcare, transportation, consumer finance, and asset-based lending; government and municipal finance; inter-

est rate protection products; and ancillary services that include a full-service international department.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA; the institutions' records of compliance with fair lending and other consumer protection laws; consultations with the OCC, the FDIC, and the CFPB; confidential supervisory information; information provided by First Horizon; and the public comments on the proposal. Based on that review, the Board concludes that the proposal would result in public benefits and that the convenience and needs factor is consistent with approval.

The Board expects First Horizon to continue making progress to address weaknesses in the CRA performance of its banks and to implement a program for lending, investments, and services that is commensurate with the size, complexity, and expanding geography of the combined organization. This includes executing CRA plans that address any weaknesses in the performance of the banks before First Horizon seeks to engage in further expansionary activity. The Board will monitor progress by First Horizon as part of the supervisory process.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[33]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[34] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[35]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, First Horizon would have approximately $26.1 billion in consolidated assets and, by any of a number of alternative measures of firm size, First Horizon would not be likely to pose systemic risks. The Board generally pre-

[33] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

[34] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[35] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

sumes that a merger that involves an acquisition of less than $2 billion in assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[36] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Applicants with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors, effective September 17, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[36] The commenters requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the request in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing would otherwise be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposal are denied.

Empresas Juan Yarur SpA
Santiago, Chile

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2015–25 (September 21, 2015)

Empresas Juan Yarur SpA ("EJY") and its subsidiary, Banco de Credito e Inversiones S.A. ("BCI" and, collectively with EJY, "Applicants"), both of Santiago, Chile, foreign banking organizations subject to the provisions of the Bank Holding Company Act ("BHC Act"),[1] have requested the Board's approval under section 3(a)(1) of the BHC Act to acquire CM Florida Holdings, Inc. ("CM Florida"), Coral Gables, Florida, and thereby indirectly to acquire its subsidiary bank, City National Bank of Florida ("City National"), Miami, Florida.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (78 *Federal Register* 42074 (July 15, 2013)). The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

EJY, with total assets of approximately $36.8 billion, is the fourth largest banking organization in Chile.[2] EJY, through its subsidiaries, including BCI, engages in banking and insurance services throughout Chile. Outside Chile, BCI operates representative offices in Peru, Brazil, Colombia, Mexico, and Spain. In the United States, BCI operates a branch in Miami, Florida. EJY and BCI are each qualifying foreign banking organizations and on consummation of the proposal would continue to meet the requirements for a qualifying foreign banking organization under Regulation K.[3]

CM Florida, with consolidated assets of approximately $5.6 billion, is the 215th largest insured depository organization in the United States, controlling approximately $4.3 billion in deposits.[4] CM Florida controls City National, which operates only in Florida. City National is the 18th largest insured depository institution in Florida, controlling approximately $4.3 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[5]

On consummation of the proposal, EJY through BCI would become the 180th largest insured depository organization in the United States, with consolidated assets in the United States of approximately $7.5 billion, which represents less than 1 percent of the total assets of insured depository organizations in the United States. EJY would control approximately $4.3 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in the United States. In Florida, EJY would become the 18th largest depository organization, controlling approximately $4.3 billion in deposits, representing less than 1 percent of the total deposits of insured depository institutions in that state.

Factors under the Bank Holding Company Act

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of bank holding companies or the acquisition of banks. These factors include the

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1 12 U.S.C. § 1842.

2 Foreign asset and ranking data are as of March 31, 2015.

3 12 CFR 211.23(a).

4 Asset and nationwide deposit data are as of March 31, 2015, unless otherwise noted.

5 Statewide deposit-ranking data are as of June 30, 2014. In this context, insured depository institutions include commercial banks, savings banks, and savings and loan associations.

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 availability of information to determine and enforce compliance with the BHC Act and other applicable federal banking laws; the convenience and needs of the communities to be served, including the records of performance of the insured depository institutions involved in the transaction under the Community Reinvestment Act ("CRA");[6] the effects of the acquisition on financial stability; and, in the case of an application involving a foreign bank, whether the foreign bank, including its parent holding company, is subject to comprehensive supervision and regulation on a consolidated basis by its home country supervisor.[7]

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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.[8]

Applicants and CM Florida do not compete in any relevant banking market.[9] Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval of the proposal.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, as well as the effectiveness of these companies in combatting money-laundering activities.[10] The Board also considers whether an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.

In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization on a pro forma basis, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions.

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6 U.S.C. § 2901 *et seq*.

7 U.S.C. § 1842(c).

8 12 U.S.C. § 1842(c)(1).

9 BCI's Miami branch is not insured by the Federal Deposit Insurance Corporation and generally cannot accept retail deposits.

10 The Board has analyzed the effectiveness of Applicants' anti-money-laundering efforts in connection with the Board's assessment of whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.

In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

The capital levels of both EJY and BCI exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization.[11] BCI's reported earnings performance and asset quality indicators, including nonperforming loans and reserves for loan losses, are consistent with approval. The proposed transaction is structured as cash for purchase of shares. BCI would fund the transaction with existing resources, including previously issued subordinated debt of $311.8 million.[12] Applicants appear to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Applicants' U.S. operations, CM Florida, and City National, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Applicants, the Board's supervisory experience and those of the other relevant bank supervisory agencies with the organizations, including through consultations in connection with this proposal, and the organizations' records of compliance with applicable banking and anti-money-laundering laws. The Board also has consulted with the Superintendencia de Bancos e Instituciones Financieras ("SBIF"), the agency with primary responsibility for the supervision and regulation of Chilean banking organizations, including BCI.

The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which the Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Applicants have committed that they will make available to the Board such information on their operations and the operations of their affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as access to information by the Board, are consistent with approval.

Supervision or Regulation on a Consolidated Basis

In evaluating this application, and as required by section 3 of the BHC Act, the Board considered whether the Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.[13]

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[11] The Board considered the total and tier1 risk-based capital ratios and the ratio of tier 1 capital to total consolidated assets of EJY and BCI. In addition, EJY and BCI provided common equity tier 1 capital ratios calculated under U.S. rules as part of the capital equivalency assessment.

[12] At consummation, BCI would be well capitalized. In addition, BCI will increase its capital through an equity offering of approximately $360 million. EJY would subscribe to its 55 percent ($198 million) pro rata share of the equity offering, funded through the issuance of approximately $216 million in debt to third parties. Upon completion of the capital raise, both BCI and EJY would continue to have capital levels equivalent to the capital levels that would be required of a U.S. banking organization.

[13] 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. *See* 12 CFR

Banco de Credito e Inversiones. As noted, the SBIF is the primary supervisor of Chilean banks, including BCI. The Board previously has determined, in connection with an application to establish an agency, that BCI is subject to comprehensive supervision on a consolidated basis by the SBIF.[14] The SBIF obtains information on BCI's operations through annual on-site examinations and its review of audit and financial reports submitted by BCI. BCI's asset quality and capital also are reviewed annually. As part of the examinations, the SBIF reviews BCI's internal controls, and BCI provides reports to the SBIF on the scope of its internal audits. The SBIF requires BCI to meet minimum capital ratios and prohibits BCI from extending credit to affiliates on terms more favorable than those offered to third parties. The SBIF has the authority to impose sanctions on BCI and its directors, officers, and managers if necessary to enforce compliance with its regulations.

Empresas Juan Yarur. In assessing whether EJY may be considered subject to consolidated supervision, the Board has considered a number of factors. The Board has long held that "the legal systems for supervision and regulation vary from country to country, and comprehensive supervision or regulation on a consolidated basis can be achieved in different ways."[15] In addition, the Board makes case-by-case, institution-specific determinations under the comprehensive supervision standard.[16] In considering previous cases in which a foreign bank was owned by a nonbank parent company, the Board has stated that the system of comprehensive supervision or regulation may vary, depending on the nature of the acquiring company and the proposed investment.[17] In light of this background, the Board has taken the following facts into account:

Prior to this proposal, EJY was part of a complex structure of family-affiliated nonbank companies that owned a controlling interest in BCI. None of these companies was subject to consolidated regulation or supervision by governmental authorities. In order to address the issues raised by this organizational structure, the controlling shareholders committed to a significant restructuring and simplification of the ownership of BCI. Under this proposal, EJY would become the sole parent company of BCI. No other company would own directly or indirectly more than 5 percent of the voting shares of BCI or EJY. Upon completion of the restructuring, EJY would operate as a shell holding company. BCI would comprise approximately 98 percent of the assets of EJY. EJY would also own three regulated insurance companies in Chile, constituting the remaining 2 percent of the assets of EJY.

225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii).

In assessing this standard under section 211.24 of Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is determinative, and other elements may inform the Board's determination.

[14] *Banco de Credito e Inversiones S.A.*, 85 *Federal Reserve Bulletin* 446 (1999). In addition, the Board previously has determined that three other Chilean banks are subject to comprehensive supervision on a consolidated basis by the SBIF. *See Corpbanca,* 95 *Federal Reserve Bulletin* B57 (2008); *Banco del Estado de Chile*, 91 *Federal Reserve Bulletin* 442 (2005); and *Banco de Chile*, 90 *Federal Reserve Bulletin* 550 (2004).

[15] *See Industrial and Commercial Bank of China Limited* ("ICBC–CIC Order"), FRB Order No.2012-4 (May 9, 2012) and 57 *Federal Register* 12992,12995 (April 15, 1992).

[16] *See ICBC–CIC Order* and 58 *Federal Register* 6348,6349 (January 28, 1993).

[17] *Id.; China Investment Corporation*, 96 *Federal Reserve Bulletin* B31, at B33 (2010).

EJY and its subsidiaries together are a financial group under Chilean law. Since 2004, Chile has taken numerous steps to provide greater transparency for such groups by giving financial regulators the ability to obtain information on the owners of regulated financial institutions. In October 2014, Chile adopted new legislation that gives the SBIF new authority with respect to controlling shareholders of Chilean banks.[18] The SBIF may require such companies to meet a solvency ratio.[19] The SBIF may also inspect the books and records of any such company in order to assess the effect of the parent company on the bank.[20] Chilean law also limits the ability of Chilean banks to engage in transactions with affiliates, including parent companies.[21]

Chilean law also provides that regulators of financial institutions may share information with each other. The SBIF, as the regulator of banks, and the Superintendencia de Valores y Seguros ("SVS"), as the regulator of securities and insurance companies, regularly meet as part of the Financial Stability Council and may share information at any time. EJY is also registered with the SVS. As a registered company, EJY is required to publish annual audited financial statements. The SBIF has confirmed its ability and willingness to share information as necessary with the Board concerning operations of BCI and EJY.

The Board has taken into account that EJY is not an operating company and that EJY's proposed investment in CM Florida and City National would be indirect and made through a foreign bank that is subject to consolidated supervision by the SBIF. Moreover, as noted, BCI and its regulated insurance affiliates comprise virtually 100 percent of the assets of EJY. EJY also has made a number of commitments in connection with this application. It would remain a non-operating company and would not acquire control of any company other than a regulated financial services company in Chile without the Board's approval. EJY would make its books and records available to the SBIF and the Board to determine compliance with these commitments. The SBIF has confirmed that it is willing and has the authority to access and monitor the books and records of EJY in order to determine EJY's continuing compliance with these commitments. In addition, the SBIF may share with the Board all information gathered through its monitoring of EJY and has indicated its willingness to assist the Board in obtaining any additional information the Board may require from EJY and its affiliates. These commitments and the involvement of the SBIF in monitoring these commitments limit the ability of EJY to undertake new activities, to make unregulated investments, or to engage in operations or activities outside the scope of appropriate governmental oversight. Moreover, CM Florida and City National would be owned and operated by BCI, which is fully subject to supervision and regulation by the SBIF.

Based on all the facts of record, including the structure and limited activities of EJY, the commitments made by BCI and EJY, and the cooperation offered by the SBIF, the Board determines that EJY and BCI are subject to comprehensive supervision on a consolidated basis by their home country supervisor for purposes of this proposal.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the effect of the proposal on the convenience and needs of the communities to be

[18] Law No. 20.789, Gazette No. 9178-05 (2014). Chilean General Banking Law (Ley General de Bancos, "LGB"), Article16.

[19] Article 28, LGB.

[20] Article 16, LGB.

[21] *See* Articles 84–85, LGB.

served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. In addition, the Board considers the banks' overall compliance records, the results of recent fair lending examinations and other supervisory assessments, the supervisory views of examiners, other supervisory information, and comments received on the proposal. The Board may also consider the institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[22] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.[23] In addition, fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board received a comment from a commenter who objected to the proposal principally on the basis of City National's record of extending home mortgage credit, including refinancing credit, to minority individuals in the Fort Lauderdale, Miami, and Orlando Metropolitan Statistical Areas as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[24] for 2011.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[25] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of City National,[26] its fair lending and compliance records, the supervisory views of the Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, information provided by Applicants, and the public comment received on the proposal.

City National's Business and Applicants' Response to Comment. City National engages primarily in commercial lending, corporate cash management, and private banking. As of September 30, 2014, commercial real estate loans and commercial and industrial loans accounted for approximately 57 percent of the loan portfolio. Residential real estate lending represented approximately 26.1 percent of the loan portfolio. Applicants argued that the commenter's assessment of City National's lending performance did not accurately reflect the bank's performance when reviewed in the context of a broader range of data.

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[22] 12 U.S.C. § 2901(b).

[23] 12 U.S.C. § 2903.

[24] 12 U.S.C. § 2801 *et seq.*

[25] Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[26] BCI's Miami branch may not take insured deposits and therefore is not subject to the CRA.

A. Record of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information provided by the appropriate federal supervisors.[27]

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[28] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans—including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;[29] the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Consequently, the Board considers the overall CRA rating and the rating on the lending test to be important indicators, when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

CRA Performance of City National. City National was assigned an overall "Outstanding" rating at its most recent publicly available CRA examination as of May 29, 2012 ("City National Evaluation"),[30] conducted by the OCC, with ratings of "Outstanding" for the Lending, Investment, and Services Tests.

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[27] *See Interagency Questions and Answers Regarding Community Reinvestment,* 75 *Federal Register* 11642,11665 (2010).

[28] 12 U.S.C. § 2906.

