



Federal Reserve Bulletin 2016 Compilation



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM



Federal Reserve Bulletin

2016 Compilation

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Federal Reserve BULLETIN

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

Residential Mortgage Lending from 2004 to 2015: Evidence from the Home Mortgage Disclosure Act Data

Neil Bhutta 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 2015 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

¹ The 2015 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) 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.

gets extended each year, who obtains such credit, and which institutions provide such credit.

In 2015, house prices continued their upward trend evident since 2012, and mortgage interest rates remained low, although slightly above the historical lows reached in late 2012 and early 2013. Mortgage credit conditions continued to slowly ease, but credit remained more difficult to obtain for individuals with lower credit scores. Reports throughout the year from the Senior Loan Officer Opinion Survey on Bank Lending Practices indicate that several large banks relaxed their credit requirements, on net, for mortgages that were eligible for purchase by the government-sponsored enterprises (GSEs) or that met the Consumer Financial Protection Bureau's standards for qualified mortgages.⁴ Growth in new housing construction continued at a moderate pace.⁵

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.⁶ Some of the key findings are as follows:

1. The number of mortgage originations in 2015 rose 22 percent, to 7.4 million from 6.1 million in 2014. For loans secured by one- to four-family properties, growth was strong in both home-purchase originations—which increased to 3.7 million from 3.2 million in 2014—and refinance originations—which increased to 3.2 million from 2.4 million in 2014.
2. The nonconventional share (that is, loans with mortgage insurance from the Federal Housing Administration (FHA) or guarantees from the Department of Veterans Affairs (VA), the Farm Service Agency (FSA), or the Rural Housing Service (RHS)) of first-lien home-purchase loans for one- to four-family, owner-occupied, site-built (that is, not manufactured) properties stood at about 39 percent in 2015, up from 36 percent in 2014 and down from a peak of 54 percent in 2009. The rise in the nonconventional share in 2015 reflects an increase in FHA lending after the FHA significantly reduced the annual mortgage insurance premium (MIP) it 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 2015. The HMDA data indicate that 5.5 percent of such loans went to black borrowers, up from 5.2 percent in 2014, while 8.3 percent went to Hispanic white borrowers, up from 7.9 percent in 2014, building on gains both groups experienced from 2013 to 2014. The share of home-purchase loans to low- or moderate-income (LMI) borrowers increased slightly to 28 percent in 2015 from 27 percent in 2014.
4. In 2015, 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 2015. For example, while small banks and credit unions accounted for about 18 percent of conventional home-purchase loans, they originated about 47 percent of higher-priced conventional home-purchase loans.

⁴ The survey is available on the Board's website at www.federalreserve.gov/boarddocs/snloansurvey.

⁵ For more information on credit and economic conditions during 2015, see Board of Governors of the Federal Reserve System (2016), *Monetary Policy Report* (Washington: Board of Governors, February 10), www.federalreserve.gov/monetarypolicy/mpr_default.htm.

⁶ Some lenders file amended HMDA reports, which are not reflected in the initial public data release. The data used to prepare this article are drawn from the initial public release for 2015 and from amended HMDA data for years prior to that. Consequently, numbers in this article for the years 2014 and earlier may differ somewhat from numbers calculated from the public release files.

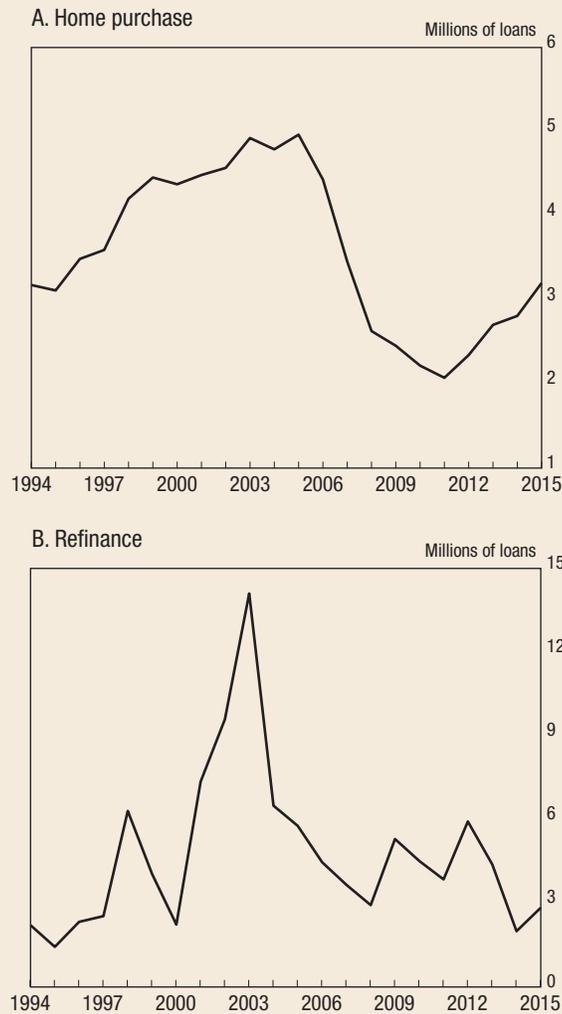
- The share of mortgages originated by nondepository, independent mortgage companies has increased sharply in recent years. In 2015, this group of lenders accounted for 50 percent of first-lien owner-occupant home-purchase loans, up 3 percentage points over 2014. Independent mortgage companies also originated 48 percent of first-lien owner-occupant refinancing loans, an increase of 6 percentage points from 2014. Both levels are higher than at any point since at least 1995.

Mortgage Applications and Originations

In 2015, 6,913 institutions reported data on nearly 12.1 million home mortgage applications (including about 2 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 7.4 million originations. The number of originations in 2015 was up from 6 million originations in 2014 (table 1).

Refinance mortgages for one- to four-family properties increased by 860,000, or 36 percent, from 2014 to 2015 following declines in the previous two years. One- to four-family home-purchase originations grew by almost 421,000, or 13 percent, from 2014. Most one- to four-family home-purchase loans are first liens for owner-occupied properties. In the past four years, such loans have grown over 50 percent, from less than 2.1 million in 2011 to 3.2 million in 2015. However, the volume of such home-purchase originations still stands well below its peak in 2005 and is near levels observed in the mid-1990s (figure 1).⁷ The number of first-lien home-purchase loans for non-owner-occupied properties—that is, purchases of rental properties, vacation properties, and second homes—increased from 378,000 in 2014 to 403,000 in 2015.

Figure 1. Number of home-purchase and refinance mortgage originations reported under the Home Mortgage Disclosure Act, 1994–2015



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

⁷ 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 2015 does not change the conclusion that home-purchase lending in 2015 was similar to that in the mid-1990s, particularly 1994.

Table 1. Applications and originations, 2004–15

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	2015
1–4 Family												
Home purchase												
Applications	9,804	11,685	10,929	7,609	5,060	4,217	3,848	3,650	4,023	4,586	4,670	5,181
Originations	6,437	7,391	6,740	4,663	3,139	2,793	2,547	2,430	2,742	3,139	3,241	3,662
First lien, owner occupied	4,789	4,964	4,429	3,454	2,628	2,455	2,218	2,073	2,343	2,703	2,809	3,200
Site-built, conventional	4,107	4,425	3,912	2,937	1,581	1,089	1,005	999	1,251	1,630	1,738	1,894
Site-built, nonconventional	553	411	386	394	951	1,302	1,151	1,019	1,033	1,007	1,003	1,230
FHA share (percent)	74.6	68.6	66.0	65.8	78.9	77.0	77.4	70.9	68.0	62.8	58.3	64.6
VA share (percent)	21.6	26.7	29.0	27.1	15.2	13.9	15.2	18.2	19.9	24.2	28.3	26.1
FSA/RHS share (percent)	3.9	4.7	5.0	7.1	5.9	9.0	7.4	10.9	12.0	13.1	13.4	9.4
Manufactured, conventional	106	100	101	95	68	43	44	40	44	51	51	56
Manufactured, nonconventional	24	27	30	29	28	21	17	15	14	14	16	20
First lien, non-owner occupied	857	1,053	880	607	412	292	285	314	355	388	378	403
Junior lien, owner occupied	738	1,224	1,269	552	93	44	42	41	43	46	53	58
Junior lien, non-owner occupied	53	150	162	50	6	2	2	1	1	1	2	2
Refinance												
Applications	16,085	15,907	14,046	11,566	7,805	9,983	8,433	7,422	10,526	8,564	4,527	5,940
Originations	7,591	7,107	6,091	4,818	3,491	5,772	4,969	4,330	6,668	5,141	2,368	3,228
First lien, owner occupied	6,497	5,770	4,469	3,659	2,934	5,301	4,516	3,856	5,930	4,393	1,999	2,841
Site-built, conventional	6,115	5,541	4,287	3,407	2,363	4,264	3,835	3,315	4,971	3,634	1,607	2,152
Site-built, nonconventional	297	151	110	180	506	979	646	508	917	715	362	658
FHA share (percent)	68.3	77.3	87.5	91.5	92.2	83.7	79.3	63.2	61.2	61.2	47.6	59.5
VA share (percent)	31.4	22.4	12.3	8.3	7.6	15.9	20.3	35.9	37.8	37.6	51.9	40.3
FSA/RHS share (percent)	.2	.3	.2	.1	.2	.4	.4	.9	.9	1.2	.5	.3
Manufactured, conventional	77	70	60	56	42	36	25	25	31	32	22	21
Manufactured, nonconventional	7	8	12	16	22	22	10	9	11	12	8	10
First lien, non-owner occupied	618	582	547	474	330	350	359	394	660	673	309	328
Junior lien, owner occupied	464	729	1,036	661	219	115	88	74	73	70	56	55
Junior lien, non-owner occupied	13	25	39	23	9	7	6	5	5	5	4	4
Home improvement												
Applications	2,200	2,544	2,481	2,218	1,413	832	670	675	779	833	842	921
Originations	964	1,096	1,140	958	573	390	341	335	382	425	409	474
Multifamily¹												
Applications	61	58	52	54	43	26	26	35	47	51	46	52
Originations	48	45	40	41	31	19	19	27	37	40	35	41
Total applications	28,151	30,193	27,508	21,448	14,320	15,057	12,977	11,782	15,375	14,034	10,085	12,094
Total originations	15,040	15,638	14,011	10,480	7,234	8,974	7,876	7,122	9,828	8,744	6,054	7,404
Memo												
Purchased loans	5,142	5,868	6,236	4,821	2,935	4,301	3,229	2,939	3,163	2,788	1,802	2,102
Requests for preapproval ²	1,068	1,260	1,175	1,065	735	559	445	429	474	474	497	531
Requests for preapproval that were approved but not acted on	167	166	189	197	99	61	53	55	64	69	64	63
Requests for preapproval that were denied	171	231	222	235	177	155	117	130	149	123	127	114

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.