[29] Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.,* 12 CFR 228.22(b)(3).

[30] The City National Evaluation was conducted using the Large Institution CRA Examination Procedures. The evaluation period for the Lending Test, including community development loans, was January 1, 2009, through December 31, 2011. For the Investment and Service Tests, the evaluation period was May 18, 2009 (the date of the previous CRA examination), through May 29, 2012. Examiners conducted a full-scope review of the

Examiners found that City National demonstrated good responsiveness to assessment area credit needs with respect to the bank's lending activity. Examiners also found that City National originated a substantial majority of its loans within its assessment area and that the bank had an excellent geographic distribution of its loans throughout its assessment area. Examiners found that the bank had an adequate distribution of loans among borrowers of different income levels and businesses of different sizes. Home mortgage lending activity was considered adequate. Examiners considered the bank's lending in light of its primary business focus and noted that, historically, the bank has not been a traditional retail-focused institution and does not actively market a variety of home mortgage products, unlike other institutions in its assessment area. Small business lending activity was considered good and examiners found the bank to have an excellent level of community development loans.

Examiners found City National to have an excellent level of qualified community development investments in the bank's Miami-Fort Lauderdale-Palm Beach assessment area. Examiners noted that the bank made a significant investment in a qualified investment fund backed by multiple mortgages on properties that provide affordable rental housing to LMI residents. In addition, examiners noted that the bank's community development investments help address the need for employment for LMI persons in the assessment area.

In evaluating the Service Test, examiners noted that City National's retail delivery systems were excellent and readily accessible to all geographies and to individuals of different income levels. Examiners found that City National provided a relatively high level of community development services that were responsive to assessment area needs, particularly those related to financial literacy and affordable housing.

City National's Efforts since the City National Evaluation. Since the City National Evaluation, City National has implemented several programs for lending to underserved communities and individuals in its assessment area. For example, City National has engaged in a partnership with Neighborhood Housing Services of South Florida ("NHSSF").[31] In addition, City National recently approved the establishment of a down payment assistance program that will provide qualified applicants with the lesser of 2 percent or up to $2,000 for a down payment. City National also created a program in which qualified borrowers can refinance their existing mortgage to take advantage of lower interest rates. The program allows for LMI families to refinance without any costs, as City National will be assuming the costs of the new loan as part of the program.

Views of Other Regulators. The Board has considered the record of City National in complying with fair lending and other consumer protection laws. In particular, the Board has reviewed the results of consumer compliance examinations of City National conducted by the OCC. The examination reports discuss City National's record of compliance with fair lending and other consumer protection laws and regulations and the bank's policies and procedures to help ensure compliance with fair lending and other consumer protection laws and regulations.

Miami-Ft. Lauderdale-Palm Beach, Florida assessment area, which accounted for 92 percent of the bank's deposits in the market. The bank has received an overall "Outstanding" CRA rating from the OCC at each of its evaluations since 2003.

[31] As a result, 17 senior officers from City National committed over 100 hours of service to coordinate, structure, develop, and implement the NHSSF CitySmart Affordable Housing Program. This program provides NHSSF with ongoing expertise from City National and access to credit for LMI home purchasers.

B. Public Benefits of the Proposal

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. In this regard, Applicants have stated that they intend to maintain City National's existing fair lending policies and procedures following consummation of the transaction. Applicants have indicated they will serve as a source of strength to City National following the proposed acquisition and will provide additional resources to City National to allow the institution to continue to serve the needs of its local communities. Applicants also represent that BCI intends to leverage its experience and capabilities to work with existing management to explore the possibility of expanding the products and services that City National offers to its customers.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the record of the relevant depository institution involved under the CRA, the institution's record of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Applicants, and the public comment on the proposal. Based on that review, the Board concludes that the proposal would result in public benefits and that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."[32]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, availability of substitute providers for any critical products and services offered by the resulting firm, interconnectedness of the resulting firm with the banking or financial system, extent to which the resulting firm contributes to the complexity of the financial system, and extent of the cross-border activities of the resulting firm.[33] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[34]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Applicants would have assets of approximately $42.4 billion, most of which would be outside the United States. The pro forma organization would have minimal cross-border activities and would not exhibit an organizational

[32] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

[33] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[34] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

structure, complex interrelationships, or unique characteristics that would complicate resolution of BCI or City National in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all the other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board hereby approves the proposed transaction.[35] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with all the commitments made to and relied on by the Board in connection with the application and on receipt of all other regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective September 21, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[35] A commenter requested that the Board hold public hearings on the proposal. Section3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board concludes that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Order Issued Under Section 4 of the Bank Holding Company Act

M&T Bank Corporation
Buffalo, New York

Manufacturers and Traders Trust Company
Buffalo, New York

Order Approving the Acquisition of a Savings and Loan Holding Company, Merger of Depository Institutions, and Establishment of Branches
FRB Order No. 2015–27 (September 30, 2015)

M&T Bank Corporation, Buffalo, New York, and its subsidiary, Wilmington Trust Corporation, Wilmington, Delaware (collectively, "M&T"), both financial holding companies within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"), have requested the Board's approval under sections 4(c)(8) and (j) of the BHC Act and section 225.24 of the Board's Regulation Y[1] to acquire Hudson City Bancorp, Inc. ("Hudson City"), and its wholly owned subsidiary, Hudson City Savings Bank ("HCB"), both of Paramus, New Jersey. HCB is a savings association for purposes of the BHC Act.

In addition, M&T's subsidiary state member bank, Manufacturers and Traders Trust Company ("M&T Bank"), Buffalo, New York, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[2] to merge with HCB, with M&T Bank as the surviving entity. M&T Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the locations of HCB's main office and branches.[3]

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published (77 *Federal Register* 60119 (October 2, 2012)).[4] As required by the Bank Merger Act, a report on the competitive effects of the bank merger was requested from the United States Attorney General. The time for submitting comments has expired, and the Board has considered the proposals and all comments received in light of the factors set forth in section 4 of the BHC Act, the Bank Merger Act, and the FRA.

M&T, with consolidated assets of approximately $97.1 billion, is the 31st largest insured depository organization in the United States, controlling deposits of approximately $72.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] M&T controls two insured depository institutions, M&T Bank and Wilmington Trust, National Association ("WTNA"), Wilmington, Delaware, which together have retail banking operations in eight states and the District of Columbia.[6] M&T Bank is the eighth largest insured depository institution in New York, controlling deposits of approximately $36.0 billion, which represent 2.8 percent of the total deposits of insured depository institutions in that state.[7] M&T Bank is the 118th largest insured depository institution in New Jersey, controlling deposits of approximately

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1 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

2 12 U.S.C. § 1828(c).

3 12 U.S.C. § 321. These locations are listed in the appendix.

4 12 CFR 262.3(b).

5 Asset and nationwide deposit-ranking data are as of June 30, 2015, unless otherwise noted. Insured depository institutions include insured commercial banks, savings and loan associations, and savings banks.

6 M&T's subsidiary banks have retail banking operations in Delaware, Florida, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

7 State deposit data are as of June 30, 2014.

$103.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Hudson City, with consolidated assets of approximately $35.4 billion, is the 49th largest insured depository organization in the United States, controlling deposits of approximately $18.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Hudson City controls HCB, which operates in Connecticut, New Jersey, and New York. HCB is the fifth largest insured depository institution in New Jersey with approximately $16.5 billion in deposits, which represent 5.8 percent of the total deposits of insured depository institutions in that state. In addition, HCB is the 35th largest insured depository institution in New York with approximately $3.1 billion in deposits, and the 16th largest insured depository institution in Connecticut with approximately $1.0 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of those states.

On consummation of the proposals, M&T would become the 25th largest depository organization in the United States, with consolidated assets of approximately $132.5 billion. M&T would have consolidated deposits of approximately $90.8 billion, representing less than 1 percent of the total deposits of insured depository institutions in the United States.

M&T would remain the eighth largest depository organization in New York, controlling deposits of approximately $39.1 billion, representing 3.0 percent of the total deposits of insured depository institutions in the state. In addition, M&T would become the fifth largest depository organization in New Jersey, controlling deposits of approximately $16.6 billion, representing 5.8 percent of the total deposits of insured depository institutions in the state.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[8] The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act. M&T has committed that all the activities of Hudson City and its subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Interstate and Deposit Cap Analyses

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[9] amended section 4 of the BHC Act[10] and the Bank Merger Act[11] to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution, or an application by one insured depository institution to acquire another insured depository institution, if the home state of the target insured depository institution is a state other than the home state of the applicant and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United States. For purposes of the BHC Act and the Bank Merger Act, the home state of M&T and M&T Bank is New York and the home state of HCB is New Jersey.[12] Consummation

[8] 12 CFR 225.28(b)(4)(ii).

[9] Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[10] Dodd-Frank Act § 623(b), 124 Stat. at 1634–35, codified at 12 U.S.C. § 1843(i)(8).

[11] Dodd-Frank Act § 623(a), 124 Stat. at 1634, codified at 12 U.S.C. § 1828(c)(13).

[12] A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company,

of the proposals would result in M&T controlling less than 1 percent of the deposits of U.S. insured depository institutions. The proposed acquisition of HCB would not be prohibited by the law of any state in which HCB is located.[13] Accordingly, in light of all the facts of record, the Board is not required to deny the proposals under section 4(i) of the BHC Act or the interstate merger provisions of the Bank Merger Act.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[14] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.[15] In addition, the Board considers the competitive effects of a proposal to acquire a savings association under the balancing test of section 4(j) of the BHC Act.[16]

M&T and Hudson City have subsidiary depository institutions that compete directly in the Metro New York City and Philadelphia banking markets.[17] The Board has reviewed the competitive effects of the proposals in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of the total deposits in insured depository institutions in the markets ("market deposits") that M&T would control,[18] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[19] and other characteristics of the markets.

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whichever is later. 12 U.S.C. § 1841(o)(4)(C). A state bank's home state is the state by which the bank is chartered. 12 U.S.C. § 1828(c)(13)(C)(ii)(II). A federal savings association's home state is the state in which the home office of the savings association is located. 12 U.S.C. §§ 1828(c)(13)(C)(ii)(III) and 1841(o)(4)(E).

[13] The merger of HCB into M&T Bank is subject to the approval of the New York Department of Financial Services ("NYDFS"). *See* N.Y. Banking Law §600. M&T Bank has filed the relevant applications with the NYDFS.

[14] 12 U.S.C. § 1828(c)(5).

[15] 12 U.S.C. § 1828(c)(5)(B).

[16] 12 U.S.C. § 1843(j)(2)(A).

[17] The Metro New York City banking market includes Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties and portions of Columbia and Greene counties, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties and portions of Burlington, Mercer, and Warren counties, all in New Jersey; Pike County and portions of Monroe and Wayne counties, all in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties, all in Connecticut.

The Philadelphia banking market includes Bucks, Chester, Delaware, Montgomery, and Philadelphia counties, all in Pennsylvania; and Camden, Cumberland, Gloucester, and Salem counties and portions of Burlington and Mercer counties, all in New Jersey.

[18] Deposit and market share figures are from the summary of deposits data reported by insured depository institutions as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386(1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743(1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 53(1991).

[19] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than

Consummation of the proposals would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for these markets. On consummation of the proposals, both the Metro New York City and Philadelphia banking markets would become less concentrated, as measured by the HHI, because of the proposed conversion of HCB from a savings association to a full-service bank, and numerous competitors would remain.[20]

The DOJ has conducted a review of the potential competitive effects of the proposals and has advised the Board that consummation of the proposals would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposals.

Based on all the facts of record, the Board concludes that consummation of the proposals would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which M&T and Hudson City compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In addition to assessing the competitive effects of a proposal, in every case under the Bank Merger Act the Board must take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the communities to be served, records of compliance with anti-money-laundering laws, and the risk to the stability of the United States banking or financial system. The Board also considers these factors in weighing the possible adverse effects of the transaction against its public benefits, as required by section 4(j) of the BHC Act.[21]

Consideration of Financial Factors. In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on

200 points. Although the DOJ and the Federal Trade Commission have issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[20] The HHI would decrease in each market as follows: 15 points to 1355 in Metro New York City and 5 points to 995 in Philadelphia. The decreases result from a pre-merger weighting of HCB's market deposits at 50 percent and a post-merger weighting at 100 percent. *See Norwest Corporation*, 78 *Federal Reserve Bulletin* 452(1992); *First Banks, Inc.*, 76 *Federal Reserve Bulletin* 669(1990) (deposits of thrifts are included in pre-merger market share calculations on a 50-percent weighted basis but included at 100 percent in the calculation of pro forma market share because the deposits would be acquired by a commercial banking organization). The resulting pro forma share of M&T's market deposits would be 1.8 percent in Metro New York City and 1.6 percent in Philadelphia. The combined organization would compete in the Metro New York City and Philadelphia banking markets with 236 and 102 other banking organizations, respectively.

[21] Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Hudson City "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system." 12 U.S.C. § 1843(j)(2)(A). As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, records of compliance with anti-money-laundering laws, and the public benefits of the proposal. 12 CFR 225.26; *see, e.g., Capital One Financial Corporation*, FRB Order No. 2012-2(February 14, 2012) ("*Capital One Order*"); *Bank of America Corporation/Countrywide*, 94 *Federal Reserve Bulletin* C81(2008); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138(2006); *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602(1997). In acting on a notice to acquire a savings association, the Board reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA"). 12 U.S.C. § 2901 *et seq.*

both parent-only and consolidated bases, as well as information about the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including public and supervisory information regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal.[22] The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposals in light of their financial and managerial resources and the proposed business plan.

M&T and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposed transactions. The proposal is a merger structured as a cash and share exchange.[23] The asset quality, earnings, and liquidity of M&T are consistent with approval. M&T appears to have adequate resources to absorb the costs of the proposals and to complete the integration of the institutions' operations.

Consideration of Managerial Factors. In its evaluation of the managerial factors, the Board considers the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of M&T, Hudson City, and their subsidiary depository institutions, including assessments of their management, risk-management programs, and operations. In addition, the Board has considered information provided by M&T, the supervisory experiences that the Board and other relevant bank supervisory agencies have had with the organizations, and the organizations' records of compliance with applicable banking, consumer, and antimoney-laundering laws, as well as information provided by commenters.