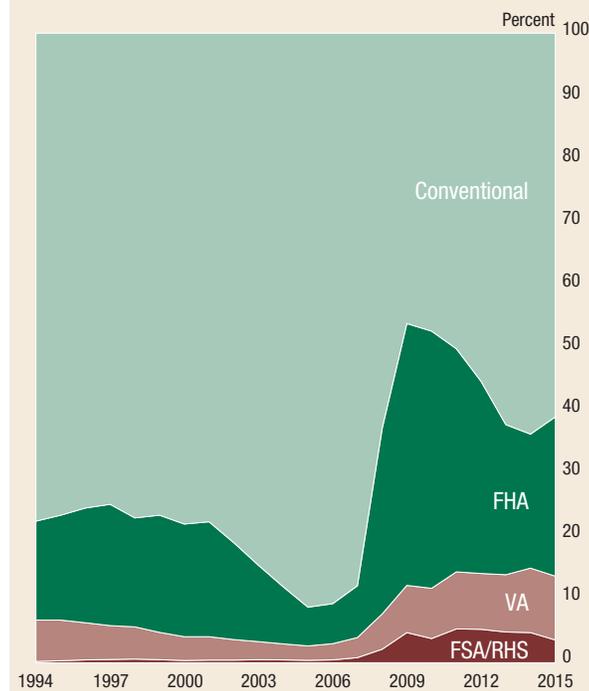
Source: Here and in subsequent tables and figures, except as noted, Federal Financial Institutions Examination Council, data reported under the Home Mortgage Disclosure Act (www.ffiec.gov/hmda).

In table 1, the volume of first-lien lending for owner-occupied properties is further disaggregated by loan and property type. (Versions of table 1 containing loan counts and dollar values by month are available in the Excel file posted online with this 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).⁸ As noted earlier, nonconventional lending involves loans with mortgage insurance or other 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 GSEs Fannie Mae and Freddie Mac.

Nonconventional loans are more common for home purchases than for 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 nearly 23 percent in 2015, while conventional loans rose about 9 percent. The nonconventional share of first-lien home-purchase loans for one- to four-family, owner-occupied, site-built properties stood at about 39 percent in 2015, up slightly from 36 percent in 2014 but down significantly from its peak of 54 percent in 2009 in the wake of the financial crisis (figure 2).⁹

Figure 2 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 been steadier. One factor that may help explain the fluctuations in the FHA share concerns changes in the upfront and annual MIPs that the FHA charges borrowers. For example, between October 2010 and April 2013, the annual MIP for a typical home-purchase loan more than

Figure 2. Nonconventional share of home-purchase mortgage originations, 1994–2015



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).

⁸ 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.

⁹ 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.

doubled, from 0.55 percent of the loan amount to 1.35 percent.¹⁰ In January 2015, the annual MIP was reduced to 0.85 percent for most borrowers, and the FHA share of home-purchase loans increased. In a supplementary analysis, we find that the reduced annual MIP increased the total number of home-purchase originations to lower-credit score, high-LTV borrowers.¹¹

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.¹² 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 reported roughly 531,000 preapproval requests; roughly 67 percent of these requests turned into an actual loan application for a specific property in 2015.¹³ Table 1 also shows that, for 2015, lenders purchased 2.1 million loans from other institutions.

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 (and contains information by type of loan rather than by applicant or neighborhood characteristic), 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 80 percent of all HMDA originations in 2015.

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 5.5 percent in 2015, up from 5.2 percent in 2014 but still lower than its peak of 8.7 percent in 2006.

¹⁰ 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/research/publication/housing-finance-glance-monthly-chartbook-1. 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.

¹¹ See Neil Bhutta and Daniel Ringo (2016), "Changing FHA Mortgage Insurance Premiums and the Effects on Lending," FEDS Notes (Washington: Board of Governors of the Federal Reserve System, September 29), <https://www.federalreserve.gov/econresdata/notes/feds-notes/2016/changing-fha-mortgage-insurance-premiums-and-the-effects-on-lending-20160929.html>.

¹² 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.

¹³ Reporters can, but are not required to, report preapproval requests that they approve but are not acted on by the potential borrower.

Table 2. Distribution of home loans, by purpose of loan, 2004–15

Percent except as noted

Characteristic of borrower and of neighborhood	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
A. Home purchase												
Borrower race and ethnicity¹												
Asian	4.8	5.0	4.5	4.5	4.9	5.3	5.5	5.2	5.3	5.7	5.4	5.3
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	5.5
Hispanic white	7.6	10.5	11.7	9.0	7.9	8.0	8.1	8.3	7.7	7.3	7.9	8.3
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	68.1
Other minority ²	1.4	1.3	1.1	1.0	.9	.9	.9	.8	.8	.7	.8	.8
Joint	2.3	2.3	2.3	2.5	2.8	2.8	2.7	2.8	2.9	3.1	3.3	3.5
Missing	19.8	11.5	10.5	10.1	9.6	9.3	9.1	8.6	8.2	8.2	8.3	8.5
All	100	100	100	100	100	100	100	100	100	100	100	100
Borrower income³												
Low or moderate	27.7	24.6	23.6	24.7	28.1	36.7	35.5	34.4	33.3	28.5	27.1	28.0
Middle	26.9	25.7	24.7	25.2	27.1	26.7	25.6	25.2	25.2	25.2	25.6	26.1
High	41.4	45.5	46.7	47.0	43.1	34.7	37.4	38.8	40.0	44.7	46.1	44.8
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	1.2
All	100	100	100	100	100	100	100	100	100	100	100	100
Neighborhood income⁴												
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	13.5
Middle	48.7	49.2	49.5	49.6	49.8	50.2	49.4	49.4	43.6	43.7	44.6	45.2
High	35.8	34.7	33.7	35.1	35.9	35.8	37.7	39.1	43.2	43.2	41.8	41.0
All	100	100	100	100	100	100	100	100	100	100	100	100
B. Refinance												
Borrower race and ethnicity¹												
Asian	3.5	2.9	3.0	3.1	3.1	4.1	5.2	5.4	5.5	4.7	4.3	5.0
Black or African American	7.4	8.3	9.6	8.4	6.0	3.5	2.9	3.1	3.3	4.4	5.4	5.0
Hispanic white	6.2	8.6	10.1	8.7	5.3	3.2	3.0	3.3	3.9	5.0	6.2	6.3
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	67.2
Other minority ²	1.4	1.4	1.3	1.1	.8	.6	.5	.6	.6	.7	.9	.8
Joint	2.1	2.1	1.9	2.0	2.2	2.6	2.7	2.8	3.1	3.1	3.2	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	12.4
All	100	100	100	100	100	100	100	100	100	100	100	100
Borrower income³												
Low or moderate	26.2	25.5	24.7	23.3	23.5	19.6	19.0	19.2	19.6	21.1	22.1	19.0
Middle	26.3	26.8	26.1	25.6	25.5	22.5	22.5	21.3	21.8	21.7	21.9	21.0
High	38.8	40.8	43.7	46.1	44.8	45.8	49.6	48.1	47.7	46.3	44.9	45.1
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	11.1	14.9
All	100	100	100	100	100	100	100	100	100	100	100	100
Neighborhood income⁴												
Low or moderate	15.3	16.5	17.9	16.1	11.9	7.7	7.2	7.4	10.1	12.1	13.3	12.3
Middle	50.0	51.3	52.0	52.2	51.9	47.5	46.1	46.1	41.9	43.7	45.2	43.8
High	33.9	31.6	29.4	31.0	35.2	43.5	46.0	46.0	47.6	43.9	41.2	43.7
All	100	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	2,638	2,741	3,124
Number of refinance loans (thousands)	6,412	5,692	4,397	3,588	2,869	5,243	4,481	3,823	5,888	4,349	1,969	2,810

Note: First-lien mortgages for one- to four-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).

Similarly, the Hispanic white share of home-purchase loans was 8.3 percent in 2015, up from 7.9 percent in 2014, although well below the 11.7 percent share seen in 2006.¹⁴ In a supplementary analysis, we use HMDA data matched to credit record data to better understand the decline in minority market shares since 2006, and we find that sharp reductions in lending to individuals with low credit scores can explain much of the decrease in black and Hispanic white market shares.¹⁵

In terms of borrower income, the share of home-purchase loans to LMI borrowers rose from 27.1 percent in 2014 to 28.0 percent in 2015.¹⁶ In accordance with definitions used by the federal bank supervisory agencies in enforcement of the Community Reinvestment Act, 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.¹⁷

From 2014 to 2015, the share of home-purchase loans originated in high-income neighborhoods (census tracts) decreased slightly from 41.8 percent to 41.0 percent.¹⁸ LMI and middle-income tracts both saw small gains. In table 2, 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 census data and 2006–10 American Community Survey data, whereas the 2004–11 data relied on 2000 census income and population data.¹⁹ In addition, the Office of Management and Budget published new metropolitan area delineations in 2014, so caution should be exercised in comparing relative income measurements between 2013 and later years.

Average Loan Size by Demographic Group and Jumbo Lending

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, and then beginning to recover since about 2011. The trends differ substantially by race and ethnicity, however. The average home-purchase loan to a Hispanic white borrower in 2015 was for \$209,000, up from \$198,000 in 2014 but still well below the peak of \$238,000 in 2006. In contrast, the average home-purchase loan amount for a non-Hispanic white borrower was

¹⁴ The bottom of table 2 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. For example, the number of home-purchase loans to Asians in 2015 was about 164,000, derived by multiplying 3.1 million loans by 5.3 and then dividing by 100.

¹⁵ See Neil Bhutta and Daniel Ringo (2016), “Credit Availability and the Decline in Mortgage Lending to Minorities after the Housing Boom,” FEDS Notes (Board of Governors of the Federal Reserve System, September 29), <https://www.federalreserve.gov/econresdata/notes/feds-notes/2016/credit-availability-and-the-decline-in-mortgage-lending-to-minorities-after-the-housing-boom-20160929.html>.

¹⁶ 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 2015, about 89 percent of refinance loans for which borrower income was not reported were nonconventional.