A bank's risk-management program comprises, among other functions, systems and procedures for ensuring regulatory compliance, which includes Bank Secrecy Act/anti-money-laundering ("BSA/AML") compliance.[24] As M&T has acknowledged, following the submission of M&T's application to acquire Hudson City, examinations conducted by the Federal Reserve Bank of New York ("Reserve Bank") revealed significant weaknesses in M&T's risk-management program.[25] In particular, examiners identified weaknesses in M&T's overall BSA/AML compliance management program. The weaknesses included a lack of robust and comprehensive systems for collecting, processing, and updating information needed to make money-laundering risk determinations for every customer and account. There were also weaknesses in M&T's processes and policies for identifying and reporting suspected structuring activities and other suspicious activities.[26]

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[22] 12 U.S.C. §§ 1828(c)(5) and (11). A commenter alleges that the acquisition is "too large" for M&T. Another commenter expressed concerns regarding the impact of Hurricane Sandy on properties securing mortgage loans extended by Hudson City.

[23] At closing, 40 percent of the merger consideration would be paid in cash. The remaining merger consideration would be a stock exchange in which each share of Hudson City common stock would be converted into a right to receive shares of M&T common stock, based on an exchange ratio. M&T would fund the cash portion of the transaction with cash on hand. M&T has the financial resources to effect the transaction.

[24] Federal Financial Institutions Examination Council, FFIEC BSA/AML Examination Manual 28 (2014), available at www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2014_v2.pdf.

[25] *See* Robert G. Wilmers, *M&T Bank 2013 Annual Report Message to Shareholders*, M&T Bank (March 7, 2014) ("2013 Report"), newsroom.mtb.com/document-archive/annual-report-letters/2013-annual-report-message-to-shareholders.htm.

[26] *See* Written Agreement among M&T Bank Corporation, Manufacturers and Traders Trust Company, and Federal Reserve Bank of New York, Docket Nos. 13-013-WA/RBHC and 13-013-WA/RB-SM (June 17, 2013), available at www.federalreserve.gov/newsevents/press/enforcement/enf20130617a1.pdf.

Also during the pendency of M&T's application, supervisory assessments identified weaknesses in M&T's consumer compliance program. In late 2014, the Consumer Financial Protection Bureau ("CFPB"), which also has supervisory responsibility over M&T Bank, issued an enforcement action against M&T Bank for deceptive practices relating to advertising, marketing, and promotion of a checking product.[27] Examinations conducted by the Reserve Bank revealed weaknesses in M&T's consumer compliance risk assessment, complaint management, and compliance monitoring and testing.

The identified weaknesses in M&T's BSA/AML and consumer compliance programs raised concerns about whether the company's managerial resources and the managerial resources of the proposed combined organization were consistent with approval. Before the Board completed its evaluation, M&T requested a stay of the Board's consideration of the proposals to afford M&T an opportunity to address the identified weaknesses. Based on the specific facts and circumstances of this case, particularly that the weaknesses first surfaced after consideration of M&T's proposals was well in progress, the Board suspended consideration of the proposals.[28] Thereafter, M&T dedicated significant financial and managerial resources to addressing the identified weaknesses.[29] The remedial actions taken by M&T required a significant period of time,[30] and M&T and Hudson City extended the term of their merger agreement multiple times.[31]

M&T has taken significant steps to remediate the identified BSA/AML and consumer compliance weaknesses and to implement comprehensive programs related to combatting money-laundering and complying with consumer protection laws and regulations. M&T also has provided the Board with numerous submissions relating to these efforts, and the Board has considered supervisory reviews related to these efforts.

M&T has made significant changes to its BSA/AML compliance program as required in M&T's Written Agreement with the Reserve Bank. In particular, M&T has instituted important enhancements to key systems and processes in its BSA/AML compliance program, including, for example, processes for collecting information to determine the extent to which a customer presents a money-laundering risk to the bank and for escalating accounts to senior management that are found to have repeatedly engaged in suspicious activity. In addition, M&T has conducted internal testing of, and has had independent third-party review to confirm, the efficacy of the changes the company has instituted to its BSA/AML compliance program.

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[27] *See* Consent Order between Manufacturers and Traders Trust Company and Consumer Financial Protection Bureau, File No. 2014-CFPB-0016 (October 9, 2014), available at files.consumerfinance.gov/f/201410_cfpb_consent-order_m-t.pdf.

[28] The Board expects that a banking organization will resolve all material weaknesses identified by examiners before applying to engage in expansionary activity. *See, e.g.*, SR Letters 14-2 and 13-7. As noted, M&T's issues largely arose during processing of this application, and the Board took the highly unusual step of permitting the case to pend while M&T addressed its weaknesses. The Board does not expect to take such action in future cases. Rather, in the future, if issues arise during processing of an application, the Board expects that a banking organization will withdraw its application pending resolution of any supervisory concerns.

[29] *See* 2013 Report.

[30] *See* Robert G. Wilmers, *M&T Bank 2014 Annual Report Message to Shareholders*, M&T Bank (March 5, 2015), newsroom.mtb.com/document-archive/annual-report-letters/2014-annual-report-message-to-shareholders.htm.

[31] *See* Press Release, M&T Bank Corporation (April 12, 2013), available at newsroom.mtb.com/press-releases/mampt-and-hudson-city-make-announcement-relating-to-the-proposed-merger-of-the-two-companies.htm; Press Release, M&T Bank Corporation (December 17, 2013), available at newsroom.mtb.com/press-releases/mt-and-hudson-city-announce-extension-of-the-merger-agreement.htm; Press Release, M&T Bank Corporation (December 9, 2014), available at newsroom.mtb.com/press-releases/hudson-city-bancorp-inc-and-mt-bank-corporation-announce-further-extension-of-time-to-complete-proposed-merger-to-april-30-2015.htm; Press Release, M&T Bank Corporation (April 17, 2015), available at newsroom.mtb.com/press-releases/hudson-city-bancorp-inc-and-mt-bank-corporation-announce-further-extension-of-time-to-complete-proposed-merger-to-october-31-2015.htm.

Similarly, M&T has made significant changes to its consumer compliance program to address previously identified weaknesses in the program. The changes M&T has implemented include, for example, the establishment of a process for managing consumer complaints and a process for rating the risks of noncompliance relating to laws. Where the risk of noncompliance is deemed to be moderate or high, M&T has established a schedule for testing compliance more frequently than peer institutions.

The Board has considered the results of several reviews conducted by Reserve Bank examiners of the actions M&T has taken to address the weaknesses in its BSA/AML and consumer compliance programs. The Board has also consulted with, and considered the views of, the CFPB.

In addition to considering the steps M&T has taken to address the weaknesses noted above, the Board has considered M&T's plans for operating the combined organization. M&T would bring significant financial and other resources to address the post-acquisition integration process for these proposals. M&T's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner. M&T has established a plan to integrate existing management and personnel of the Hudson City organization in a manner that augments the combined organization's management team.[32]

Based on all the facts of record, including the steps M&T has implemented to address identified issues related to BSA/AML and consumer compliance, M&T's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, and subject to the conditions noted in this Order, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the records of effectiveness of the organizations in combatting money-laundering activities, are consistent with approval.

This transaction would significantly increase the scope of M&T's operations by, among other things, expanding its geographic footprint and significantly increasing its asset size. The Board expects M&T to ensure that its riskmanagement framework and methodologies, as well as its compliance functions, are fully implemented, functioning effectively, and commensurate with its size and complexity, and that all risks within the organization are proactively identified and promptly addressed. The Board also expects that M&T will not engage in any expansionary activities, except for establishing branches in historically underserved communities, until supervisors are satisfied that the integration with Hudson City has been satisfactorily completed and examiners have confirmed that all risk-management and compliance systems at M&T are fully implemented, functioning effectively, adequate for proactively identifying and promptly addressing all risks within the combined organization, and reflective of its greater size and complexity. The Board will monitor M&T's efforts in this regard through the supervisory process.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[33] The Board also considers this factor in weighing the possible adverse effects against the public benefits of the transaction, as required by section 4(j) of the BHC Act. In its evaluation of the effects

[32] At closing, M&T and M&T Bank would augment their senior management teams with managers of Hudson City and HCB. In addition, the CEO of Hudson City would be appointed to the boards of M&T and M&T Bank, and all current members of the Hudson City board of directors would be appointed to a newly created regional advisory board that would advise M&T Bank on the activities in Hudson City's former market area.

[33] 12 U.S.C. § 1828(c)(5).

of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.[34] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[35] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.[36]

In addition, the Board considers the banks' overall compliance record and the results of recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board also considers the supervisory assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicants, and comments received on the proposal. The Board also may consider the applicant institution's business model, marketing and outreach plans, plans following consummation, and any other information the Board deems relevant.

A. Public Comments Regarding the Proposal

In this case, the Board received comments from 27 commenters in support of the proposals. These commenters described favorable experiences with M&T and commended the company and its management for the bank's community outreach efforts and support for various community development programs and initiatives, such as financial literacy counseling, homebuyer workshops, and housing rehabilitation. Commenters also praised the level of M&T Bank's CRA-eligible grants, stating that the level is the highest among commercial banks in New York, New York, as a percentage of deposits. These commenters contend that the proposals would benefit consumers and the communities served by the combined organization.

The Board received 11 comments from four commenters objecting to the proposals principally on the basis of HCB's CRA performance record and M&T Bank's and HCB's records of extending home mortgage credit to minority individuals.[37] Commenters criticized HCB's CRA performance record and allege that M&T had not sufficiently explained how it would improve HCB's CRA performance following consummation of the proposals. A commenter alleges that HCB exhibited poor CRA performance in New Jersey, with a lower level of lending to LMI borrowers compared to other lenders in the bank's assessment areas and branch locations concentrated in middle- and upper-income neighborhoods. This commenter also alleges that, in New Jersey, three of HCB's four branches in

[34] 12 U.S.C. § 2901 *et seq.*

[35] 12 U.S.C. § 2901(b).

[36] 12 U.S.C. § 2903.

[37] Commenters also urged M&T to provide certain products and services at the combined organization, including free or low-cost checking accounts; fee and service charge waivers for LMI customers, senior citizens, and customers with disabilities; and lending programs for first-time homebuyers and small businesses. One commenter alleges that M&T refused to provide loans for the purchase of condominium units in a converted Washington, D.C., apartment building, during the period following M&T's 2009 acquisition of Provident Bankshares. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA does not require an institution to provide any specific types of products or services nor does it prescribe the costs to be charged for them.

LMI neighborhoods did not operate on Saturday, unlike HCB's branches in middle- and upper-income neighborhoods, most of which operate on Saturday.[38] In addition, a commenter alleges that HCB did not establish adequate relationships with community groups in New Jersey.

Commenters also criticized M&T Bank's and HCB's record of mortgage lending to minority individuals, based on data reported for 2011 and 2013 under the Home Mortgage Disclosure Act of 1975 ("HMDA").[39] These commenters allege that M&T Bank and HCB made disproportionately fewer conventional residential mortgage loans to African American and Hispanic borrowers than to white borrowers, and that the institutions denied more applications for conventional home purchase loans by African American and Hispanic borrowers compared to white borrowers.[40] A commenter also contended that M&T Bank made more higher-priced HMDA-reportable loans to African American borrowers than to white borrowers,[41] and denied disproportionately more HMDA-reportable loans to African American borrowers than to white borrowers.[42]

M&T Bank's and HCB's Businesses and M&T's Responses to Comments. M&T Bank's lending activities are focused on consumers residing in Delaware, Maryland, New York, Pennsylvania, Virginia, and the District of Columbia, and on small- and medium-size businesses based in those areas. Commercial and industrial loans and loans secured by one-to-four family residential properties make up approximately 24 and 21 percent, respectively, of the bank's total loan portfolio.[43] As of June 30, 2012, M&T Bank had 764 domestic banking offices.

HCB is a community- and consumer-oriented retail savings association offering traditional retail deposit and loan products, such as conforming one-to-four family residential mortgages, time deposits, checking accounts, and savings accounts. HCB operates a total of 135 branches throughout the New York, New York, and Philadelphia, Pennsylvania, metropolitan areas.

M&T argues that focusing solely on denial disparities on conventional home purchase mortgage loans reported under HMDA does not accurately portray M&T Bank's and HCB's home mortgage lending record. In this regard, M&T contends that M&T Bank is a

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[38] M&T represents that in 2012, HCB extended branch hours in its branches in Hudson and Essex counties, all in New Jersey, by opening two branches on Saturdays and extending lobby hours at a third branch.

[39] 12 U.S.C. § 2801 *et seq.* One commenter also alleges that a "mystery shopper" program conducted by the commenter showed that M&T Bank engaged in disparate treatment of African American and Hispanic borrowers compared to white borrowers in home equity conversion mortgage loan ("reverse mortgage loan") originations. The commenter filed a complaint concerning these allegations against M&T with the Department of Housing and Urban Development, which dismissed the complaint after review.

A commenter argues that the proposal should not be approved because a court complaint was filed against M&T Bank by a community group alleging that M&T discriminated against minority women applicants by steering them towards certain loan products and neighborhoods. *Fair Housing Justice Center, Inc.* v. *M&T Bank Corporation*, No. 1:15cv-00779-KBF (S.D.N.Y. 2015). The parties agreed to settle the matter, and the case was dismissed with prejudice and without any admission of wrongdoing.

[40] With respect to M&T Bank, these allegations related to the Nassau–Suffolk, NewYork, Metropolitan Division ("Long Island MD"); the Baltimore–Towson, Maryland, Metropolitan Statistical Area ("MSA"); and the New York, New York; Philadelphia, Pennsylvania; and Washington, D.C., areas. With respect to HCB, these allegations related to the Long Island MD; the New York, New York, area; the Bridgeport–Stamford–Norwalk, Connecticut, MSA ("Bridgeport MSA"); the Newark–Union, New Jersey–Pennsylvania, Metropolitan Division; and the New York–White Plains–Wayne, New York–New Jersey, Metropolitan Division.

[41] For example, commenters allege that in 2013, 5.41 percent of M&T's loans to African American borrowers were above the rate spread, compared to 2.99 percent of its loans to white borrowers.

[42] Commenters allege that M&T denied 26.26 percent of applications from African American borrowers, compared to 13.3 percent of applications from white borrowers.

[43] Manufacturers and Traders Trust Company, Consolidated Report of Condition and Income, at 19–20 (data as of June 30, 2015).

significant originator of government-sponsored mortgage loans and offers its own portfolio of affordable mortgages, which are designed to enhance the opportunities for borrowers across all socioeconomic strata to qualify for home purchase loans.[44] M&T argues that these loans provide more flexible features than conventional home purchase mortgage loans, including below-market rates, less cash required out-of-pocket from borrowers, lender credits that can be used for closing-cost assistance, and reduced down payment and reserve requirements. Moreover, M&T contends that M&T Bank has numerous lending programs with features that do not qualify as conventional home purchase loans and that these programs generally offer loans with higher risk levels and loan-to-value ratios, lower down payment requirements, and require smaller cash outlays when compared to conventional home mortgage loans.[45]

With respect to HCB, M&T represents that all loans originated by the bank, regardless of the borrower's race or ethnicity, are subject to the same credit underwriting and pricing standards used industry-wide, including loan-to-value ratios and debttoincome ratios. Moreover, M&T argues that a more accurate picture of HCB's mortgage lending activities emerges when considering loan types other than the conventional home purchase loans on which commenters focused, such as refinance loans and home-improvement loans.[46]

M&T further contends that the apparent denial disparities in the areas identified by the commenters for both M&T Bank and HCB are due to the creditworthiness of the applicants and are not the result of discrimination on a prohibited basis. In this regard, M&T argues there were nondiscriminatory reasons for denial that include inadequate collateral, insufficient income for the amount of credit, excessive obligation in relation to income, insufficient funds to close, lack of documentation or incomplete credit application, or inability to obtain mortgage insurance.

B. Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information as well as information and views provided by the appropriate federal supervisors.[47]

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[48] An institution's most recent CRA performance evaluation is a particularly important consideration in the appli-

[44] M&T Bank is an active provider of loans backed by the Federal Housing Administration ("FHA"), United States Department of Agriculture ("USDA"), and Department of Veterans Affairs ("VA"), as well as state-sponsored programs. For example, during 2010 through 2012, M&T Bank funded 28,961 federally backed loans worth approximately $5.3 billion and 958 loans backed by the State of New York Mortgage Agency worth approximately $127.6 million.

[45] For example, M&T Bank's proprietary versions of the standard FHA, VA, and USDA mortgage products provide LMI borrowers and those purchasing in LMI census tracts with discounted rates and lender credits that can be used for closing-cost assistance.

[46] For example, M&T argues that, although HCB originated only 10 conventional home purchase loans to African American borrowers in the New York, New York, area in 2011, HCB approved 24 of 25 home-purchase loan applications by mixed-race applicants and 44 of 56 of such loan applications by Hispanic applicants in the same area in 2011. In addition, HCB approved 50 percent of applications by African American borrowers and approximately 65 to 70 percent of applications by Hispanic borrowers for refinance and home improvement loans during 2011 in the New York, New York area.

[47] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

[48] 12 U.S.C. § 2906.

cations process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;[49] the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. The Board considers the overall CRA rating and the rating on the lending test to be important indicators, when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[50] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

The Board has considered all the facts of record, including reports of examination of the CRA performance of M&T Bank and HCB, the fair lending and compliance records of both banks, the supervisory views of the Office of the Comptroller of the Currency ("OCC") and the CFPB, confidential supervisory information, information provided by M&T, and the public comments received on the proposal.

CRA Performance of M&T Bank. M&T Bank, the lead bank subsidiary for M&T, was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the Reserve Bank, as of July 9, 2012 ("M&T Bank Evaluation").[51] M&T Bank received

[49] Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

[50] Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[51] The M&T Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test, the Investment Test, and the Service Test was from January 1, 2010, through

a "High Satisfactory" rating on the Lending Test and "Outstanding" ratings on both the Investment Test and the Service Test.

In assigning M&T Bank a "High Satisfactory" rating for the Lending Test, examiners found that M&T Bank demonstrated good responsiveness to the retail credit needs of its assessment areas. The bank originated a majority of its loans within its assessment areas and had good overall distribution of loans among borrowers of different income levels and businesses of different sizes.[52] Examiners noted that the bank's overall geographic distribution of HMDA-related and small business loans reflected good penetration in LMI geographies.[53] Examiners also noted that M&T Bank was a leader in community development lending and used various innovative and flexible products to enhance the level of lending to LMI geographies and borrowers. In addition, examiners determined that M&T's community development lending, which had increased markedly since the previous CRA public evaluation, was responsive to community needs and served a variety of purposes, including financing of affordable housing, promoting economic development, revitalizing communities located in LMI tracts and empowerment zones, and providing services to benefit LMI individuals.

In evaluating the Investment Test, examiners assigned M&T Bank an "Outstanding" rating based on good to excellent performance in the bank's key assessment areas—i.e., those with high concentrations of deposits and lending.[54] Examiners found that M&T Bank demonstrated good responsiveness to community credit needs and made use of complex investments to support community development initiatives. Examiners noted that more than 80 percent of the bank's qualifying investments supported the development of affordable housing.

For the Service Test, examiners found M&T Bank's performance to be excellent.[55] Examiners observed that the bank's branches were readily accessible to all portions of its assessment areas and that the bank's record of opening and closing branches had not adversely affected the overall accessibility of its delivery systems. Examiners found that M&T Bank was a leader in providing community development services, which included sponsorship and participation in a significant number of seminars and presentations relating to affordable mortgages, small business assistance, and other banking education offered throughout its assessment areas.

CRA Performance of WTNA. WTNA was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of May 6, 2013 ("WTNA Evalu-

June 30, 2012. Examiners considered HMDA-related and CRA-reportable small business loans originated between January 1, 2010, and December 31, 2011. Examiners also considered multifamily loans originated by M&T Real Estate Trust and M&T Realty Corporation, both subsidiaries of M&T Bank.

[52] Examiners noted good loan distribution among borrowers of different income levels and businesses of different sizes in Maryland; New York; Pennsylvania; and the Cumberland, Maryland–West Virginia, MSA ("Cumberland MSA"). Examiners noted adequate loan distribution in Delaware; Florida; Virginia; the New York–Northern New Jersey–Long Island, New York–New Jersey–Pennsylvania, MSA ("New York City MSA"); the Philadelphia–Camden–Wilmington, Pennsylvania–New Jersey–Delaware–Maryland, MSA ("Philadelphia MSA"); and the Washington–Arlington–Alexandria, D.C.–Virginia–Maryland–West Virginia, MSA ("Washington MSA").

[53] Examiners noted excellent geographic distribution in the Washington MSA and good distribution in Maryland, New York, Pennsylvania, Virginia, and the New York City MSA. Examiners noted adequate geographic distribution in Delaware, Florida, and the Cumberland and Philadelphia MSAs.

[54] Examiners noted excellent investment performance in Maryland, New York, and the Washington MSA; good investment performance in Delaware, Pennsylvania, and the Cumberland, New York City, and Philadelphia MSAs; and adequate investment performance in Florida and Virginia.

[55] Examiners noted excellent service performance in Maryland, New York, Pennsylvania, and the Washington MSA; good service performance in Virginia and the Cumberland and New York City MSAs; and adequate service performance in Delaware, Florida, and the Philadelphia MSA.

ation").[56] Examiners noted that the bank demonstrated an adequate level of community development lending, qualified investment activity, and community development services. Examiners also noted that the bank demonstrated occasional use of innovative or complex qualified investments, community development loans, or community development services, and that the bank demonstrated excellent responsiveness to credit and community development needs in its assessment areas.

M&T's Efforts since the M&T Bank Evaluation. M&T represents that, since the M&T Bank Evaluation, it has continued to build upon its commitment to provide financial services to LMI individuals, within LMI geographies, to small businesses, and to underserved communities. For instance, M&T Bank has made community development loans in Delaware, Maryland, New Jersey, New York, and the District of Columbia to increase affordable housing, revitalize LMI geographies, increase educational services to children of LMI households, and develop medical facilities. The bank also has committed to CRAqualified investments and provided community development grants in Delaware, New York, and Pennsylvania. In addition, the bank has offered a suite of products and services to address the credit needs of LMI borrowers, including mortgage loan products and unsecured installment loan products.

As noted above, earlier in the pendency of M&T's application, supervisory assessments by the Reserve Bank disclosed weaknesses in M&T's consumer compliance program. Since that time, M&T has undertaken efforts to address these weaknesses and provided the Board with substantial information relating to these efforts. M&T has made significant progress toward implementing a program acceptable to the Board and commensurate with the expanded scale and scope of the combined organization. In particular, M&T has implemented a compliance program that includes appropriate risk assessments, testing, and monitoring to ensure compliance with all consumer protection laws and regulations. Under this program, M&T conducts compliance testing more frequently than peer institutions. In addition, M&T has enhanced its processes for evaluating legal and regulatory changes applicable to the organization and for handling consumer complaints.

Reserve Bank examiners have conducted multiple on-site reviews to evaluate M&T's efforts to implement an enhanced consumer compliance program. These reviews indicate that M&T has made changes and enhancements to its consumer compliance systems and processes and has taken steps to address weaknesses that were identified in the examination process. Examiners noted that there are additional enhancements that can be made to some processes and systems to further improve the program and make it more effective. The Board has considered information provided by M&T and examiners' views regarding the improvements made by M&T to its consumer compliance program. The Board expects that M&T will swiftly and fully implement the additional improvements to enhance further the effectiveness of its consumer compliance program.

CRA Performance of HCB. HCB was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision,[57] as of March 14,

[56] WTNA is a limited purpose bank for purposes of the CRA and was evaluated under the community development test. Examiners reviewed community development activities from May 18, 2009, through May 5, 2013. In assessing WTNA, OCC examiners reviewed WTNA's qualified community development investments, loans, and services and also considered the qualified community development activities of M&T Bank. *See* 12 CFR 25.25(d).

[57] The supervision of federally chartered savings associations was transferred to the OCC effective July 21, 2011. *See* Dodd-Frank Act § 312, Pub. L. No. 111-203, 124 Stat. 1376, 1521–23 (2010), codified at 12 U.S.C. § 5412.

2011 ("HCB Evaluation").[58] HCB received a "Low Satisfactory" rating for the Lending Test, a "High Satisfactory" rating on the Investment Test, and a "Needs to Improve" rating on the Service Test.[59]

In evaluating the Lending Test, examiners noted that HCB was among the market leaders in HMDA mortgage lending based on its volume of lending from 2008 through 2010. Through loan originations and purchases, HCB's lending to LMI geographies was consistent with lending by the aggregate of lenders in HCB's assessment areas. The bank also deployed two innovative and flexible loan products with reduced interest rates to meet community credit needs. The examiners assigned HCB a "Low Satisfactory" rating because, in examiners' view, the level of community development lending was low compared to the resources available to the bank, and examiners suggested that HCB could improve its market share of community development lending.

Examiners assigned HCB a "High Satisfactory" rating on the Investment Test based on its level of qualified community development investments. From 2008 through 2010, the bank made significant investments in securities backed by mortgage loans made to LMI borrowers, with the majority of such loans having been originated in HCB's assessment areas. These investments represented a significant increase from the prior evaluation period. HCB also doubled its investment in a nonprofit community development financial institution that provides innovative financing and technical assistance to foster the creation of quality homes, education facilities, and employment opportunities in underserved communities in New Jersey. Examiners noted that HCB made qualified community development donations during the evaluation period, including contributions to HCB's affiliated charitable foundation.

In evaluating the Service Test, examiners noted that the bank was involved in a variety of community development service activities, including service to organizations that provide affordable housing and transitional housing to disadvantaged youth. The bank also sponsored, and provided employees for, foreclosure workshops and seminars. Examiners also observed that HCB provides a wide range of traditional thrift deposit and loan products through a substantial network, with most branches open on Saturdays and having ATMs, drive-up windows, walk-up windows, or a combination thereof, for customer convenience. Examiners also noted that HCB's branch locations did not inconvenience LMI populations in the bank's combined assessment area. However, examiners assigned the bank a Service Test rating of "Needs to Improve," citing the need to improve the percentage of the bank's branch locations in LMI geographies and the need for greater involvement by the bank's officers in community development activities.

HCB's Mortgage Lending Practices and M&T's Plans for the Combined Organization. On September 24, 2015, the DOJ, the CFPB, and HCB announced a proposed Consent Order to resolve the agencies' claims that HCB has engaged in redlining of majority Black and Hispanic neighborhoods in HCB's three primary assessment areas[60] and thereby denied an equal opportunity to, and discouraged the residents of these neighborhoods to, obtain

[58] The HCB Evaluation was conducted using Large Savings Association CRA Examination Procedures. Examiners analyzed HMDA-reportable mortgage loans originated and purchased from January 1, 2008, through December 31, 2010, for most factors under the Lending Test. Examiners considered community development loans originated from April 2, 2008, through March 14, 2011.

[59] The HCB Evaluation included a full-scope review of three assessment areas: the New York–Newark–Bridgeport, New York–New Jersey–Connecticut–Pennsylvania, Combined Statistical Area; the Burlington County, New Jersey, assessment area; and the Suffolk County, New York, assessment area. A limited-scope review was performed in the Camden County, New Jersey, assessment area and the Gloucester County, New Jersey, assessment area.

[60] These areas are the New York City, Bridgeport, and Philadelphia MSAs.

mortgage loans on account of the racial composition of those neighborhoods.[61] HCB agreed to a program to ensure that it provides credit on an equal and nondiscriminatory basis throughout its assessment areas, including by, among other things, taking all reasonable, practicable actions, consistent with safe and sound operation, to increase lending, open two new branches, provide subsidized loan offerings, and expand outreach and education efforts in the identified minority neighborhoods and census tracts. HCB also agreed to ensure that it makes credit available in minority neighborhoods and census tracts in the three assessment areas on no less favorable a basis than it does in nonminority neighborhoods and census tracts, and not to otherwise engage in discrimination prohibited by the Equal Credit Opportunity Act[62] or the Fair Housing Act.[63]

M&T has agreed to address the weaknesses at HCB and contends that M&T's record of providing banking services in the areas served by HCB demonstrates M&T's ability to implement these improvements effectively. M&T notes that M&T Bank already operates in the assessment areas identified in the HCB Consent Order and has continuously received the highest available CRA rating since 1989. M&T Bank will expand the CRA activities of the combined bank to be commensurate with its expanded size and geographic scope. For example, following consummation, the CRA lending, investment, and service programs of M&T Bank would be applied to the operations and activities of HCB in the communities it serves.