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

Table 3. Average value of home loans, by purpose of loan, 2004–15

Thousands of dollars, nominal, except as noted

Characteristic of borrower and of neighborhood	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
A. Home purchase												
Borrower race and ethnicity¹												
Asian	280	316	326	334	299	276	293	291	304	328	344	360
Black or African American	166	183	197	197	184	172	174	174	179	193	199	209
Hispanic white	189	224	238	220	186	168	168	168	176	190	198	209
Non-Hispanic white	193	211	216	222	209	195	204	204	213	226	231	239
Other minority ²	206	240	257	245	216	196	201	198	206	219	229	241
Joint	233	255	261	269	255	248	263	261	274	289	293	303
Missing	216	248	261	280	265	242	256	262	279	298	293	303
Borrower income³												
Low or moderate	114	116	117	123	128	129	128	125	131	132	132	141
Middle	165	170	170	176	182	187	189	184	192	194	193	204
High	281	306	313	317	297	291	303	302	313	323	328	340
Income not used or not applicable	208	235	254	266	218	195	214	225	233	260	273	315
Neighborhood income⁴												
Low or moderate	159	180	189	188	175	160	164	163	158	171	178	188
Middle	172	190	197	196	186	174	177	173	178	191	196	206
High	258	284	294	301	277	257	270	271	282	300	306	316
Memo												
All home-purchase loans	201	221	228	232	217	202	210	210	221	235	240	249
Conventional jumbo loans (percent of originations) ⁵	11.2	12.7	9.4	6.8	2.3	1.3	1.7	2.2	2.9	4.0	4.8	5.3
Conventional jumbo loans (percent of loaned dollars) ⁵	29.4	32.5	26.8	21.9	10.1	6.2	7.4	9.5	11.9	14.5	16.5	17.3
B. Refinance												
Borrower race and ethnicity¹												
Asian	274	325	370	368	321	298	313	309	308	304	341	363
Black or African American	151	180	199	192	173	184	180	174	181	171	174	199
Hispanic white	178	219	252	244	193	190	191	183	190	180	190	214
Non-Hispanic white	180	205	221	222	205	209	210	208	212	206	216	239
Other minority ²	190	229	269	258	211	217	218	207	213	201	213	240
Joint	210	246	265	262	243	247	254	249	254	249	266	292
Missing	194	226	246	250	242	243	248	253	253	244	245	268
Borrower income³												
Low or moderate	114	124	124	126	129	138	133	128	135	128	123	136
Middle	162	181	183	181	180	185	179	174	182	171	174	193
High	256	294	320	311	275	268	274	280	277	276	301	324
Income not used or not applicable	150	178	240	240	194	204	203	185	212	193	198	231
Neighborhood income⁴												
Low or moderate	142	169	188	185	164	172	172	167	163	153	157	182
Middle	158	184	201	198	182	184	182	175	181	173	180	201
High	245	282	313	311	272	259	265	269	269	270	290	311
Memo												
All refinance loans	185	212	232	231	212	216	220	218	221	213	222	247
Conventional jumbo loans (percent of originations) ⁵	9.2	11.4	10.2	7.5	2.0	.9	1.6	2.4	2.2	3.0	4.2	4.9
Conventional jumbo loans (percent of loaned dollars) ⁵	25.8	29.6	28.3	23.0	9.0	4.1	6.9	10.7	9.1	12.7	16.5	16.8

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 4.⁵ Fraction of loans that are conventional and have loan amounts in excess of the single-family conforming loan-size limits for eligibility for purchase by the government-sponsored enterprises.

about \$239,000 in 2015, higher than the pre-crisis peak in 2007 of about \$222,000. Asian borrowers took out the largest loans, averaging \$360,000 for home purchases and \$363,000 for refinancings in 2015, whereas loans to black borrowers averaged \$209,000 for home purchases and \$199,000 for refinancings.²⁰

In terms of borrower income, for LMI borrowers, the average home-purchase loan amount increased to \$141,000 in 2015 from \$132,000 in 2014; it also increased by a similar magnitude for middle-income borrowers. High-income borrowers saw their average home-purchase loan value rise to \$340,000 in 2015 from \$328,000 in 2014. Average loan values increased across all borrower-income groups for refinance loans as well.

The increase in jumbo lending, coinciding with the general housing market recovery, continued in 2015. As table 3 shows, conventional jumbo loans—those with loan amounts in excess of the GSEs’ conforming loan limits and no other government guarantee—made up 5.3 percent of all first-lien home-purchase loans for owner-occupied, one- to four-family, site-built homes in 2015, up from 4.8 percent in 2014.²¹ Among refinance loans, the conventional jumbo fraction increased to 4.9 percent from 4.2 percent in 2014. Because of their larger size, jumbo loans make up a correspondingly larger share of the dollar volume of mortgages, accounting for 17.3 percent of home-purchase loans and 16.8 percent of refinance loans in 2015. Since the financial crisis, most new jumbo loans have been held in the originating bank’s portfolio, as the market for mortgage-backed securities without a government guarantee is thin.²²

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 2015, among home-purchase borrowers, 70 percent of blacks and 63 percent of Hispanic whites took out a nonconventional loan, whereas about 36 percent of non-Hispanic whites and just 17 percent of Asians did so. These numbers have declined from their peaks in 2009 and 2010, when well over three-fourths of blacks and Hispanic whites, and over one-half of non-Hispanic whites, took out nonconventional loans.

Nonconventional usage is also more prevalent for borrowers with lower incomes and in neighborhoods with lower incomes. In 2015, about 53 percent of LMI home-purchase borrowers and 50 percent of those borrowing to purchase homes in LMI neighborhoods used nonconventional loans, compared with 26 percent of high-income borrowers and 29 percent of borrowers in high-income neighborhoods. While black and Hispanic white borrowers tend to have lower incomes, on average, than non-Hispanic white borrowers, the previously mentioned racial and ethnic differences in nonconventional loan use persist

²⁰ Median loan amounts (not shown in tables) followed similar trends as average loan amounts.

²¹ A loan qualifies as jumbo in table 3 if the loan amount is above 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 2015, the general conforming loan-size limit was \$417,000, and the maximum high-cost area loan-size limit was \$625,500 (and 50 percent higher in Alaska, Hawaii, the U.S. Virgin Islands, and Guam). 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.

²² See Neil Bhutta, Jack Popper, and Daniel R. Ringo (2015), “The 2014 Home Mortgage Disclosure Act Data,” *Federal Reserve Bulletin*, vol. 101 (November), pp. 1–43, www.federalreserve.gov/pubs/bulletin/2015/default.htm.

Table 4. Nonconventional share of home loans, by purpose of loan, 2004–15

Percent except as noted

Characteristic of borrower and of neighborhood	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
A. Home purchase												
Borrower race and ethnicity¹												
Asian	2.9	1.8	2.1	2.6	13.4	26.1	26.6	25.8	21.9	16.1	14.7	16.6
Black or African American	21.7	14.3	13.6	21.7	64.1	82.0	82.9	80.3	77.2	70.8	68.0	70.2
Hispanic white	13.7	7.5	7.0	12.4	51.4	75.4	77.0	74.1	70.7	63.1	59.5	62.6
Non-Hispanic white	11.1	8.9	9.5	11.5	35.4	52.0	50.3	47.4	42.2	35.5	33.4	36.0
Other minority ²	14.0	9.3	9.4	14.8	48.4	67.6	68.8	65.9	62.2	55.5	53.9	55.1
Joint	16.9	12.8	14.4	17.2	46.4	59.4	56.3	53.6	48.9	42.1	41.3	43.7
Missing	11.3	5.1	5.7	8.8	32.7	50.6	49.4	45.9	39.4	31.9	32.2	35.0
Borrower income³												
Low or moderate	20.3	15.2	14.9	16.0	46.1	65.3	66.6	64.5	59.7	52.5	50.3	53.3
Middle	14.3	11.0	12.6	16.8	46.1	60.4	59.3	57.0	51.5	45.6	44.8	47.6
High	5.3	3.9	4.9	7.5	26.7	38.5	37.2	34.3	29.5	25.1	24.2	26.3
Neighborhood income⁴												
Low or moderate	15.8	9.7	9.6	13.8	45.5	64.4	65.1	61.2	57.9	49.9	48.0	50.3
Middle	14.1	10.2	10.8	14.2	42.7	59.8	59.4	56.9	52.0	44.7	43.0	45.6
High	7.1	5.4	6.1	7.6	27.4	43.4	42.0	39.5	34.6	28.2	26.1	28.9
Memo												
All borrowers	11.9	8.5	9.0	11.8	37.6	54.4	53.4	50.5	45.2	38.2	36.6	39.4
B. Refinance												
Borrower race and ethnicity¹												
Asian	1.2	.7	.6	1.0	4.6	5.7	4.7	4.3	5.9	6.7	6.8	9.8
Black or African American	11.1	5.8	4.4	10.2	39.2	53.8	42.0	37.8	38.6	37.1	39.1	49.4
Hispanic white	5.6	2.6	1.9	3.9	20.5	36.2	28.1	22.9	26.9	25.8	21.2	32.0
Non-Hispanic white	4.0	2.4	2.6	4.9	15.9	16.8	13.6	12.2	14.2	14.8	16.3	21.0
Other minority ²	5.5	3.4	2.4	4.9	20.0	28.3	23.3	21.9	25.5	24.9	25.0	32.6
Joint	7.5	3.7	3.4	6.2	19.5	21.1	16.6	16.3	20.1	20.5	25.5	28.0
Missing	4.2	1.9	1.7	4.1	18.7	19.0	12.5	13.6	16.5	16.7	21.4	25.5
Borrower income³												
Low or moderate	2.3	1.6	2.9	5.7	18.3	16.6	14.0	11.5	9.3	9.3	13.0	16.5
Middle	1.7	1.3	2.7	6.2	19.6	13.2	12.2	10.9	8.9	9.5	13.2	14.8
High	.8	.6	1.1	2.7	10.5	7.2	6.7	6.3	5.5	6.1	8.8	9.2
Neighborhood income⁴												
Low or moderate	5.9	3.2	2.9	6.3	24.6	31.3	23.1	19.7	22.2	22.1	22.4	29.5
Middle	5.2	3.0	2.9	5.8	20.2	22.3	17.5	16.1	18.4	19.0	20.9	26.8
High	2.9	1.7	1.6	3.0	11.3	12.1	10.0	9.3	11.7	12.4	14.5	18.4
Memo												
All borrowers	4.6	2.6	2.5	5.0	17.6	18.7	14.4	13.3	15.6	16.4	18.4	23.4

Note: First-lien mortgages for one- to four-family, owner-occupied, site-built homes. Excludes applications where no credit decision was made. 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.

within income groups.²³ 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.²⁴

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.²⁵ 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 such loans.²⁶

Denial Rates and Denial Reasons

In 2015, the overall denial rate on applications for home-purchase loans of 12.1 percent, as well as the denial rate for refinance loan applications of 27.4 percent, was somewhat lower than in 2014 (table 5).²⁷ 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 10.8 percent in 2015 was 7.7 percentage points lower than in 2006, while for nonconventional home-purchase loan applications, the denial rate of 13.9 percent in 2015 was 1.8 percentage points higher than in 2006. Variations 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 2015 than during the housing boom years, even though most measures of credit availability suggest that credit standards are tighter today.²⁸ 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 2015 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 23 percent for black borrowers, 17 percent for Hispanic white borrowers, 12 percent for Asian borrowers, 18 percent for other minority borrowers, and 9 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

²³ See Bhutta, Popper, and Ringo, “The 2014 Home Mortgage Disclosure Act Data,” in note 22.

²⁴ The reported nonconventional share of refinance loans is lower than the true share for the groups categorized 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.

²⁵ Findings of the Federal Reserve Board’s Survey of Consumer Finances for 2013 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, “2013 Survey of Consumer Finances,” webpage, www.federalreserve.gov/econresdata/scf/scfindex.htm.

²⁶ See, for example, Glenn B. Canner, Stuart A. Gabriel, and J. Michael Woolley (1991), “Race, Default Risk and Mortgage Lending: A Study of the FHA and Conventional Loan Markets,” *Southern Economic Journal*, vol. 58 (July), pp. 249–62.

²⁷ 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.

²⁸ 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.

Table 5. Denial rates, by purpose of loan, 2004–15

Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
A. Home purchase												
Conventional and nonconventional¹												
All applicants	14.4	16.0	18.0	18.7	18.0	15.5	15.6	15.8	14.9	14.4	13.2	12.1
Asian	13.7	15.9	16.9	17.5	19.2	16.3	15.8	16.5	15.8	15.3	14.0	12.6
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	20.8
Hispanic white	18.3	21.1	25.1	29.5	28.3	22.2	21.8	21.1	20.2	20.5	18.2	16.1
Non-Hispanic white	11.1	12.2	12.9	13.3	14.0	12.8	12.9	13.1	12.5	12.0	11.0	10.0
Other minority ²	19.4	20.8	24.0	26.7	25.5	21.2	21.9	20.9	20.8	21.2	18.9	17.2
Conventional only												
All applicants	14.6	16.3	18.5	19.0	18.3	15.8	15.2	15.1	13.6	12.9	11.8	10.8
Asian	13.7	16.0	17.1	17.5	19.1	15.8	14.8	15.5	14.4	14.2	13.1	11.9
Black or African American	25.0	27.8	31.9	35.7	37.6	35.8	33.6	33.2	32.0	28.5	24.7	23.3
Hispanic white	18.6	21.4	25.7	30.5	32.5	26.9	24.9	24.2	22.4	21.5	18.8	17.2
Non-Hispanic white	11.2	12.3	13.2	13.3	14.1	13.3	12.9	12.7	11.6	10.8	9.8	9.1
Other minority ²	19.7	21.2	24.8	27.8	29.0	25.9	28.0	24.6	23.6	22.5	20.1	18.3
Nonconventional only¹												
All applicants	13.3	12.5	12.1	16.2	17.4	15.3	16.0	16.5	16.3	16.8	15.7	13.9
Asian	12.6	11.6	10.6	15.5	20.2	17.7	18.6	19.3	20.2	20.6	18.8	16.1
Black or African American	17.7	16.8	16.2	22.8	25.3	22.6	22.7	23.9	24.0	24.1	21.8	19.7
Hispanic white	16.3	17.2	15.7	20.5	23.1	20.4	20.7	19.9	19.3	19.9	17.8	15.5
Non-Hispanic white	10.7	10.2	10.0	13.1	13.9	12.5	13.0	13.6	13.7	14.1	13.2	11.7
Other minority ²	16.8	16.3	15.2	18.6	20.9	18.7	18.7	18.8	18.9	20.1	17.7	16.3
B. Refinance												
Conventional and nonconventional¹												
All applicants	29.5	32.6	35.4	39.6	37.7	24.0	23.3	23.8	19.9	23.3	30.9	27.4
Asian	18.8	23.5	27.5	32.6	32.5	21.4	19.5	20.1	17.3	21.0	27.9	23.8
Black or African American	39.9	42.2	44.1	52.0	56.0	42.2	41.7	40.0	32.8	35.0	45.8	43.3
Hispanic white	28.7	30.1	33.2	43.0	49.1	36.4	33.4	33.2	27.5	29.6	36.7	32.6
Non-Hispanic white	24.1	26.9	30.1	33.7	32.2	20.7	20.6	21.3	17.8	20.5	27.5	24.1
Other minority ²	33.7	35.5	40.6	52.0	57.4	37.3	35.3	34.4	30.0	32.1	41.6	40.2
Conventional only												
All applicants	30.1	32.9	35.6	39.9	37.0	22.1	21.3	22.3	19.4	22.5	29.5	26.4
Asian	18.8	23.5	27.5	32.5	31.5	20.2	18.5	19.4	17.0	20.5	27.1	23.1
Black or African American	41.7	43.0	44.7	53.3	60.9	48.6	41.4	40.6	34.8	36.0	47.0	47.8
Hispanic white	29.3	30.2	33.3	43.2	50.2	38.9	33.6	33.5	28.9	30.6	37.3	34.7
Non-Hispanic white	24.6	27.1	30.4	33.9	31.5	19.1	18.9	20.1	17.4	19.9	26.1	23.2
Other minority ²	34.5	35.7	40.9	52.6	59.4	38.4	34.8	34.4	31.1	32.6	40.9	41.3
Nonconventional only¹												
All applicants	15.0	20.1	21.9	31.6	40.9	31.1	33.3	32.2	22.2	26.7	36.6	30.3
Asian	15.0	20.0	22.0	38.5	48.9	37.2	34.2	32.7	22.2	26.9	37.5	29.6
Black or African American	17.5	23.6	24.6	33.7	43.5	35.1	42.2	39.1	29.5	33.1	43.9	37.8
Hispanic white	15.7	23.6	26.3	34.6	43.4	31.4	33.0	32.3	23.3	26.6	34.5	27.7
Non-Hispanic white	12.0	17.6	19.7	28.3	36.1	27.4	29.3	29.0	19.7	23.8	33.7	27.3
Other minority ²	15.2	25.8	22.2	34.8	45.4	34.1	37.0	34.4	26.6	30.6	43.8	37.9

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 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.

credit risk that are not available in the HMDA data, such as credit history (including credit scores), ratio of total debt service payments to income (DTI), and LTV ratios. Differential costs of loan origination and the local competitive environment, as well as illegal discrimination, may also bear on the differences in pricing.

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.²⁹ 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 (as shown in table 6). Among denied first-lien applications for one- to four-family, owner-occupied, site-built properties in 2015, about 74 percent of denied home-purchase applications and about 60 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 sum across 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 applications, the DTI ratio and collateral are more likely to be cited as denial reasons 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 2015, credit history was cited as a denial reason for almost 27 percent of denied black applicants, 19 percent of denied Hispanic white applicants, 20 percent of denied non-Hispanic white applicants, and just 12 percent of denied Asian applicants. The DTI ratio was cited most often as a denial reason for Asian home-purchase applicants at 30 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 15 percent, compared with 11 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).³⁰ 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.³¹

²⁹ The Interagency Fair Lending Examination Procedures are available at www.ffiec.gov/PDF/fairlend.pdf.

³⁰ 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 9.

³¹ See Freddie Mac, "Mortgage Rates Survey," webpage, www.freddiemac.com/pmms; and Federal Financial

Table 6. Reasons for denial, by purpose of loan, 2015

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 nonconventional¹										
All applicants	23.4	3.8	20.4	13.7	6.9	5.2	9.3	.6	10.1	26.3
Asian	30.5	4.8	12.3	12.5	8.5	8.5	11.8	.6	11.0	21.5
Black or African American	25.3	3.0	26.6	10.5	7.8	4.9	6.8	.6	9.9	27.4
Hispanic white	25.3	4.1	19.4	12.1	6.9	6.1	6.9	.5	12.0	28.4
Non-Hispanic white	22.2	3.8	20.1	14.7	6.5	4.9	9.4	.6	9.8	26.5
Other minority ²	25.5	3.5	24.3	11.4	8.0	5.2	7.9	.4	10.2	25.6
Conventional only										
All applicants	24.8	3.2	20.5	15.7	7.5	5.4	10.0	1.0	9.9	22.8
Asian	30.6	4.3	11.3	13.4	9.0	8.7	13.0	.7	10.8	20.2
Black or African American	26.0	2.4	33.0	13.0	8.9	4.0	5.8	1.6	10.4	21.6
Hispanic white	27.0	3.1	21.7	15.3	8.0	5.6	6.9	1.0	13.0	22.7
Non-Hispanic white	23.9	3.2	19.8	16.5	7.1	5.2	10.1	1.0	9.3	23.5
Other minority ²	26.8	3.4	27.0	11.6	9.3	5.6	7.7	.8	10.3	23.8
Nonconventional only¹										
All applicants	21.7	4.4	20.3	11.4	6.1	5.0	8.4	.1	10.3	30.4
Asian	30.0	6.5	15.9	9.3	6.8	7.7	7.8	.07	11.8	26.5
Black or African American	24.9	3.4	23.2	9.2	7.3	5.3	7.4	.1	9.6	30.5
Hispanic white	24.2	4.7	17.7	10.0	6.1	6.4	6.9	.1	11.4	32.3
Non-Hispanic white	19.9	4.6	20.4	12.3	5.7	4.4	8.6	.1	10.5	30.6
Other minority ²	24.3	3.6	21.8	11.2	6.7	4.9	8.2	.1	10.1	27.2
B. Refinance										
Conventional and nonconventional¹										
All applicants	14.8	.9	16.8	13.9	2.7	3.6	11.0	.1	7.8	39.8
Asian	23.1	1.4	13.5	11.2	3.3	5.4	10.7	.1	9.3	35.8
Black or African American	11.0	.5	18.8	11.3	2.8	2.7	8.4	.1	7.4	47.6
Hispanic white	18.6	1.0	19.5	10.3	3.5	4.0	9.1	.1	9.1	38.5
Non-Hispanic white	14.7	.9	16.1	14.9	2.6	3.7	10.5	.1	7.7	40.1
Other minority ²	13.7	.7	16.1	9.9	2.3	3.8	8.8	.1	7.5	48.2
Conventional only										
All applicants	17.5	.9	17.4	14.9	2.7	4.2	9.7	.1	8.0	37.5
Asian	24.9	1.4	13.4	11.9	3.5	5.7	10.3	.1	9.2	34.2
Black or African American	13.3	.5	19.9	12.0	2.5	3.2	6.7	.2	7.6	46.9
Hispanic white	21.3	1.0	20.1	11.2	3.5	4.4	7.7	.1	9.0	37.1
Non-Hispanic white	17.2	1.0	16.8	16.0	2.6	4.3	9.4	.1	7.9	37.5
Other minority ²	15.9	.8	17.3	10.5	2.3	4.6	7.6	.1	7.8	45.9
Nonconventional only¹										
All applicants	7.8	.7	15.1	11.3	2.7	2.0	14.2	.03	7.3	46.0
Asian	12.0	.9	14.0	6.9	2.2	3.2	13.4	.0	9.7	46.5
Black or African American	7.4	.4	17.1	10.1	3.3	1.8	11.1	.02	7.1	48.7
Hispanic white	10.9	.9	18.0	7.7	3.4	3.0	13.0	.06	9.6	42.5
Non-Hispanic white	7.3	.7	14.0	11.7	2.5	2.0	13.8	.04	7.1	47.5
Other minority ²	8.7	.6	13.2	8.5	2.3	1.9	11.5	.0	6.8	53.5

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.

In 2015, the fraction of home-purchase loans (again, first liens for one- to four-family, owner-occupied, site-built properties) above the higher-priced threshold decreased to 7.6 percent from 11.6 percent in 2014 (as shown in table 7.A). This decrease stemmed from a drop in the higher-priced share of nonconventional loans from 26 percent to 14.5 percent, while the higher-priced share of conventional loans increased slightly, from 3.1 percent to 3.2 percent.

Table 7.A also shows that, in 2015 as well as earlier years, black and Hispanic white borrowers had the highest incidences of higher-priced loans within both the conventional and nonconventional loan types. This table provides the raw rates of higher-priced lending by group from 2004 to 2015, 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 comparable term (rather than the APOR) reported if it rose above 3 percentage points.³² Second, the previous price-reporting rule created unintended distortions in reporting over 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.³³

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.³⁴ 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—rather than 1.5 percentage points, as in table 7.A.³⁵ Higher-priced lending by this measure virtually disappeared by 2008 and has not reemerged, likely reflecting the lack of subprime mortgage lending.