The integration of HCB into M&T Bank will expand the CRA assessment areas for the combined bank. For example, in New York, although HCB currently operates primarily in Staten Island and Westchester County, the combined bank would serve all five boroughs of New York City. As a result, the combined bank would serve a broader and more diversified geographic area than either M&T Bank or HCB on a standalone basis. Upon consummation of the proposal and the merger of HCB into M&T Bank, M&T will assume the obligations of HCB, including HCB's obligations under the Consent Order to open two new branches in majority-minority census tracts within HCB's current assessment areas.

Moreover, M&T has stated that it will expand the products and services that HCB offers in HCB's current assessment areas to include the products and services provided by M&T Bank, and it will implement the CRA program developed by M&T Bank at the offices of HCB.[64] In particular, M&T plans for the combined bank to continue to offer innovative and flexible loan products throughout its assessment areas. For example, M&T would offer its version of the FHA Community Mortgage throughout the expanded geographic area served by the combined bank. Similarly, the combined bank will continue to offer M&T Bank's suite of government-backed mortgage products, such as FHA loans and loans backed by the State of New York Mortgage Agency. These products include features such as below-market rates, less cash required out-of-pocket from borrowers, lender credits that can be used for closing-cost assistance, and reduced down payment and reserve requirements.

The combined organization is expected to continue M&T Bank's current approach to promoting these affordable mortgage products. M&T notes that M&T Bank focuses its

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[61] Press Release, Consumer Financial Protection Bureau (September 24, 2015), available at www.consumerfinance.gov/newsroom/cfpb-and-doj-order-hudson-city-savings-bank-to-pay-27-million-to-increase-mortgage-credit-access-in-communities-illegally-redlined/; Press Release, Department of Justice (September 24, 2015), available at www.justice.gov/opa/pr/justice-department-and-consumer-financial-protection-bureau-reach-settlement-hudson-city.

[62] 15 U.S.C. § 1691 *et seq.*

[63] 42 U.S.C. § 3601 *et seq.*

[64] These communities include communities in New Jersey, where according to one commenter, HCB generally has a poor CRA performance record.

advertising for such affordable mortgage loan products in newspapers that are targeted to reach minority and/or LMI residents and in community-based newsletters that serve those residents. M&T Bank also promotes its affordable mortgage products through referrals, loan officer interactions with customers, and participation with nonprofit housing counselors and community reinvestment organizations. M&T states that it has found that participation with such organizations in community events, such as housing fairs, seminars, and similar events, is an effective means to promote the features and benefits of its affordable mortgage loan products.

M&T also plans to continue to provide community sponsorships that benefit LMI and minority neighborhoods. M&T's existing community sponsorships include, for example, financial support for organizations like the Westminster Community Charter School, an elementary school that serves LMI and minority neighborhoods in Buffalo, New York.

Following consummation of the proposal, the Board expects that M&T will cooperate fully with the DOJ and the CFPB and that M&T will ensure that the combined organization commits the appropriate resources to integrate the operations of HCB into those of M&T Bank and fulfill all outstanding obligations of HCB under applicable law and the Consent Order.

C. Public Benefits of the Proposals

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. Commenters allege that these proposals would not provide a clear or significant public benefit.[65]

In this regard, M&T represents that the proposals would provide existing customers of HCB with access to an expanded branch and ATM network and would offer additional products and services to HCB's customers that are not currently offered by HCB, including products and services to benefit LMI individuals and communities in HCB's New Jersey and Connecticut markets.[66] For example, HCB customers would have access to M&T's deposit, lending, investment, wealth advisory, and institutional client services, as well as a suite of commercial loan and deposit products. HCB's retail customers would benefit from M&T Bank's offering of consumer loans and mortgages, including various conventional mortgage products; FHA and VA mortgages, including renovation loans under section 203(k) of the National Housing Act;[67] and a variety of CRA products focused on the needs of LMI borrowers.

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[65] In addition, a commenter expressed concerns that M&T Bank would close branches in New York and thereby decrease access to banking services in LMI neighborhoods. M&T does not currently have any plans to close any HCB or M&T Bank branches upon an acquisition of HCB and is still evaluating potential branch consolidation opportunities. M&T Bank has identified three potential consolidation opportunities where M&T Bank branches are in close proximity to HCB branches and where the characteristics of the respective branches—i.e., the floor plans, customer servicing elements (e.g., drive-up, teller lines), branch condition, and location—might support a consolidation decision.

In this regard, M&T Bank's branch closing record will continue to be reviewed by Reserve Bank examiners in the course of conducting CRA performance evaluations. Moreover, federal law requires an insured depository institution to provide notice to the public and to the appropriate federal banking agency before closing a branch. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (June 29, 1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal banking agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

[66] Commenters expressed concerns that M&T would not introduce new products and services to the customers of Hudson City, especially to its LMI customers.

[67] 12 U.S.C. § 1709(k).

In addition, following the merger of HCB with M&T Bank, the CRA programs of M&T Bank would be applied to the operations and activities of HCB. M&T notes that M&T Bank's CRA program has been applied to the operations and activities of other banks that have been merged into M&T Bank, and M&T Bank has maintained an "Outstanding" CRA performance record in each CRA public evaluation following these actions. In light of this record, M&T argues that the proposals would produce CRA benefits through increased CRA activities and improved CRA performance in the communities HCB serves.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with the OCC and the CFPB, confidential supervisory information, information provided by M&T, and the public comments on the proposals. Based on that review, the Board concludes that the proposals would result in public benefits that would outweigh the potential adverse effects and that the convenience and needs factor is consistent with approval.

These proposals represent a significant expansion by M&T. As noted above, the Board expects M&T to complete its efforts to implement effective consumer compliance and management programs across the entire enterprise and expects that M&T will implement a consumer compliance program that is commensurate with the size and complexity of the combined organization.

Financial Stability

The Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering a proposal under section 4(j) of the BHC Act, and as a factor that must be considered under the Bank Merger Act.[68]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the merged firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[69] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[70]

[68] Dodd-Frank Act §§ 604(e)(1) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–02(2010), amending 12 U.S.C. §§ 1843(j)(2)(A) and 1828(c)(5).

[69] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[70] For further discussion of the financial stability standard, *see Capital One Order*.

In this case, the Board has considered information relevant to the risks to the stability of the U.S. banking or financial system, including public comments on the proposals.[71] Both the acquirer and the target are predominantly engaged in retail financial activities.[72] The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Additional Public Benefits of the Proposals

As noted, in connection with a notice under section 4(c)(8) of the BHC Act, section 4(j) of the BHC Act requires the Board to "consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[73] As noted, commenters asserted that the proposed transactions would not provide a clear or significant public benefit. As discussed above, the Board has considered that the proposed transactions would provide greater services, product offerings, and geographic scope to customers of Hudson City. In addition, the acquisitions would ensure continuity and strength of service to customers of Hudson City.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this Order is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, including conditions noted in this Order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weigh in favor of approval of these proposals. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

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[71] A commenter generally alleges that M&T seeks to become "too big to fail."

[72] M&T accepts retail deposits and engages in mortgage lending, mortgage and credit card servicing, commercial real estate financing, small business lending, credit card and other consumer lending, wealth management, institutional client services, and securities brokerage services. Hudson City offers savings accounts, certificates of deposit, and residential mortgage loans. In each of its activities, M&T has, and as a result of the proposals would continue to have, a small share on a nationwide basis, and numerous competitors would remain.

[73] 12 U.S.C. § 1843(j)(2)(A).

Establishment of Branches

As noted, M&T Bank has applied under section 9 of the FRA to establish branches at the current locations of HCB.[74] The Board has assessed the factors it is required to consider when reviewing an application under that section.[75] For the reasons discussed in this Order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposals should be, and hereby are, approved.[76] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. Approval of these proposals is specifically conditioned on compliance by M&T with all commitments made in connection with these proposals and the conditions set forth in this Order. The commitments and conditions are deemed to be conditions imposed in writing by the Board in connections with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transactions may not be consummated before the 15th calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective September 30, 2015.

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[74] Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may establish branches at locations acquired through acquisition if the branches are located in states in which the state member bank had a presence prior to the acquisition. *See* sections 5455(c)(2) and (e) of the Revised Statutes of the United States, 12 U.S.C. § 36(c)(2) and (e). In addition, section 341 of the Dodd-Frank Act provides authority for savings associations that become banks to continue to operate branches that they operated immediately before becoming banks. Dodd-Frank Act § 341, Pub. L. No. 111-203, 124 Stat. 1376, 1540–41 (2010), codified at 12 U.S.C. § 5451.

[75] 12 U.S.C. §§ 321 and 322; 12 CFR 208.6. Specifically, the Board has considered M&T Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, and CRA performance. In addition, upon consummation of the proposals, M&T Bank's investments in bank premises would remain within the legal requirements under 12 CFR 208.21.

[76] Several commenters requested that the Board hold public hearings or meetings on the proposals. The Board's regulations provide for a formal public hearing or informal public meeting on a notice filed 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 rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposals and, in fact, submitted written comments that the Board has considered in acting on the proposals. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing or meeting. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing or meeting on the proposals are denied.

In addition, a commenter requested a further extension of the comment period for the proposals. The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. 12 CFR 262.25(b)(2). The commenter's requests for additional time do not identify circumstances that would warrant an extension of the public comment period for these proposals. Accordingly, the Board has determined not to extend further the public comment period.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Connecticut Branches to Be Established

1. 100 East Putnam Avenue, Cos Cob, Connecticut
2. 599 Newfield Avenue, Stamford, Connecticut
3. 2 Prospect Street, Ridgefield, Connecticut
4. 837 Post Road, Fairfield, Connecticut
5. 146 Greenwood Avenue, Bethel, Connecticut
6. 247 Federal Road, Brookfield, Connecticut
7. 525 Main Street, Monroe, Connecticut
8. 547 Boston Post Road, Darien, Connecticut
9. 596 Westport Avenue, Norwalk, Connecticut

New Jersey Branches to Be Established

10. West 80 Century Road, Paramus, New Jersey
11. 532 Ocean Avenue, Jersey City, New Jersey
12. 2530 Kennedy Boulevard, Jersey City, New Jersey
13. 7533 Bergenline Avenue, North Bergen, New Jersey
14. 7 East Prospect Street, Waldwick, New Jersey
15. 249 Kinderkamack Road, Oradell, New Jersey
16. 495 Manila Avenue, Jersey City, New Jersey
17. 790 Queen Anne Road, Teaneck, New Jersey
18. 897 Prospect Street, Glen Rock, New Jersey
19. 684 Anderson Avenue, Cliffside Park, New Jersey
20. 304 Essex Street, Lodi, New Jersey
21. 330 Kinderkamack Road, Emerson, New Jersey
22. 731 Brick Boulevard, Brick, New Jersey
23. 887 Allwood Road, Clifton, New Jersey
24. 119 Central Avenue, Westfield, New Jersey
25. 80 Union Avenue #86, Cresskill, New Jersey
26. 62-64 Main Street, Millburn, New Jersey
27. 767 Bloomfield Avenue, West Caldwell, New Jersey
28. 114-116 Kings Highway East, Haddonfield, New Jersey
29. 365 Tucker Avenue, Union, New Jersey
30. 167 East Kennedy Boulevard #169, Lakewood, New Jersey
31. 2335 Church Road, Cherry Hill, New Jersey
32. 379 Ramapo Valley Road, Oakland, New Jersey
33. 57 West Main Street, Ramsey, New Jersey
34. 94 North Maple Avenue, Ridgewood, New Jersey
35. 1070 Main Street, River Edge, New Jersey
36. 1002 Mantua Pike, Woodbury Heights, New Jersey
37. 303 Main Street and Center Avenue, Fort Lee, New Jersey
38. 351 West Main Street, Freehold, New Jersey
39. One Paddock Plaza, West Long Branch, New Jersey
40. 587 Summit Avenue, Jersey City, New Jersey
41. 715 River Road, New Milford, New Jersey
42. 341 Springfield Avenue, Summit, New Jersey
43. 1406 Route 130, Cinnaminson, New Jersey