The higher-priced fraction of FHA home-purchase loans was about 22 percent in 2015 (table 8). In contrast, about 1 percent of VA and FSA/RHS home-purchase loans were higher priced. In 2014, the higher-priced fraction of FHA home-purchase loans was much higher, at around 44 percent. The January 2015 reduction in the FHA's annual MIP appears to have moved many FHA home-purchase loans under the reporting threshold. The June 2013 increase in the term length over which the annual MIP must be paid remained in effect, however. As a result, the fraction of FHA home-purchase loans priced over the reporting threshold in 2015 was still substantially higher than before the 2013 rule change, despite a lower annual MIP.

³² The reporting threshold for junior liens was 5 percentage points.

³³ 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.

³⁴ 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 are the APRs on 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.

³⁵ For a more detailed discussion of this adjustment technique, see Avery and others, "The 2009 HMDA Data," in note 9.

Table 7. Incidence of higher-priced lending, by purpose of loan, 2004–15**A. Unadjusted**

Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Home purchase												
Conventional and nonconventional¹												
All borrowers	9.8	22.5	23.2	12.7	8.1	4.6	2.2	3.3	3.1	7.1	11.6	7.6
Asian	5.5	16.3	16.4	7.6	4.0	2.4	1.0	1.5	1.4	3.1	5.2	3.6
Black or African American	24.3	46.7	46.4	27.6	14.5	7.1	3.0	5.0	5.3	14.3	25.6	16.2
Hispanic white	17.5	42.0	43.3	25.9	15.8	8.1	3.9	6.1	5.9	16.9	28.4	18.5
Non-Hispanic white	7.8	15.5	16.0	9.6	7.2	4.3	2.2	3.1	2.9	6.2	9.5	6.2
Other minority ²	14.4	30.3	30.7	16.1	9.1	5.3	2.3	3.5	3.4	8.8	13.6	8.9
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	3.2
Asian	5.6	16.6	16.7	7.7	3.3	1.9	1.0	1.3	1.2	1.1	1.5	2.1
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	6.8
Hispanic white	20.0	45.3	46.3	28.9	17.7	11.0	9.6	10.7	8.7	7.3	6.5	8.3
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	2.9
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	4.9
Nonconventional only¹												
All borrowers	1.2	.9	1.8	3.0	9.5	4.6	1.3	2.7	3.0	13.9	26.2	14.5
Asian	2.4	.6	.8	1.3	8.2	3.9	.8	2.0	1.9	13.4	26.2	11.4
Black or African American	1.4	1.6	2.5	4.5	12.8	6.8	2.4	4.3	4.9	17.6	34.0	20.2
Hispanic white	2.0	1.4	3.5	4.5	14.0	7.1	2.2	4.5	4.8	22.5	43.3	24.6
Non-Hispanic white	1.0	.7	1.5	2.5	8.4	3.9	1.0	2.3	2.6	12.1	22.4	12.2
Other minority ²	4.4	.7	2.1	2.4	8.8	4.7	1.2	2.5	2.4	11.9	20.9	12.2
Refinance												
Conventional and nonconventional¹												
All borrowers	14.5	25.0	30.3	21.0	10.9	3.8	1.8	2.1	1.5	1.9	3.3	2.5
Asian	5.8	15.1	19.5	12.5	3.1	.9	.4	.5	.4	.5	1.1	.7
Black or African American	30.0	46.2	50.7	38.1	22.8	9.0	6.5	6.8	4.1	3.8	5.6	5.1
Hispanic white	18.2	32.6	36.9	26.5	15.1	7.0	4.4	4.4	2.6	3.1	4.7	3.9
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	2.4
Other minority ²	17.6	26.9	32.3	23.8	13.9	4.7	2.6	2.6	2.0	2.2	3.1	2.8
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	1.6
Asian	5.8	15.2	19.6	12.5	2.9	.7	.2	.3	.3	.3	.7	.4
Black or African American	33.7	49.0	52.8	41.5	27.6	9.9	4.0	4.2	2.9	3.3	3.8	3.1
Hispanic white	19.2	33.4	37.5	27.3	16.0	7.2	3.3	3.3	2.3	2.4	2.8	2.4
Non-Hispanic white	12.8	20.9	25.6	18.2	9.8	3.1	1.3	1.6	1.2	1.6	2.3	1.7
Other minority ²	18.2	27.7	32.9	24.5	14.7	4.8	1.9	2.2	1.7	2.0	2.1	2.0
Nonconventional only¹												
All borrowers	1.5	.9	3.1	6.6	13.2	6.7	4.9	5.9	3.2	3.9	8.1	5.4
Asian	3.6	2.1	2.5	4.9	8.9	4.8	3.1	4.0	1.8	2.6	7.1	3.3
Black or African American	1.0	1.2	4.1	7.8	15.2	8.2	9.8	10.9	6.0	4.6	8.3	7.1
Hispanic white	2.0	.9	2.6	6.2	11.6	6.6	7.3	7.9	3.6	5.1	12.1	7.0
Non-Hispanic white	1.3	.7	2.8	6.0	12.1	6.5	4.6	5.9	3.3	4.2	8.6	5.4
Other minority ²	8.1	3.9	9.6	9.9	10.5	4.5	4.6	4.3	2.9	2.8	5.9	4.4

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.

Table 7. Incidence of higher-priced lending, by purpose of loan, 2004–15**B. Adjusted**

Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Home purchase												
Conventional and nonconventional¹												
All borrowers	7.4	18.3	17.1	6.3	1.3	1.3	.6	.8	.8	.7	.8	.7
Asian	3.8	13.0	11.4	3.1	.5	.5	.3	.3	.3	.3	.4	.5
Black or African American	19.3	40.3	38.5	16.7	1.9	1.3	.6	.7	.9	1.0	1.2	1.2
Hispanic white	12.3	34.5	32.8	13.0	2.1	1.4	1.0	1.3	1.6	1.5	1.6	1.5
Non-Hispanic white	5.8	12.1	10.9	4.3	1.3	1.4	.7	.8	.8	.7	.7	.6
Other minority ²	10.5	24.7	22.7	8.0	1.5	1.4	.8	.9	1.1	.9	.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	.8
Asian	3.8	13.3	11.6	3.2	.5	.6	.3	.4	.4	.3	.4	.5
Black or African American	24.4	46.9	44.5	21.2	4.7	4.0	2.6	2.6	2.7	1.7	1.4	1.8
Hispanic white	14.0	37.2	35.2	14.8	3.9	4.6	3.9	4.1	4.5	2.8	2.3	2.8
Non-Hispanic white	6.5	13.2	12.0	4.9	1.9	2.6	1.3	1.5	1.2	.8	.7	.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	1.5
Nonconventional only¹												
All borrowers	.9	.3	.2	.3	.4	.4	.1	.2	.3	.5	.7	.5
Asian	2.2	.3	.1	.2	.2	.2	.1	.2	.2	.3	.4	.2
Black or African American	1.0	.5	.3	.6	.4	.7	.2	.3	.3	.8	1.1	1.0
Hispanic white	1.6	.3	.3	.2	.5	.4	.1	.3	.3	.8	1.1	.7
Non-Hispanic white	.8	.2	.2	.2	.3	.3	.1	.2	.3	.5	.7	.5
Other minority ²	3.9	.3	.2	.2	.3	.3	.1	.1	.2	.3	.6	.4
Refinance												
Conventional and nonconventional¹												
All borrowers	11.3	20.1	21.3	12.7	4.3	1.4	.6	.8	.7	.7	1.0	.6
Asian	4.1	12.2	12.1	5.4	.8	.2	.1	.2	.1	.1	.2	.1
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	1.3
Hispanic white	13.4	27.0	25.8	14.8	5.6	2.5	1.8	1.8	1.1	.9	1.1	.7
Non-Hispanic white	9.5	15.9	16.9	10.3	4.1	1.4	.6	.8	.7	.7	1.1	.6
Other minority ²	13.2	22.0	22.3	14.5	7.1	2.1	.9	1.1	1.1	.8	1.1	.7
Conventional only												
All borrowers	11.8	20.7	21.9	13.3	5.1	1.5	.5	.6	.4	.4	.7	.5
Asian	4.1	12.3	12.1	5.4	.9	.2	.1	.1	.0	.0	.1	.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	1.1
Hispanic white	14.1	27.7	26.2	15.4	6.9	3.5	1.4	1.3	.8	.7	.8	.8
Non-Hispanic white	9.9	16.3	17.3	10.9	4.8	1.6	.5	.6	.4	.5	.8	.5
Other minority ²	13.6	22.6	22.7	14.9	8.3	2.8	.9	.9	.7	.7	.7	.6
Nonconventional only¹												
All borrowers	1.0	.6	.7	.5	.4	.5	1.2	2.5	2.4	1.8	2.4	.9
Asian	2.9	1.8	1.3	1.4	.5	.3	.5	1.5	1.4	1.1	1.9	.4
Black or African American	.6	.8	1.2	.6	.5	1.1	3.5	5.9	4.9	2.6	3.0	1.5
Hispanic white	1.4	.4	.3	.6	.7	.8	2.8	3.5	1.9	1.3	2.0	.6
Non-Hispanic white	.8	.4	.4	.3	.4	.5	1.0	2.4	2.5	2.1	2.8	1.0
Other minority ²	6.3	3.4	7.8	6.3	1.9	.4	1.1	2.0	2.2	1.2	2.2	.8

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.

Table 8. Distribution of price spread, 2015

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	1,894,090	59,959	3.2	53.7	20.3	10.2	8.8	3.4	3.6
FHA ²	793,828	173,157	21.8	78.0	18.4	2.4	.9	.14	.12
VA/RHS/FSA ³	435,792	5,080	1.2	84.5	7.8	1.6	3.8	2.0	.3
Refinance									
Conventional	2,151,796	33,573	1.6	51.1	18.6	10.1	11.2	5.1	3.9
FHA ²	391,651	34,582	8.8	70.0	13.2	7.9	6.2	.5	2.2
VA/RHS/FSA ³	266,758	1,009	.4	92.3	3.9	.7	2.2	.8	.2
Manufactured homes									
Home purchase									
Conventional	56,155	43,331	77.2	6.7	4.9	7.3	13.1	10.8	57.3
FHA ²	15,408	8,383	54.4	57.2	25.4	6.5	1.7	.6	8.7
VA/RHS/FSA ³	4,372	181	4.1	90.1	7.7	.6	1.7	0	0
Refinance									
Conventional	20,591	5,869	28.5	27.2	15.3	13.3	18.3	11.4	14.6
FHA ²	6,783	1,529	22.5	68.7	19.3	6.7	4.4	.3	.7
VA/RHS/FSA ³	3,439	59	1.7	88.1	11.9	0	0	0	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.