44. 632 Westwood Avenue, River Vale, New Jersey
45. 128 Center Grove Road, Randolph, New Jersey
46. 45 Outwater Lane, Garfield, New Jersey
47. 10 West Main Street, Denville, New Jersey
48. 355 Applegarth Road, Monroe, New Jersey
49. 216 Passaic Avenue, Kearny, New Jersey
50. 782 Lacey Road, Forked River, New Jersey
51. 35a Marshall Hill Road, West Milford, New Jersey
52. 157 Seventh Avenue, Newark, New Jersey
53. 72 Mt Vernon Place, Newark, New Jersey
54. 187 Eagle Rock Avenue, Roseland, New Jersey
55. 641 Shunpike Road, Chatham, New Jersey
56. 18 James Street, Florham Park, New Jersey
57. 977 Valley Road, Gillette, New Jersey
58. 90 Barclay Center, Route 70, Cherry Hill, New Jersey
59. 55 Brick Boulevard, Brick, New Jersey
60. 2100 Route 70, Manchester, New Jersey
61. 209 Route 206 South, Chester, New Jersey
62. 75 Route 35, Middleton, New Jersey
63. 232 South Livingston Avenue, Livingston, New Jersey
64. 313 Henry Street, Orange, New Jersey
65. 150 Newark Pompton Turnpike, Pequannock, New Jersey
66. 200 Grand Avenue, Hackettstown, New Jersey
67. 261 Godwin Avenue, Wyckoff, New Jersey
68. 340 Main Street, Madison, New Jersey
69. 577 Lakehurst Road, Toms River, New Jersey
70. 288 Main Street, Orange, New Jersey
71. 1965 State Route 57, Hackettstown, New Jersey
72. 50 East Palisade Avenue, Englewood, New Jersey
73. 60 Park Place, Newark, New Jersey
74. 1328 River Avenue, Lakewood, New Jersey
75. 217 Berdan Avenue, Wayne, New Jersey
76. 335 Atlantic City Boulevard, Bayville, New Jersey
77. 240 Baldwin Road, Parsippany, New Jersey
78. 1000 Route 70, Lakewood, New Jersey
79. 277 Eisenhower Parkway, Livingston, New Jersey
80. 408 East Madison Avenue, Dumont, New Jersey
81. 89 Interstate Shopping Center, Ramsey, New Jersey
82. 455 County Road, Marlboro, New Jersey
83. 1018 Washington Street, Hoboken, New Jersey
84. 115 Franklin Turnpike, Mahwah, New Jersey
85. 580 North Main St., Barnegat, New Jersey
86. 601 Route 72 East, Manahawkin, New Jersey
87. 45 South New York Road, Galloway, New Jersey
88. 435 Lewandowski Street, Lyndhurst, New Jersey
89. 108 Lacey Road, Whiting, New Jersey
90. 85 Godwin Avenue, Midland Park, New Jersey
91. 547 Broadway, Bayonne, New Jersey
92. 3495 U.S. Highway 1, Suite 2, Princeton, New Jersey
93. 370 Route 130, East Windsor, New Jersey
94. 2407 State Route 71, Spring Lake, New Jersey
95. 523 Shoppes Boulevard, North Brunswick, New Jersey
96. 1168 Highway 34, Aberdeen, New Jersey
97. 416 South Main Street, Forked River, New Jersey

98. 1620 Route 23 North, Wayne, New Jersey
99. 210 Enterprise Drive, Rockaway, New Jersey
100. 51 Route 22 East, Green Brook, New Jersey
101. 3562 Route 27, Princeton, New Jersey
102. 3897 Route 9, Old Bridge, New Jersey
103. 166 State Route 31, Flemington, New Jersey
104. 779 Franklin Avenue, Franklin Lakes, New Jersey
105. 3 Tree Farm Road, Pennington, New Jersey
106. 889 Fischer Boulevard, Toms River, New Jersey

New York Branches to Be Established
107. 53345 Main Road, Southold, New York
108. 18 East Montauk Highway, Hampton Bays, New York
109. 1591 Richmond Road, Staten Island, New York
110. 2220 Forest Avenue, Staten Island, New York
111. 25 Hill Street, Southampton, New York
112. 1430 Old Country Road, Riverhead, New York
113. 2212 Hylan Boulevard, Staten Island, New York
114. 133 Main Street, Westhampton Beach, New York
115. 320 Mamaroneck Avenue, White Plains, New York
116. 389 Halstead Avenue, Harrison, New York
117. 115 South Ridge Street, Port Chester, New York
118. 228 South Main Street, New City, New York
119. 1019 Park Street, Peekskill, New York
120. 1961 Commerce Street, Yorktown Heights, New York
121. 3031 East Main Street, Mohegan Lake, New York
122. 88 Fourth Street, New Rochelle, New York
123. 302 Somers Commons, Baldwin Place, New York
124. 4106 Hylan Boulevard, Staten Island, New York
125. 248 Main Street, Center Moriches, New York
126. 301 Route 25a, Miller Place, New York
127. 2040 Boston Post Road, Larchmont, New York
128. 74825 Main Road, Greenport, New York
129. 126 North Main Street, East Hampton, New York
130. 300 Mamaroneck Avenue, Mamaroneck, New York
131. 190 Gleneida Avenue, Carmel, New York
132. 2935 Veterans Road West, Suite F, Staten Island, New York
133. 903 Montauk Highway, Bayport, New York
134. 1320 Stony Brook Road, Suite 140, Stony Brook, New York
135. 2102 Montauk Highway, Bridgehampton, New York

Order Issued Under Sections 3 and 4 of the Bank Holding Company Act

PacWest Bancorp

Los Angeles, California

Order Approving the Merger of Bank Holding Companies and Acquisition of Nonbanking Subsidiaries
FRB Order No. 2015–26 (September 21, 2015)

PacWest Bancorp ("PacWest"), Los Angeles, California, has requested the Board's approval under section 3 of the Bank Holding Company Act of 1956, as amended ("BHC

Act"),[1] to merge with Square 1 Financial, Inc., and thereby acquire its subsidiary bank, Square 1 Bank, both of Durham, North Carolina. Immediately following the proposed merger, Square 1 Bank would be merged into PacWest's subsidiary bank, Pacific Western Bank ("PWB"), Los Angeles, California.[2] PacWest has also requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y to acquire nonbanking subsidiaries of Square 1 Financial that are engaged in financial and investment advisory activities.[3]

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (80 *Federal Register* 18404 (April 6, 2015); 80 *Federal Register* 22189 (April 21, 2015)).[4] The time for submitting comments has expired, and the Board has considered the proposals and all comments received in light of the factors set forth in the BHC Act.

PacWest, with consolidated assets of approximately $16.7 billion, is the 84th largest depository organization in the United States.[5] PacWest controls PWB, which operates branches only in California. PWB is the 14th largest insured depository institution in California, controlling approximately $12.0 billion in deposits, which represent 1.1 percent of the total deposits of insured depository institutions in California.[6]

Square 1 Financial, with consolidated assets of approximately $3.9 billion, is the 265th largest depository organization in the United States. Square 1 Financial controls Square 1 Bank, which operates one branch located in Durham, North Carolina. Square 1 Bank is the 9th largest insured depository institution in North Carolina with approximately $2.4 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Upon consummation, PacWest would become the 76th largest depository organization in the United States, with consolidated assets of approximately $21.3 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. PacWest would control approximately $14.4 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.

Because this transaction involves the acquisition by a bank holding company of a bank and nonbank companies, the Board has reviewed the transaction under both section 3 and section 4 of the BHC Act. Section 3 governs the acquisition of a bank; section 4 establishes the standards governing the acquisition of nonbank companies.

Interstate and Deposit Cap Analyses

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than the home state of the bank holding company without regard to

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1 12 U.S.C. § 1842.

2 The merger of Square 1 Bank into PWB is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on August 24, 2015.

3 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

4 12 CFR 262.3(b).

5 Asset data are as of June 30, 2015, and nationwide asset-ranking data are as of March 31, 2015, unless otherwise noted.

6 State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

whether the transaction is prohibited under state law.[7] Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[8] In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States or 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[9]

For purposes of the BHC Act, the home state of PacWest is California, and the home state of Square 1 Financial is North Carolina.[10] PacWest is well capitalized and well managed under applicable law, and PWB has a "Satisfactory" Community Reinvestment Act ("CRA") rating.[11] In this case, North Carolina's statute would require the application of California's five year minimum age requirement, and Square 1 Bank has been in existence for more than five years.[12]

On consummation of the proposals, PacWest would control less than 1 percent of the total amount of deposits in insured depository institutions in the United States. In addition, the combined organization would control $12.0 billion (or approximately 1.1 percent) and $2.4 billion (or approximately 0.7 percent) of the total amount of deposits of insured depository institutions in California and North Carolina, respectively, which are the two states in which the combined organization would have banking operations upon consummation of the proposal. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.[13]

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal 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

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7 12 U.S.C. § 1842(d)(1)(A).

8 12 U.S.C. § 1842(d)(1)(B).

9 12 U.S.C. § 1842(d)(2)(A) and (B).

10 A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state by which the bank is chartered. 12 U.S.C. § 1841(o)(4).

11 12 U.S.C. § 2901-2908.

12 North Carolina law applies to an out-of-state bank or holding company the requirements or limitations that would be imposed by such bank's or holding company's home state on an acquisition made by a North Carolina bank or holding company in the other state. *See* N.C. Gen. Stat. §53-211(a). In turn, California, PacWest's home state, provides that "[n]o foreign (other state) bank that does not already maintain a California branch office may . . . [m]erge as the surviving bank with a California bank ... unless the California bank has been in existence for at least five years." Cal. Fin. Code § 1685. Consequently, a five year minimum age requirement applies in this case.

13 One commenter argued that the merger may result in violation of section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the "Riegle-Neal Act"), which generally prohibits a bank from establishing or acquiring a branch outside its home state for the purpose of deposit production. The Board notes that the loan-to-deposit ratio test established under section 109 of the Riegle-Neal Act is not applicable until one year after establishment or acquisition of an interstate branch and therefore would not be applied to PWB until one year after consummation. Furthermore, if the loan-to-deposit ratio test established under section 109 is not satisfied by PWB one year after consummation, PWB would not violate section 109 unless it is also found by the FDIC not to be reasonably helping to meet the credit needs of the communities served, including through the FDIC's evaluation of the bank's performance record under the CRA, which is currently deemed to be "Satisfactory." *See* 12 U.S.C. § 1835a.

the probable effect of the proposal in meeting the convenience and needs of the community to be served.[14] In addition, under section 4 of the BHC Act, the Board must consider the competitive effects of a proposal to acquire a nonbank company under the balancing test of section 4(j) of the BHC Act.[15]

PWB and Square 1 Bank do not compete directly in any banking market. The Department of Justice has advised the Board that consummation of the transaction would not be likely to have a significantly adverse effect on competition in any relevant market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the applicant to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

PacWest and PWB are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured as an exchange of shares.[16] The asset quality, earnings, and liquidity of PWB and Square 1 Bank are consistent with approval, and PacWest appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations.[17] In addition, future prospects are considered consistent with approval.

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[14] 12 U.S.C. § 1842(c)(1).

[15] 12 U.S.C. § 1843(j)(2)(A).

[16] As proposed, Square 1 Financial would be merged into PacWest and shares of Square 1 Financial would be converted into a right to receive shares of PacWest common stock, based on an exchange ratio. Additionally, outstanding options, warrants, and unvested restricted stock of Square 1 Financial would be cancelled in exchange for cash. PacWest has the financial resources to fund the acquisition.

[17] One commenter expressed concern about the safety and soundness of PacWest, arguing that the company has a high loan-to-deposit ratio, poor asset quality, and heavy cost structure. The Board has considered this comment as well as the financial resources of the combined organization, including asset quality and other measures of financial ability.

This commenter also noted that PacWest had its credit ratings by Fitch Ratings withdrawn in April 2015. PacWest does not have any outstanding debt, is not issuing any debt, and has no plans to issue debt. As a result, PacWest asked Fitch not to provide a rating to the company, and PacWest did not renew its contract with Fitch. In addition, in announcing the withdrawal of PacWest's rating, Fitch affirmed the rating and assigned PacWest a stable outlook.

Based on its review of the record, the Board finds that PacWest has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of PacWest, Square 1 Financial, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by PacWest, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

PacWest, Square 1 Financial, and their subsidiary depository institutions are each considered to be well managed. PacWest's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of PacWest have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered PacWest's plans for implementing the proposal. PacWest is devoting significant resources to address all aspects of the post-acquisition integration process for these proposals. PacWest has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. Since 2000, PacWest has acquired and successfully integrated into its operations more than 20 banking organizations. As part of its integration process, PacWest conducts a comprehensive review of the target's activities and the compliance, policies, procedures, and internal monitoring associated with these activities. Where appropriate, new elements are introduced and incorporated into PacWest's policies and processes to ensure they are effective for the combined organization. As a result of this integration process in connection with its 2014 acquisition of Capital Source Inc., PacWest overhauled and significantly improved its risk management framework to address the new activities and risk profile that resulted from the transaction. PacWest has also improved the depth and experience of its management through prior acquisitions by retaining management from acquisition targets. PacWest plans to follow this process in integrating Square 1 Bank.

PacWest would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, PacWest's and Square 1 Financial's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and PacWest plans to integrate Square 1 Financial's existing management and personnel in a manner that augments PacWest's and PWB's management.[18]

Based on all the facts of record, including PacWest's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of PacWest and Square 1 Financial in combatting money-laundering activities, are consistent with approval.

[18] After consummation, the chief executive officer and president of Square 1 Bank will become the president of the Square 1 division of PWB, and one current director of Square 1 Financial will be appointed to the board of directors of PacWest.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.[19] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[20] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.[21]

In addition, the Board considers the banks' overall compliance record and recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board also considers the supervisory assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

The Board consulted with the FDIC concerning its evaluation of the CRA performance of PWB and Square 1 Bank, PWB's compliance with fair lending and consumer protection laws and regulations, and the comments received on the proposal. The FDIC considered the comments opposing the proposal, including allegations against PWB and Square 1 Bank, as part of the FDIC's review of the proposed merger of the two banks and has approved the bank merger.

A. Public Comments Regarding the Proposal

In this case, the Board received 17 comments from 13 commenters objecting to the proposal on the basis of PWB's CRA performance record and plans for meeting the credit needs of the communities served by the combined organization. Of the 13 opposing commenters, 10 commenters, led by a California based community group, submitted substantially identical comments raising identical issues and concerns.[22] These commenters raised issues and concerns about PacWest and its CRA activities similar to those raised in connection with the application for Board approval of PacWest's 2014 acquisition of Capital Source Inc., which was granted by the Board.[23]

Commenters argued that only 42 percent of the bank's business loans were made to businesses with less than $1 million in annual revenues in 2014, and that the bank should

[19] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

[20] 12 U.S.C. § 2901(b).

[21] 12 U.S.C. § 2903.

[22] One commenter, Reinvestment Partners, also submitted a petition in opposition to the proposal, with the names of approximately 158 individuals.

[23] *See* PacWest Bancorp, FRB Order No. 2014-3 (April 1, 2014). As noted below, PWB's CRA performance record has been evaluated by the FDIC since the Capital Source acquisition and has improved significantly.

extend at least 50 percent of its business loans to those businesses annually.[24] Commenters also argued that PacWest has not made sufficient reinvestments, including through small business lending, in rural areas and that the company has a history of closing branches in rural areas.[25] In addition, commenters argued that Square 1 Bank has a stronger CRA performance record than PacWest and the proposal will dilute Square 1 Bank's CRA performance because deposits collected by Square 1 Bank in North Carolina may be reinvested in PacWest's assessment areas outside that state. It was also argued that the proposal would not provide a public benefit to the affected communities. These commenters urged that approval of PacWest's proposal be conditioned on the submission of a stronger, multi-year CRA plan that is made available publicly, including on PacWest's website.