HOEPA Loans

Under the Home Ownership and Equity Protection Act (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 the loan 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

Table 9. Distribution of HOEPA loans, by characteristic of loan, 2004–15												
Percent except as noted												
Loans by purpose, lien status, property type, and amount	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
HOEPA loans (total)	24,437	35,985	15,195	10,780	8,577	6,446	3,407	2,373	2,193	1,868	1,271	1,248
Loan purpose												
Home purchase	0	0	0	0	0	0	0	0	0	0	31.3	39.5
Home improvement	37.7	26.1	42.4	45.4	30.5	31.1	32.6	32.3	31.5	30.1	17.8	14.9
Refinance	62.3	73.9	57.6	54.6	69.5	68.9	67.4	67.7	68.5	69.9	50.9	45.6
Lien status												
First	55.5	60.5	53.6	52.8	78.5	84.1	83.9	82.8	84.6	84.2	90.4	88.4
Junior	44.5	39.5	46.4	47.2	21.5	15.9	16.1	17.2	15.4	15.8	9.6	11.6
Property type												
Site built	88.0	91.8	83.7	81.0	72.7	67.8	68.3	65.7	65.7	68.8	75.4	83.3
Manufactured home	12.0	8.2	16.3	19.0	27.3	32.2	31.7	34.3	34.3	31.2	24.6	16.7
Loan amount												
Less than \$50,000	72.4	48.4	72.1	74.3	66.7	72.5	76.5	77.8	75.6	71.3	52.8	36.9
Greater than \$50,000	27.6	51.6	27.9	25.7	33.3	27.5	23.5	22.2	24.4	28.7	47.2	63.1

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

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.³⁶

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 9). In 2015, the total was only 1,248 loans (about the same as in 2014), despite the extension of HOEPA protections to home-purchase loans.

Lending Institutions

In 2015, there were 6,913 reporting institutions (table 10). The total consisted of 3,954 banks and thrifts (hereafter, banks), of which 3,209 were small, defined as having assets of less than \$1 billion; 1,971 credit unions; 132 mortgage companies affiliated with depositories (banks and credit unions); and 856 independent mortgage companies.³⁷ Banks collectively accounted for about 42 percent of all reported mortgage originations; independent mortgage companies, about 44 percent; credit unions, 9 percent; and affiliates, the remainder.

Many institutions report little activity. About 44 percent of institutions (3,071 out of 6,913) reported fewer than 100 mortgage originations in 2015, accounting for about 122,000

³⁶ 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 amount 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 from the base year of 2014.

³⁷ 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 (available at <https://www.ffiec.gov/hmda/hmdaflat.htm>) 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—that is, institutions for which the “other lender code” in the Reporter Panel equals 1, 2, or 5. Most 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 Consumer Financial Protection Bureau.

Table 10. Lending activity, by type of institution, 2015

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	3,209	745	1,971	132	856	6,913
Applications (thousands)	858	3,963	1,104	551	5,619	12,094
Originations (thousands)	621	2,470	670	359	3,285	7,404
Purchases (thousands)	24	1,107	19	185	767	2,102
Number of institutions with fewer than 100 loans	1,765	129	1,067	27	83	3,071
Originations (thousands)	71.6	5.6	40.7	1.1	3.1	122.1
Number of institutions with fewer than 25 loans	611	41	419	9	40	1,120
Originations (thousands)	7.5	.5	5.2	.1	.5	13.8
Home-purchase loans (thousands) ²	234	929	202	197	1,562	3,124
Conventional	72.2	74.9	85.2	57.1	47.7	60.6
Higher-priced share of conventional loans	11.0	1.8	5.3	1.4	2.4	3.2
LMI borrower ³	30.1	23.7	26.6	30.8	30.0	28.0
LMI neighborhood ⁴	12.1	11.8	12.9	12.5	14.9	13.5
Non-Hispanic white ⁵	81.1	69.6	69.9	71.1	64.7	68.1
Minority borrower ⁵	11.8	17.9	14.8	16.2	23.4	19.9
Sold ⁶	72.7	72.2	47.3	96.2	97.8	84.8
Refinance loans (thousands) ²	161	932	251	122	1,344	2,810
Conventional	82.9	90.9	95.8	76.2	62.3	76.6
Higher-priced share of conventional loans	7.6	1.2	2.7	.6	.7	1.6
LMI borrower ³	20.1	20.2	23.2	17.9	17.4	19.0
LMI neighborhood ⁴	10.0	11.1	12.9	10.9	13.3	12.3
Non-Hispanic white ⁵	83.6	69.5	70.0	70.2	62.8	67.2
Minority borrower ⁵	8.1	16.5	14.6	14.8	19.3	17.1
Sold ⁶	71.3	72.0	37.4	95.6	98.9	82.7

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 2015. 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 (<https://www.fdic.gov>).

originations, or 2 percent of all originations. About 16 percent of institutions originated fewer than 25 loans, in total accounting for about one-fifth of 1 percent of all originations.

Table 10 provides several other statistics to help compare the lending patterns of different types of institutions in 2015, and we discuss some highlights here. First, depositories tend to originate a significantly higher fraction of conventional loans than nondepositories. Second, in 2015, small banks and credit unions accounted for a highly disproportionate share of conventional higher-priced loans. About 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 over 5 percent of such loans originated by credit unions. In contrast, about 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 47 percent of conventional higher-priced loans.³⁸

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.

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 10 displays the fraction of loans sold within the calendar year, as opposed to being held in portfolio.³⁹ Nondepositories sold virtually all of their loans in 2015. In contrast, credit unions sold less than one-half of the home-purchase loans they originated and a little more than one-third of the refinance loans they originated. That said, portfolio lending among depositories has declined significantly over time.

Table 11 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 10.⁴⁰ Wells Fargo reported the most originations, with about 436,000.⁴¹ The next-highest total was for Quicken Loans, followed by Bank of America and JPMorgan Chase (JPMC). Overall, the top 25 lenders accounted for about 33 percent of all loan originations in 2015, down slightly from 34 percent in 2014. These same firms also purchased over 1.2 million loans from other lending institutions during 2015 (these loans could have been originated in 2015 or in earlier years).

The top institutions differ significantly in their lending patterns. For example, about 95 percent of JPMC's home-purchase loans were conventional, compared with less than 50 percent for Quicken Loans. Regarding loan sales, Navy Federal Credit Union sold only about 51 percent of its home-purchase originations, whereas the average across the top 25 institutions was about 83 percent. Finally, the composition of borrowers varied across the top 25 institutions. For some institutions, one-third or more of home-purchase borrowers

³⁸ The share of conventional loans originated by, for example, small banks can be calculated from the data in table 10. To obtain the small bank share of conventional home-purchase loans, multiply the number of home-purchase loans small banks originated (234,000) by the percentage that were conventional (72.2), and divide this result by the product of the total number of home-purchase loans (3.1 million) and the percentage that were conventional (60.6). To calculate the share of higher-priced conventional home-purchase loans originated by small banks, divide the number of such loans originated by small banks (11 percent of 72.2 percent of 234,000) by their total number (3.2 percent of 60.6 percent of 3.1 million). Similar calculations apply to refinance loans and other institution types.

³⁹ 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.

⁴⁰ Some institutions may be part of a larger organization; however, the data in table 11 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.

⁴¹ Notably, market shares derived from the HMDA data can differ markedly from market shares based on information compiled by Inside Mortgage Finance. For HMDA reporting purposes, institutions report only mortgage applications in which they make the credit decision. Under HMDA, if an application is approved by a third party (such as a correspondent) rather than the lending institution, then that party reports the loan as its own origination and the lending institution reports the loan as a purchased loan. Alternatively, if a third party forwards an application to the lending institution for approval, then the lending institution reports the application under HMDA (and the third party does not report anything). In contrast, Inside Mortgage Finance considers loans to have been originated by the acquiring institution even if a third party makes the credit decision. Thus, many of the larger lending organizations that work with sizable networks of correspondents report considerable volumes of purchased loans in the HMDA data, while Inside Mortgage Finance considers many of these purchased loans to be originations.

Table 11. Top 25 respondents in terms of total originations, 2015

Percent except as noted

Respondent	Institution type ¹	Total originations (thousands)	Total purchases (thousands)	Home-purchase loans ²							Sold ⁷
				Number (thousands)	Conventional	Higher priced ³	LMI borrower ⁴	LMI neighborhood ⁵	Non-Hispanic white ⁶	Minority borrower ⁶	
Wells Fargo Bank, NA	Large bank	436	468	156	76.8	.6	18.5	11.3	67.1	20.6	76.3
Quicken Loans, Inc.	Ind. mort. co.	366	0	66	49.0	.3	28.8	13.6	54.6	13.2	99.9
Bank of America, NA	Large bank	170	27	47	84.9	.0	18.5	11.3	61.5	28.5	60.4
JPMorgan Chase Bank, NA	Large bank	170	212	56	95.0	.6	13.5	8.8	63.8	21.2	37.8
U.S. Bank, NA	Large bank	113	143	32	80.0	1.1	28.3	11.7	68.6	12.1	78.3
Freedom Mortgage Corp.	Ind. mort. co.	100	66	15	46.7	.2	26.3	14.1	62.2	24.4	97.8
loanDepot.com	Ind. mort. co.	99	0	27	56.2	1.6	19.1	13.5	52.2	26.4	100.0
Flagstar Bank, FSB	Large bank	98	16	44	58.1	1.7	25.5	12.9	66.8	25.1	95.4
Caliber Home Loans, Inc.	Ind. mort. co.	70	31	44	53.5	2.5	32.2	16.0	60.3	23.2	94.2
PNC Bank, NA	Large bank	69	0	20	68.1	.0	34.8	14.4	62.9	15.2	85.2
Citibank, NA	Large bank	67	26	22	96.6	.0	12.4	13.3	43.8	30.9	52.7
Navy Federal Credit Union	Credit union	63	0	30	40.5	25.4	22.3	12.9	53.4	21.9	50.8
Nationstar Mortgage	Ind. mort. co.	60	28	1	80.0	.9	22.8	11.1	58.1	23.4	99.9
Stearns Lending, Inc.	Ind. mort. co.	59	37	30	47.5	1.5	32.0	16.8	63.2	26.7	100.0
PrimeLending, a PlainsCapital Company	Affiliated mort. co.	58	1	41	55.3	2.2	30.3	12.8	70.9	16.2	99.9
Guild Mortgage Co.	Ind. mort. co.	56	7	34	43.4	3.5	31.8	18.0	59.3	20.9	99.7
Ditech Financial LLC	Ind. mort. co.	54	73	4	68.0	.5	26.8	13.6	71.7	18.2	99.9
Shore Mortgage	Ind. mort. co.	50	0	21	82.1	1.7	28.1	14.3	62.5	29.6	100.0
Guaranteed Rate, Inc.	Ind. mort. co.	50	0	27	74.1	1.0	23.4	13.0	73.3	15.5	100.0
Fairway Independent Mortgage Corp.	Ind. mort. co.	49	1	36	48.3	2.3	34.5	13.8	72.8	17.6	99.7
Branch Banking and Trust Co.	Large bank	48	48	19	74.7	.2	26.9	12.5	69.6	10.8	72.9
Regions Bank	Large bank	45	0	16	66.9	3.4	29.6	12.7	75.7	19.9	64.6
SunTrust Mortgage, Inc.	Affiliated mort. co.	43	45	15	86.3	.1	17.9	10.4	63.0	16.9	96.3
Academy Mortgage Corp.	Ind. mort. co.	41	0	29	42.2	2.7	33.6	15.8	66.9	23.2	99.7
USAA Federal Savings Bank	Large bank	41	1	32	27.6	.0	15.4	9.7	64.7	15.6	95.5
Top 25 institutions	...	2,476	1,231	865	64.6	2.0	24.3	12.8	63.7	20.5	83.4
All institutions	...	7,404	2,102	3,124	60.6	3.2	28.0	13.5	68.1	19.9	84.8

¹ See table 10, note 1.² First-lien mortgages for one- to four-family, owner-occupied, site-built homes.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 10, note 6.