PWB's and Square 1 Bank's Businesses and PacWest's Responses to Comments. PWB focuses on serving small- to medium-sized businesses through a broad range of banking products and services, including deposit products, money market accounts, commercial loans, real estate construction loans, and SBA-guaranteed loans. A substantial majority of PWB's loans are originated within its local communities to business customers of different revenue sizes. PWB has 81 branches located throughout California.

Square 1 Bank primarily serves venture capital and private equity firms and their portfolio companies by providing deposit products, term commercial revolving lines of credit, asset-based loans, credit cards, foreign exchange, cash management, and letters of credit. Square 1 Bank also has a recently formed asset management subsidiary that provides investment advisory services to clients of Square 1 Bank. Square 1 Bank operates one branch in Durham, North Carolina.

PacWest contends that PWB's loans to businesses with annual revenues of $1 million or less grew from approximately 34 percent of its small business loans in 2012 to 42 percent of

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[24] Commenters also expressed concern about: (i) PacWest's decision to develop two new small business products rather than participate in California's state loan guarantee program as suggested by commenters; (ii) PacWest's failure to commit at least $50,000 per year to technical assistance for small businesses; (iii) the absence of a formalized program under which PacWest would refer to community lenders at least 20 percent of the small business loan applicants declined by PacWest; (iv) PacWest's failure to develop a bank account with features suggested by one commenter; (v) PacWest's failure to commit at least 50 percent of its charitable contributions to housing and economic development; (vi) the level of charitable and philanthropic activity by Square 1 Bank; (vii) the concentration of PacWest community development lending and investments in tax credits and non-equity equivalent investments; and (viii) the concentration of Square 1 Bank CRA lending and investments in CRA-qualifying mortgage backed securities.

Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor authorizes the federal banking agencies to direct a bank's community development investment or lending activities to specific groups, individuals, projects, or types of investments such as those recommended by commenters. Moreover, neither the CRA nor the agencies' implementing rules require that institutions engage in a specific activity such as charitable giving in order to meet community credit needs of the communities the institutions serve. As explained below, the Board has considered whether the products PacWest and Square 1 Financial have chosen to provide help meet the credit needs of the entire community, including LMI areas.

Commenters also raised concerns that PacWest does not have a vendor program that targets contracting opportunities to minority, women and disabled-owned businesses and that PacWest has received payments from the FDIC pursuant to the company's loss-share agreement with the agency. The Board believes that these contentions and concerns are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See CIT Group, Inc.*, FRB Order No. 2015-20, n. 71 (2015); *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 223 n.31 (2004). *See also Western Bancshares, Inc.* v. *Board of Governors*, 480 F.2d 749 (10th Cir. 1973) ("*Western Bancshares*").

[25] Commenters also argued that PacWest's CRA plan for PWB is weak and deceptive because, although it commits that PWB's CRA activities will represent a certain percentage of core deposits, the CRA plan defines "core deposits" to exclude roughly 50 percent of the bank's deposits. The result, in commenters' views, is that PacWest's CRA plan overstates the level of CRA activities as a percentage of deposits. Neither the CRA nor the federal banking agencies' implementing rules require that an institution's CRA activities represent a specific percentage of its deposits. Rather, an institution's CRA performance is measured by performance tests and standards outlined in the federal banking agencies' CRA regulations. *See* 12 CFR 228.21 *et seq.*

its small business loans in 2014 and that PWB has a goal of extending 50 percent of its small business loans to businesses with $1 million or less in annual revenues, as suggested by commenters. The steady growth in small business lending experienced by PWB reflects, in PacWest's view, the organization's strong commitment to small businesses. PacWest is also expanding the transaction account and small business lending products available to customers of its four recently acquired branches in the rural areas of California's Central Valley. PacWest also highlights the FDIC's most recent CRA evaluation of PWB and notes that FDIC examiners concluded that the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems.

PacWest also argues that it is preparing to meet the credit needs of the communities it will enter as a result of this transaction. PacWest has engaged organizations in North Carolina communities to determine the credit needs of those communities and how those needs can be met by the combined organization. As a result of this outreach, PacWest plans to offer, for example, two types of small business loans not currently available from Square 1 Bank for businesses in its communities with gross annual revenues of $1 million or less.

PacWest notes that it has developed one-year CRA plans rather than multi-year plans because a one-year plan allows the company to be flexible and adaptive as it executes its strategy. PacWest contends that, the length of its CRA plan notwithstanding, it is committed to increasing the dollar amount of PWB's CRA activities by at least 10 percent over the previous year's results if PWB has positive net income at each year end. PacWest states that in no case would the dollar amount of PWB's overall commitment be less than the previous year's commitment.

B. Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information as well as information and views provided by the appropriate federal supervisors.[26]

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[27] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of

[26] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[27] 12 U.S.C. § 2906.

home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans—including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;[28] the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Consequently, the Board considers the overall CRA rating and the rating on the lending test to be important indicators, when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

CRA Performance of PWB. PWB was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of October 27, 2014 ("PWB Evaluation").[29] PWB received a "High Satisfactory" rating on the Lending Test and the Investment Test and an "Outstanding" rating on the Service Test. These ratings reflect significant improvements in the bank's CRA performance record since its previous CRA public evaluation, dated October 2010. In particular, PWB's ratings on the Lending Test and the Investment Test improved from "Low Satisfactory" to "High Satisfactory," and its rating on the Service Test improved from "Low Satisfactory" to "Outstanding."

Examiners found that PWB's responsiveness to the credit needs of its assessment areas was good. Examiners noted that a substantial majority of the bank's loans were originated within the bank's assessment areas and the distribution of borrowers reflected adequate penetration among business customers of different revenue sizes, given the bank's primary lending focus on small- and medium- sized businesses. Examiners also noted that the geographic distribution of loans reflected good penetration throughout the assessment areas. PWB also exhibited adequate penetration among business customers of different revenue sizes, and PWB's origination of small business loans to businesses with annual revenue under $1 million was similar to or better than peer banks serving the same assessment areas. FDIC examiners also noted that while PWB made limited use of innovative and/or flexible lending practices, the bank made a relatively high level of community development loans and had a record of serving the credit needs of the most economically disadvantaged areas, low-income individuals, and/or very small businesses. Moreover, examiners found that the relatively high level of community development loans made by PWB addressed affordable housing, community services, economic development, and revitalization aspects of community development lending.

Examiners found that PWB had a significant level of qualified community development investments and grants, and particularly those that are not routinely provided by private investors. Examiners found that PWB was a leader for community development invest-

[28] Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.,* 12 CFR 228.22(b)(3).

[29] The PWB Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners evaluated 2012 and 2013 CRA small business loan data collected and reported and 2014 CRA small business loan data collected through June 30, 2014. The evaluation period for community development loans, innovative/flexible components of the Lending Test, community development investments, and services was October 18, 2010, through October 27, 2014. Full-scope evaluation procedures were performed for the bank's Los Angeles and San Diego assessment areas. Limited scope evaluation procedures were performed for the bank's San Luis Obispo, Santa Barbara, San Francisco, Fresno, Kern, and Kings-Tulare assessment areas.

ments and grants. Examiners also found that PWB's performance exhibited good responsiveness to credit and community economic development needs based on the opportunities for such investments in its assessment areas. Examiners noted that PWB made significant use of innovative and/or complex investments to support community development initiatives. Examiners also noted that an overwhelming majority of PWB's equity investments supported affordable housing.

Examiners found PWB to be a leader in providing community development services and exceeded other regional banks in terms of both the number of organizations served and the number of hours provided. Examiners observed that the bank's delivery systems were accessible to all portions of its assessment areas. Moreover, the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and/or to LMI individuals.[30] Of the 46 branches closed during the review period, 23 were consolidated with existing branches located within close proximity to their previous location, three were relocated, 10 were sold to another financial institution, and 10 were permanently closed. Of the 10 permanently closed, two were in moderate-, four were in middle-, and four were in upper-income census tracts.

CRA Performance of Square 1 Bank. Square 1 Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of October 17, 2013 ("Square 1 Evaluation"). The Square 1 Evaluation was conducted pursuant to an FDIC approved CRA strategic plan, which specified measurable goals for meeting the lending, investment, and service needs of the bank's assessment area.[31] The Square 1 Evaluation included a full-scope review of the bank's performance toward meeting the strategic plan goals in the defined assessment areas of Wake and Durham Counties, North Carolina, for plan years 2010, 2011, and 2012 under strategic plans approved by the FDIC in December 2008 and December 2011.

Square 1 Bank exceeded all but two of the "Outstanding" strategic plan goals in each area in 2010, 2011, and 2012 combined. Examiners noted that, although Square 1 Bank's 2010 CRA loans and investments and 2012 service hours fell slightly below its "Satisfactory" goals, the bank's performance exceeded, often by significant margins, every other goal for "Outstanding" performance established under its plan. For example, Square 1 Bank's CRA grants were more than three times its goal for "Outstanding" performance in each year, and its 2012 CRA loans and investments exceeded its goal for "Outstanding" by approximately 33 percent.

The FDIC has conducted annual updates on Square 1 Bank's compliance with its CRA Strategic Plan for 2013 and 2014. Examiners concluded that Square 1 Bank exceeded its goal for "Satisfactory" for CRA loans and investments and exceeded its goal for "Out-

[30] The FDIC will continue to review PWB's branch closing record in the course of conducting CRA performance evaluations. Moreover, federal law requires an insured depository institution to provide notice to the public and to the appropriate federal banking agency before closing a branch. Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the *Joint Policy Statement Regarding Branch Closings* (64 *Fed. Reg*. 34,844 (June 29, 1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal banking agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

[31] The CRA regulations provide that the appropriate federal banking agency will assess a bank's record of meeting the credit needs of its assessment areas under a strategic plan if, among other things, the bank invites public comment on the plan and the plan is approved by such agency. The FDIC approved Square 1 Bank's current strategic plan in December 2011, pursuant to 12 CFR 345.27.

standing" for both CRA grants and CRA service activity in each of the years 2013 and 2014.[32]

PWB's Efforts Since the PWB Evaluation and Plans for the Combined Bank. PacWest has represented that, since the PWB Evaluation was conducted, community reinvestment has remained a focus of the organization's banking activities. For example, since the time period covered by the PWB Evaluation, PWB has increased the percentage of its small business loans made to businesses with less than $1 million in gross annual revenues. PacWest represents that marketing efforts during the first and second quarters of 2015 have resulted in improved small business activity in the bank's rural markets. PacWest also represents that its current level of community development lending is on pace to exceed its performance during the time period covered by the PWB Evaluation and that PWB has significantly increased its investments and donations within its communities. Further, PacWest represents that the bank's investments and donations through the first six months of 2015 already exceed, by a wide margin, the annualized amount of the bank's investments and donations during the time period covered by the PWB Evaluation. PacWest also represents that it is on pace for its 2015 community development service hours to exceed its prior year by a substantial amount.

PacWest has also undertaken efforts to identify the credit needs of the communities served by Square 1 Bank through a review of the needs identified by local organizations, Square 1 Bank's CRA strategic plan, Square 1 Bank's CRA evaluation and the CRA evaluations of other banks operating in Square 1 Bank's community, population and demographic data of Durham and Raleigh communities, and periodic publications of the Federal Reserve Bank of Richmond. As part of these efforts, PacWest has engaged in in-person meetings with ten different community groups located in the communities served by Square 1 Bank to assess the needs of Square 1 Bank's community. Through these diligence efforts, PacWest identified a list of community needs with respect to credit and deposit products and services—e.g., loans to businesses with gross annual revenues of $1 million or less; loans to finance the creation and preservation of affordable housing; modification of loans on single-family dwellings; loans and investments that support economic development activities—in Square 1 Bank's current assessment area in Durham and Wake counties, North Carolina.

PacWest represents that, at the request of the FDIC, the company has developed a CRA plan for the combined bank with specific goals for qualifying CRA activities that reflect how the combined bank would meet the credit needs of its communities after consummation of the proposed transaction. For example, PacWest plans to go beyond Square 1 Bank's existing practices by initiating small business and community development lending in the North Carolina communities currently served by Square 1 Bank. Further, upon consummation of the proposal, PacWest will dedicate a full-time officer for community reinvestment matters in North Carolina reinforced by PWB's CRA resources in California.

The transaction is intended to combine the strengths of the two organizations to create a more diversified bank with greater geographic and product reach. The current suite of products and services offered by each of PWB and Square 1 Bank will continue to be offered by the combined organization.

Following consummation, Square 1 Bank would operate as a division of PWB. Given its business focus on lending to venture capital firms, Square 1 Bank historically has not

[32] A commenter argued that, although Square 1 Bank has provided grants to community groups in North Carolina and has satisfied the requirements of the CRA, the bank's grantmaking in its community does not benefit those most in need of reinvestment from banking institutions and does not meet the spirit of the CRA requirements.

offered consumer banking deposit, loan, or other products and has offered only limited small business products. As a division of PWB, Square 1 Bank would expand its suite of product and service offerings to include the broader array of products and services offered by PacWest, including, for example, personal loans, home equity lines of credit, automobile loans, and traditional banking products to commercial businesses.

As a division of PWB, Square 1 Bank would also offer a broader array of small business loan products such as real estate loans and equipment loans and leases. Customers of Square 1 Bank would have access to two new business products that offer overdraft protection and working capital for operations and expansions. These products were designed for small businesses in need of smaller lines of credit with lower fees and interest rates, as well as simpler application processes and underwriting requirements, than traditional business lines of credits.

C. Public Benefits of the Proposal

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. PacWest represents that the proposal would allow PacWest to offer increased products and services to customers of Square 1 Bank, which currently consist of venture capital and private equity funds. As noted, PWB would offer small business lines of credit, commercial real estate loans, equipment loans and leases, and PWB's full suite of retail banking products and services to Square 1 Bank customers.

Additionally, PacWest states that Square 1 Bank customers would have access to a larger network of branches and ATMs, and PacWest's customers would have expanded access to venture capital funding and investment advisory services. Further, the proposed acquisitions would create revenue enhancement and cost savings to the combined organization, which PacWest represents would provide it with greater resources to make more loans.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, information provided by PacWest, confidential supervisory information, and the public comments on the proposal. The Board has also consulted with and considered the views of the FDIC concerning the proposal and the comments objecting to the proposal. Based on that review, the Board concludes that the proposal would result in public benefits that outweigh the potential adverse effects and that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering proposals under section 3 and section 4(j) of the BHC Act.[33]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the merged firm and the incremental effect of the transaction on the systemic

[33] Sections 604(d) and (e) of the Dodd-Frank Act, amending 12 U.S.C. §§ 1842(c)(7) and 1843(j)(2)(A).

footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[34] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[35]

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation, PacWest would have approximately $19.3 billion in consolidated assets, and by any of a number of alternative measures of firm size, PacWest would not be likely to pose systemic risks. The Board generally presumes that a merger that results in a firm with less than $25 billion in total consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Acquisition of Nonbanking Companies

As noted, PacWest has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire certain Square 1 Financial nonbanking subsidiaries, which engage in financial and investment advisory activities that the Board has determined by regulation are so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the BHC Act.[36] The nonbanking subsidiaries to be acquired by PacWest relate to Square 1 Financial's investment in and sponsorship of a "fund of funds" that invests in U.S.-based venture capital investment funds. PacWest has committed to conduct these activities in accordance with the requirements and limitations of the BHC Act, including the limitations imposed by section 13 of the BHC Act, commonly referred to as the Volcker Rule.

In evaluating a proposal under section 4(j) of the BHC Act, the Board must determine that the proposed acquisition of nonbanking companies by PacWest "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[37]

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[34] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[35] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

[36] 12 CFR 225.28(b)(6).

[37] 12 U.S.C. § 1843(j)(2)(A).

The record indicates that consummation of the proposal would create a stronger and more diversified financial services organization and would expand services, product offerings, and geographic scope to current and future customers of PWB and Square 1 Bank, as well as merger-related cost savings to the combined organization. The record also reflects that the proposed nonbank acquisition within the framework of Regulation Y and Board precedent is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system. Based on all the facts of record, and for the reasons discussed above, the Board concludes that consummation of the proposal can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposals should be, and hereby are, approved.[38] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by PacWest with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or Federal Reserve Bank of San Francisco, acting under delegated authority.

By order of the Board of Governors, effective September 21, 2015.

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[38] Several commenters requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. The Board's regulations provide for a hearing on a notice filed 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 rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing would otherwise be necessary or appropriate. For these reasons, and based on all the facts of record, the Board determines that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposal are denied.

In addition, commenters requested an additional extension of the comment period for the proposal. The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. 12 CFR 262.25(b)(2). The commenters' requests for additional time do not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend the public comment period.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under Federal Reserve Act

Auburn State Bank
Auburn, Nebraska

Order Approving the Merger of Banks and the Establishment of a Branch
FRB Order No. 2015–22 (August 31, 2015)

Auburn State Bank ("Auburn Bank"), Auburn, Nebraska, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[1] ("Bank Merger Act") to merge with The Carson National Bank of Auburn ("Carson Bank"), Auburn, Nebraska. In addition, Auburn Bank has applied under section 9 of the Federal Reserve Act ("FRA")[2] to establish and operate a branch at the location of Carson Bank's sole office.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[3] The time for submitting comments has expired. Pursuant to the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The Board has considered the proposal and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

Auburn Bank and Carson Bank are under common control of the Grant family and have been since 1946.[4] Auburn Bank, with total assets of approximately $99.7 million, operates only in Nebraska. Auburn Bank is the 99th largest insured depository institution in Nebraska, controlling deposits of approximately $77.8 million, which represent less than 1 percent of the total amount of deposits in insured depository institutions in the state ("state deposits").[5]

Carson Bank, with total assets of approximately $71.8 million, operates only in Nebraska. Carson Bank is the 113th largest insured depository institution in Nebraska, controlling deposits of approximately $60.6 million, which represent less than 1 percent of the total amount of state deposits.

On consummation of the proposal, Auburn Bank would become the 61st largest insured depository institution in Nebraska, controlling deposits of approximately $138.4 million, representing less than 1 percent of the total amount of state deposits.

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1 12 U.S.C. § 1828(c).

2 12 U.S.C. § 321.

3 12 CFR 262.3(b).

4 Three siblings, James W. Grant III, Mary Kathleen Green, and Carol Sue Schulte, and their respective children control more than 87 percent of the voting shares of Auburn Bank and more than 95 percent of the voting shares of Carson Bank. Members of the Grant family have controlled more than 25 percent of the voting shares of Auburn Bank since 1946, and more than 25 percent of the voting shares of Carson Bank since 1935.

5 Asset data are as of December 31, 2014. Deposit data and state rankings are as of June 30, 2014. In this context, insured depository institutions include insured commercial banks, savings banks, and savings and loan associations.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[6] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that 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.[7]

Auburn Bank and Carson Bank compete in the Nemaha County banking market, which is defined as Nemaha County, Nebraska. In assessing the competitive effects of a proposed bank merger, the Board and the Department of Justice ("DOJ") review market shares and market concentration in banking markets in which the combined organization would operate after consummation of the proposal, as measured by the Herfindahl-Hirschman Index ("HHI"), under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines").[8] Under the DOJ Bank Merger Guidelines, affiliates are treated as a single entity. Under this analysis, a merger of affiliated banking institutions does not result in a change to the calculation of market share or market concentration as measured by the HHI.

In reviewing past proposals involving affiliated banking organizations, the Board generally has considered the competitive effects of a proposal at the time the banking organizations came under common control.[9] In reviewing past proposals, the Board has also considered whether the banking organizations became affiliated prior to 1950, when the Clayton Antitrust Act was first extended to bank mergers.[10] In those cases, the Board has considered whether the banking organizations were small in absolute size at the time of the affiliation and other factors.[11]

In this case, Auburn Bank and Carson Bank have been affiliated for 69 years, well before the antitrust laws were applied to bank mergers and, to date, the affiliation has not been challenged under antitrust laws by federal or state authorities. At the time of the affiliation, the Clayton Antitrust Act did not extend to bank mergers, and neither the Bank Merger Act nor the Bank Holding Company Act, which both include antitrust provisions, had been enacted. Thus, the original affiliation did not represent an attempt to evade the anti-

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6 12 U.S.C. § 1828(c)(5)(A).

7 12 U.S.C. § 1828(c)(5)(B).

8 Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that the DOJ Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

9 *See, e.g., LBT Bancshares, Inc.*, 90 *Federal Reserve Bulletin* 485 (2004); *Mid-Nebraska Bancshares, Inc.*, 64 *Federal Reserve Bulletin* 589 (1978), *aff'd*, 627F.2d 266 (D.C. Cir. 1980); *Mahaska Investment Co.*, 63 *Federal Reserve Bulletin* 579 (1977).

10 The Clayton Antitrust Act was first applied to bank mergers with enactment of the Celler-Kefauver Antimerger Act of 1950. *See* Law of December 29, 1950, ch. 1184, 64 Stat. 11251126 (current version at 15 U.S.C. § 18) (subjecting mergers to scrutiny under the Clayton Antitrust Act). The laws were extended with enactment of the Bank Merger Act of 1960. *See* Bank Merger Act, Pub. L. No. 86-463, 74 Stat. 129 (1960) (requiring the Board to consider the competitive effects of proposed bank mergers).

11 *See Victoria Bankshares, Inc.*, 70 *Federal Reserve Bulletin* 229, 230 (1984) ("*Victoria Order*"); *Shickley State Company*, 70 *Federal Reserve Bulletin* 360 (1984); *First Monco Bancshares, Inc.*, 69 *Federal Reserve Bulletin* 293 (1983); *Texas East BanCorp*, 69 *Federal Reserve Bulletin* 636 (1983) ("*Texas Order*").

trust laws or the Bank Merger Act. In 1946, Auburn Bank controlled approximately $2.2 million in deposits, while Carson Bank controlled approximately $2.9 million in deposits, which were both well below the mean size for all commercial banks in the United States at that time.[12]

The DOJ has conducted a review of the competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal. Based on all the facts of record, including the longstanding affiliation of Auburn Bank and Carson Bank, the fact that the affiliation was established prior to the application of the antitrust laws to bank mergers, the lack of any previous challenge to the affiliation of Auburn Bank and Carson Bank on competitive grounds, and the small absolute size of both institutions, both at the time of their affiliation in 1946 and now, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Nemaha banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing this proposal under the Bank Merger Act, the Board has considered the financial and managerial resources and future prospects of the institutions involved. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

Auburn Bank is well capitalized and would remain so on consummation of the proposal. Carson Bank would be merged into Auburn Bank. The asset quality, earnings, and liquidity of Auburn Bank are consistent with approval, and Auburn Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of Auburn Bank's and Carson Bank's operations. Future prospects are considered consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of Auburn Bank and has reviewed the examination records of Auburn Bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences with Auburn Bank and the organization's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws. The Board also has considered Auburn Bank's plans for implementing the proposal. Auburn Bank is considered to

[12] At the time, the mean size for all commercial banks in the United States was $10.3 million. *See, e.g., Victoria Order* at 230 (institutions controlled $2.4 million and $1.4 million in deposits, respectively); *Texas Order* at 636 (institutions controlled $7.1 million and $1.9 million in deposits, respectively). At the time of their affiliation in 1946, Auburn Bank and Carson Bank were the two largest of five depository institutions in Nemeha County, with market shares of 31 and 41 percent, respectively, and a combined market share of 72 percent of deposits. Currently, Auburn Bank and Carson Bank control market shares of 33.7 percent and 26.3 percent, respectively, and the combined entity would control a market share of 60 percent of deposits.

be well managed, and its board of directors and senior management have substantial banking experience. Auburn Bank would operate the acquired branch of Carson Bank under its existing policies and procedures, which are considered to be satisfactory. In addition, Auburn Bank's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Auburn Bank, as well as the records of effectiveness of Auburn Bank and Carson Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[13] In addition, the Board considers the banks' overall compliance record, recent fair lending examinations, and other supervisory assessments; the supervisory views of examiners; and other supervisory information. The Board may also consider the acquiring institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[14] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.[15] In addition, fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board has considered all the facts of record, including reports of examination of CRA performance for Auburn Bank and Carson Bank, the fair lending and compliance records of both banks, confidential supervisory information, and information provided by Auburn Bank.

A. Record of Performance under the CRA

The Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[16] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[17] An institution's

[13] 12 U.S.C. § 2901 *et seq*.

[14] 12 U.S.C. § 2901(b).

[15] 12 U.S.C. § 2903.

[16] *See Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

[17] 12 U.S.C. § 2906.

most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply the small bank lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The institution's lending performance is based on the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, and qualified investments; the percentage of loans and other lending-related activities located in the institution's assessment areas; the institution's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of the institution's loans; and the institution's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. Consequently, the Board considers the CRA rating to be an important indicator, when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

CRA Performance of Auburn Bank. Auburn Bank was assigned an overall "Satisfactory" rating by the Federal Reserve Bank of Kansas City ("Reserve Bank") at its most recent CRA performance evaluation, as of April 9, 2012 ("Auburn Bank Evaluation").[18] Examiners found that Auburn Bank's loan-to-deposit ratio reflected a reasonable effort to extend credit, given the bank's size, financial condition, the competitive lending market, and the credit needs of the assessment area. Examiners concluded that the bank's lending within its assessment area, including its distribution of lending to borrowers of different income levels and to farms of different revenue sizes, was reasonable. In evaluating Auburn Bank's performance, examiners found that Auburn Bank had a satisfactory record of meeting the credit needs of its assessment area, including those of low- and moderate-income families.

CRA Performance of Carson Bank. Carson Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency as of December 2, 2013 ("Carson Bank Evaluation").[19] Examiners found that Carson Bank's average loan-to-deposit ratio was reasonable given economic and demographic factors, and the bank originated a majority of its loans inside the assessment area. Examiners noted that Carson Bank's community development activities demonstrated good responsiveness to community development needs in its assessment area.

B. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. In this regard, Auburn Bank has represented that the proposal would provide customers of the combined organization with access to an expanded branch network and would offer additional products and services not currently offered to Carson customers.

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[18] The Auburn Bank Evaluation was conducted using the Small Institution CRA Examination Procedures. Examiners reviewed the bank's average loan-to-deposit ratio since the prior CRA examination dated February 4, 2008; a statistical sample of agricultural lending activity from September 2011 through March 2012; and a statistical sample of the bank's residential real estate lending activity from March 2011 through March 2012. The Auburn Bank Evaluation reviewed the bank's Nemaha County assessment area.

[19] The Carson Bank Evaluation was also conducted using the Small Institution CRA Examination Procedures. Examiners reviewed the bank's agricultural lending activity from May 27, 2008, through December 2, 2013. The Carson Bank Evaluation reviewed the bank's Nemaha County assessment area.

These products and services include internet bill pay, mobile banking, and remote deposit capture. Auburn Bank has also represented that customers of the combined organization would benefit from a higher legal lending limit following the merger.

C. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, and information provided by Auburn Bank. Based on that review, the Board concludes that the proposal would result in public benefits and that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[20]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[21] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[22]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Auburn Bank would have approximately $171.5 million in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than $2 billion in assets, or that results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

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[20] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

[21] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[22] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

Establishment of a Branch

Auburn Bank has applied under section 9 of the FRA to establish a branch at the current location of Carson Bank,[23] and the Board has considered the factors it is required to consider when reviewing an application under that section.[24] Specifically, the Board has considered Auburn Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by Auburn Bank with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

Acquisition of Carson Bank may not be consummated before the 15th calendar day after the effective date of this order or 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 Reserve Bank acting pursuant to delegated authority.

By order of the Board of Governors, effective August 31, 2015.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[23] Carson Bank's main office and only location is 2301 Dahlke Avenue, Auburn, Nebraska 68305.
[24] 12 U.S.C. § 322; 12 CFR 208.6.

Federal Reserve
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