... Not applicable.

Source: FFIEC HMDA data; bank asset data drawn from Federal Deposit Insurance Corporation Reports of Condition and Income (<https://www.fdic.gov>).*(continued on next page)*

were LMI, while at other institutions, fewer than 20 percent of borrowers were in that category.⁴² Although 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 the institutions serve, or some combination of these two broad factors.

⁴² 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.

Table 11. Top 25 respondents in terms of total originations, 2015—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	186	85.3	.6	18.1	11.7	66.9	18.7	88.3
Quicken Loans, Inc.	Ind. mort. co.	279	67.0	.2	23.4	12.7	53.6	11.5	100.0
Bank of America, NA	Large bank	94	97.2	.1	24.3	12.9	64.1	24.3	79.0
JPMorgan Chase Bank, NA	Large bank	88	97.6	1.2	19.4	9.6	68.3	18.4	51.4
U.S. Bank, NA	Large bank	57	94.3	3.4	23.1	12.7	63.6	11.3	55.4
Freedom Mortgage Corp.	Ind. mort. co.	77	9.0	.0	3.8	15.4	61.6	23.4	100.0
loanDepot.com	Ind. mort. co.	62	67.0	.5	17.1	12.1	64.5	18.6	100.0
Flagstar Bank, FSB	Large bank	41	78.5	.4	14.5	11.0	63.7	25.7	91.5
Caliber Home Loans, Inc.	Ind. mort. co.	18	75.4	.4	16.9	11.8	64.9	18.3	96.8
PNC Bank, NA	Large bank	30	86.5	.1	28.9	13.5	68.4	11.5	62.3
Citibank, NA	Large bank	35	96.3	.0	22.1	12.3	58.9	19.7	81.4
Navy Federal Credit Union	Credit union	15	48.0	1.7	14.6	11.3	53.7	23.9	50.4
Nationstar Mortgage	Ind. mort. co.	49	88.2	2.1	11.7	17.4	62.6	25.7	99.9
Stearns Lending, Inc.	Ind. mort. co.	24	66.0	.1	18.4	14.2	64.6	23.6	100.0
PrimeLending, a PlainsCapital Company	Affiliated mort. co.	11	84.7	1.0	18.1	10.9	74.7	14.7	100.0
Guild Mortgage Co.	Ind. mort. co.	12	63.7	.3	17.3	15.6	65.0	18.5	99.9
Ditech Financial LLC	Ind. mort. co.	37	96.5	.1	37.6	16.5	66.6	19.3	99.9
Shore Mortgage	Ind. mort. co.	23	94.3	.3	17.1	11.3	62.5	27.5	100.0
Guaranteed Rate, Inc.	Ind. mort. co.	17	91.4	.2	13.1	9.6	76.7	12.7	100.0
Fairway Independent Mortgage Corp.	Ind. mort. co.	8	76.5	.4	18.6	11.3	79.6	11.1	99.8
Branch Banking and Trust Co.	Large bank	13	92.3	.5	23.1	11.0	71.8	8.6	73.5
Regions Bank	Large bank	16	95.7	.6	26.6	13.4	79.4	15.6	23.9
SunTrust Mortgage, Inc.	Affiliated mort. co.	22	89.9	.1	22.2	10.5	65.8	15.0	97.3
Academy Mortgage Corp.	Ind. mort. co.	7	74.3	.8	20.8	12.0	77.6	14.8	99.9
USAA Federal Savings Bank	Large bank	7	32.8	.0	9.1	9.5	60.8	17.0	86.2
Top 25 institutions	...	1,229	77.1	.6	19.8	12.6	62.9	17.7	87.2
All institutions	...	2,810	76.6	1.6	19.0	12.3	67.2	17.1	82.7

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

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 Act² 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.

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

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.

benefits, 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.

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

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.

the 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

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.

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;

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).

unfairly 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 important indicators, when taken into consideration with other factors, in deter-

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).

mining 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 meet 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

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. Examiners

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 (“Los Angeles AA”). A limited-scope review was performed in the Oxnard–Thousand Oaks–Ventura, California Metropolitan Statistical Area (“MSA”); the Riverside–San Bernardino–Ontario, California MSA; the San Diego–Carlsbad–San Marcos, 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.

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

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

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

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 provided 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

majority-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

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.

regulators 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

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.

the 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 Order⁶⁹ 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 from OneWest Bank's lending platform. Further, CIT Group stated that the

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 than 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.*

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 would result in a too-big-to-fail institution given that the combined organization would

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).

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 bank to be acquired make a timely written recommendation of denial of the application.⁷⁸

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.

⁷⁸ 12 U.S.C. § 1842(b); 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 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 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

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.

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 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

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).

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.

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 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

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.

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.

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.

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

¹³ Neither Idaho nor Oregon impose a deposit cap or concentration limit.

¹⁴ 12 U.S.C. § 1842(c)(1).

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.

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 markets¹⁸ 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. 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

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.

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

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.

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

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 Corporation*, *supra*; *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

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).

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 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 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

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.

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.

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 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

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 *Federal Register* 11642, 11665 (2010).

³⁰ 12 U.S.C. § 2906.

³¹ 12 U.S.C. § 2801 *et seq.*

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 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.

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.

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 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.

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.

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 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.

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.

³⁷ 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 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

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, Cavaleiro, 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

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.

become the 33rd largest depository organization, controlling deposits of approximately \$571.6 million, 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

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 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 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.

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

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

²³ 12 U.S.C. § 2801 *et seq.*

were reflected in 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

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).

information critical to an institution's credit decisions is not available from HMDA data.²⁷ 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

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).

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.

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 several 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

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.

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.

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; interest 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

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).

\$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 presumes 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

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.

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 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

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.

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.

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.

¹¹ The Board considered the total and tier 1 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.

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

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

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 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 *Corpanca*, 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).

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.

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.

¹⁸ Law No. 20.789, Gazette No. 9178-05 (2014). Chilean General Banking Law (Ley General de Bancos, “LGB”), Article 16.

¹⁹ Article 28, LGB.

²⁰ Article 16, LGB.

²¹ See Articles 84–85, LGB.

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 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

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.

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.

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

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).

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.

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.

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 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.

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.

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 opacity 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

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.

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 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.

³⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

³⁵ 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 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.

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 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 Y¹ 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

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 Act¹⁰ and the Bank Merger Act¹¹ 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.

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 200 points. Although the DOJ and the Federal Trade Commission have issued revised Horizontal

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 both parent-only and consolidated bases, as well as information about the financial condi-

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.*

tion 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

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.

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

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, New York, 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 debt-to-income 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 CRA-qualified 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 areas⁶⁰ 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 Act⁶² 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

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.

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.

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.

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

1. West 80 Century Road, Paramus, New Jersey
2. 532 Ocean Avenue, Jersey City, New Jersey
3. 2530 Kennedy Boulevard, Jersey City, New Jersey
4. 7533 Bergenline Avenue, North Bergen, New Jersey
5. 7 East Prospect Street, Waldwick, New Jersey
6. 249 Kinderkamack Road, Oradell, New Jersey
7. 495 Manila Avenue, Jersey City, New Jersey
8. 790 Queen Anne Road, Teaneck, New Jersey
9. 897 Prospect Street, Glen Rock, New Jersey
10. 684 Anderson Avenue, Cliffside Park, New Jersey
11. 304 Essex Street, Lodi, New Jersey
12. 330 Kinderkamack Road, Emerson, New Jersey
13. 731 Brick Boulevard, Brick, New Jersey
14. 887 Allwood Road, Clifton, New Jersey
15. 119 Central Avenue, Westfield, New Jersey
16. 80 Union Avenue #86, Cresskill, New Jersey
17. 62-64 Main Street, Millburn, New Jersey
18. 767 Bloomfield Avenue, West Caldwell, New Jersey
19. 114-116 Kings Highway East, Haddonfield, New Jersey
20. 365 Tucker Avenue, Union, New Jersey
21. 167 East Kennedy Boulevard #169, Lakewood, New Jersey
22. 2335 Church Road, Cherry Hill, New Jersey
23. 379 Ramapo Valley Road, Oakland, New Jersey
24. 57 West Main Street, Ramsey, New Jersey
25. 94 North Maple Avenue, Ridgewood, New Jersey
26. 1070 Main Street, River Edge, New Jersey
27. 1002 Mantua Pike, Woodbury Heights, New Jersey
28. 303 Main Street and Center Avenue, Fort Lee, New Jersey
29. 351 West Main Street, Freehold, New Jersey
30. One Paddock Plaza, West Long Branch, New Jersey
31. 587 Summit Avenue, Jersey City, New Jersey
32. 715 River Road, New Milford, New Jersey
33. 341 Springfield Avenue, Summit, New Jersey
34. 1406 Route 130, Cinnaminson, New Jersey

35. 632 Westwood Avenue, River Vale, New Jersey
36. 128 Center Grove Road, Randolph, New Jersey
37. 45 Outwater Lane, Garfield, New Jersey
38. 10 West Main Street, Denville, New Jersey
39. 355 Applegarth Road, Monroe, New Jersey
40. 216 Passaic Avenue, Kearny, New Jersey
41. 782 Lacey Road, Forked River, New Jersey
42. 35a Marshall Hill Road, West Milford, New Jersey
43. 157 Seventh Avenue, Newark, New Jersey
44. 72 Mt Vernon Place, Newark, New Jersey
45. 187 Eagle Rock Avenue, Roseland, New Jersey
46. 641 Shunpike Road, Chatham, New Jersey
47. 18 James Street, Florham Park, New Jersey
48. 977 Valley Road, Gillette, New Jersey
49. 90 Barclay Center, Route 70, Cherry Hill, New Jersey
50. 55 Brick Boulevard, Brick, New Jersey
51. 2100 Route 70, Manchester, New Jersey
52. 209 Route 206 South, Chester, New Jersey
53. 75 Route 35, Middleton, New Jersey
54. 232 South Livingston Avenue, Livingston, New Jersey
55. 313 Henry Street, Orange, New Jersey
56. 150 Newark Pompton Turnpike, Pequannock, New Jersey
57. 200 Grand Avenue, Hackettstown, New Jersey
58. 261 Godwin Avenue, Wyckoff, New Jersey
59. 340 Main Street, Madison, New Jersey
60. 577 Lakehurst Road, Toms River, New Jersey
61. 288 Main Street, Orange, New Jersey
62. 1965 State Route 57, Hackettstown, New Jersey
63. 50 East Palisade Avenue, Englewood, New Jersey
64. 60 Park Place, Newark, New Jersey
65. 1328 River Avenue, Lakewood, New Jersey
66. 217 Berdan Avenue, Wayne, New Jersey
67. 335 Atlantic City Boulevard, Bayville, New Jersey
68. 240 Baldwin Road, Parsippany, New Jersey
69. 1000 Route 70, Lakewood, New Jersey
70. 277 Eisenhower Parkway, Livingston, New Jersey
71. 408 East Madison Avenue, Dumont, New Jersey
72. 89 Interstate Shopping Center, Ramsey, New Jersey
73. 455 County Road, Marlboro, New Jersey
74. 1018 Washington Street, Hoboken, New Jersey
75. 115 Franklin Turnpike, Mahwah, New Jersey
76. 580 North Main St., Barnegat, New Jersey
77. 601 Route 72 East, Manahawkin, New Jersey
78. 45 South New York Road, Galloway, New Jersey
79. 435 Lewandowski Street, Lyndhurst, New Jersey
80. 108 Lacey Road, Whiting, New Jersey
81. 85 Godwin Avenue, Midland Park, New Jersey
82. 547 Broadway, Bayonne, New Jersey
83. 3495 U.S. Highway 1, Suite 2, Princeton, New Jersey
84. 370 Route 130, East Windsor, New Jersey
85. 2407 State Route 71, Spring Lake, New Jersey
86. 523 Shoppes Boulevard, North Brunswick, New Jersey
87. 1168 Highway 34, Aberdeen, New Jersey
88. 416 South Main Street, Forked River, New Jersey

89. 1620 Route 23 North, Wayne, New Jersey
90. 210 Enterprise Drive, Rockaway, New Jersey
91. 51 Route 22 East, Green Brook, New Jersey
92. 3562 Route 27, Princeton, New Jersey
93. 3897 Route 9, Old Bridge, New Jersey
94. 166 State Route 31, Flemington, New Jersey
95. 779 Franklin Avenue, Franklin Lakes, New Jersey
96. 3 Tree Farm Road, Pennington, New Jersey
97. 889 Fischer Boulevard, Toms River, New Jersey

New York Branches to Be Established

1. 53345 Main Road, Southold, New York
2. 18 East Montauk Highway, Hampton Bays, New York
3. 1591 Richmond Road, Staten Island, New York
4. 2220 Forest Avenue, Staten Island, New York
5. 25 Hill Street, Southampton, New York
6. 1430 Old Country Road, Riverhead, New York
7. 2212 Hylan Boulevard, Staten Island, New York
8. 133 Main Street, Westhampton Beach, New York
9. 320 Mamaroneck Avenue, White Plains, New York
10. 389 Halstead Avenue, Harrison, New York
11. 115 South Ridge Street, Port Chester, New York
12. 228 South Main Street, New City, New York
13. 1019 Park Street, Peekskill, New York
14. 1961 Commerce Street, Yorktown Heights, New York
15. 3031 East Main Street, Mohegan Lake, New York
16. 88 Fourth Street, New Rochelle, New York
17. 302 Somers Commons, Baldwin Place, New York
18. 4106 Hylan Boulevard, Staten Island, New York
19. 248 Main Street, Center Moriches, New York
20. 301 Route 25a, Miller Place, New York
21. 2040 Boston Post Road, Larchmont, New York
22. 74825 Main Road, Greenport, New York
23. 126 North Main Street, East Hampton, New York
24. 300 Mamaroneck Avenue, Mamaroneck, New York
25. 190 Gleneida Avenue, Carmel, New York
26. 2935 Veterans Road West, Suite F, Staten Island, New York
27. 903 Montauk Highway, Bayport, New York
28. 1320 Stony Brook Road, Suite 140, Stony Brook, New York
29. 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.

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.

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 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

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

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 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 institu-

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.

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.

tions' operations.¹⁷ In addition, future prospects are considered consistent with approval. 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

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.

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.

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.

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

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.

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 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,

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.

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.*

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 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 institu-

²⁶ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

²⁷ 12 U.S.C. § 2906.

tion'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;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,

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.

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 investments 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.

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.

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 "Outstanding" 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.

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.

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 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

³³ Sections 604(d) and (e) of the Dodd-Frank Act, amending 12 U.S.C. §§ 1842(c)(7) and 1843(j)(2)(A).

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.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 opacity 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

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).

banking practices, or risk to the stability of the United States banking or financial system.”³⁷

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.

³⁷ 12 U.S.C. § 1843(j)(2)(A).

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.

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

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 Act¹ (“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.

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

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.

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 antitrust 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

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*”).

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 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

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 Nemaha 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.

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 most recent CRA performance evaluation is a particularly important consideration in the

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.

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. These products and services include internet bill pay, mobile banking, and remote deposit

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.

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.

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.

Legal Developments: Fourth Quarter, 2015

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Royal Bank of Canada
 Montreal, Canada

Order Approving the Formation of a Bank Holding Company, the Acquisition of a Bank Holding Company, and Determination on a Financial Holding Company Election
 FRB Order No. 2015-28 (October 7, 2015)

Royal Bank of Canada (“RBC”), Montreal, Canada, a foreign banking organization and bank holding company that has elected to be a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ and its subsidiary, RBC USA Holdco Corporation (“RBC USA Holdco,” and together with RBC, “Applicants”), New York, New York, have requested the Board’s approval under section 3 of the BHC Act² to acquire City National Corporation (“City National”) and thereby indirectly acquire its subsidiary bank, City National Bank, both of Los Angeles, California. As part of the proposal, RBC USA Holdco will become a bank holding company. RBC USA Holdco also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board’s Regulation Y.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 16010 (March 26, 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.

RBC, with consolidated assets of approximately \$832 billion, is the second largest bank in Canada by asset size.⁵ RBC provides retail and commercial banking, wealth management, insurance, investment banking, and transaction-processing services on a global basis. Internationally, RBC operates on six continents. In the United States, RBC controls RBC Bank (Georgia), National Association (“RBC Bank Georgia”), Atlanta, Georgia. RBC Bank Georgia operates only in Georgia. RBC Bank Georgia is the eighth largest depository institution in Georgia, controlling deposits of approximately \$2.7 billion, which repre-

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82.

⁴ 12 CFR 262.3(b).

⁵ Asset data and nationwide deposit-ranking data are as of June 30, 2015, unless otherwise noted. Asset and ranking data for RBC on a consolidated basis are as of July 31, 2015, and are based on the exchange rate as of that date.

sent 1.4 percent of the total deposits of insured depository institutions in that state.⁶ RBC operates branches in New York; a state-licensed agency in Texas; and representative offices in California, Delaware, Texas, and Washington. RBC is a qualifying foreign banking organization and, upon consummation of the proposal, would continue to meet the requirements for a qualifying foreign banking organization under the Board's Regulation K.⁷

City National, with consolidated assets of approximately \$33.8 billion, is the 52nd largest insured depository organization in the United States, controlling approximately \$28.5 billion in deposits. City National controls City National Bank, which operates in California, Georgia, Nevada, New York, and Tennessee. City National Bank is the 214th largest insured depository institution in Georgia, controlling deposits of approximately \$47 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, RBC's U.S. operations would have approximately \$172 billion in consolidated assets, which represent less than 1 percent of the total assets of insured depository institutions in the United States. RBC USA Holdco would control total deposits of approximately \$28.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Georgia, RBC would remain the eighth largest depository organization, controlling deposits of approximately \$2.8 billion, which represent 1.4 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 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.⁸ 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.⁹ In addition, the Board may not approve an interstate application if the bank holding company controls or would upon consummation of the proposed transaction 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.¹⁰

For purposes of the BHC Act, the home state of RBC is North Carolina, and City National Bank's home state is California.¹¹ City National Bank also is located in Georgia,

⁶ 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.

⁷ 12 CFR 211.23(a).

⁸ 12 U.S.C. § 1842(d)(1)(A).

⁹ 12 U.S.C. § 1842(d)(1)(B).

¹⁰ 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).

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 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.

Nevada, New York, and Tennessee. RBC is well capitalized and well managed under applicable law, and RBC Bank Georgia has a satisfactory Community Reinvestment Act (“CRA”)¹² rating. There are no minimum age requirements under the laws of California, Georgia, Nevada, New York, or Tennessee that apply to RBC’s acquisition of City National and City National Bank.¹³

On consummation of the proposed transaction, Applicants 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 30 percent of the total amount of deposits of insured depository institutions in Georgia, the only state in which RBC and City National Bank have overlapping banking operations. 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 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

RBC and City National have subsidiary depository institutions that compete directly in the Atlanta, Georgia, banking market (“Atlanta market”).¹⁵ 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 RBC would control;¹⁶ 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”);¹⁷ and other characteristics of the market.

¹² 12 U.S.C. § 2901 *et seq.*

¹³ See Cal. Fin. Code § 1685(a); Ga. Code Ann. § 7-1-622; Nev. Rev. Stat. § 666.405; N.Y. Banking Law § 142-a; Tenn. Code Ann. § 45-2-1403.

¹⁴ 12 U.S.C. § 1842(c)(1).

¹⁵ The Atlanta market is defined as Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton counties; Hall County (excluding the town of Clermont); the towns of Auburn and Winder in Barrow County; and Luthersville in Meriwether County, all in Georgia.

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); *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 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.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Atlanta market. On consummation of the proposal, the Atlanta market would remain moderately concentrated, as measured by the HHI. The change in the HHI would be small, and numerous competitors would remain in the market.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 Atlanta 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 information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. 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 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 their financial and managerial resources and the proposed business plan. The Board also has consulted with the Office of the Superintendent of Financial Institutions ("OSFI"), the agency with primary responsibility for the supervision and regulation of federally registered Canadian banking organizations, including RBC.

The capital levels of RBC 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.¹⁹ The proposed transaction is a merger that is structured as a cash and share exchange.²⁰ The asset quality, earnings, and liquidity of

¹⁸ RBC operates the seventh largest depository institution in the Atlanta market, controlling approximately \$2.7 billion in deposits, which represent 2.1 percent of market deposits. City National operates the 73rd largest depository institution in the same market, controlling deposits of approximately \$47 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, RBC would remain the seventh largest depository organization in the market, controlling deposits of approximately \$2.7 billion, which represent 2.1 percent of market deposits. The HHI for the Atlanta market would increase by 1 point to 1562, and 79 competitors would remain in the market.

¹⁹ The Board considered the total risk-based capital ratio, tier 1 risk-based capital ratio, common equity tier 1 risk-based capital ratio, and the ratio of tier 1 to total assets of RBC, RBC USA Holdco, and RBC Bank Georgia.

²⁰ Applicants would effect the acquisition by merging City National with and into RBC USA Holdco (with RBC USA Holdco as the survivor). At the time of the merger, each share of City National common stock would be converted into a right to receive RBC common stock and cash, based on an exchange ratio. RBC has the financial resources to fund the cash portion of the exchange.

RBC and City National are consistent with approval, and RBC 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.

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 RBC's U.S. operations, City National, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by RBC, 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, as well as information provided by commenters. As noted, the Board also has consulted with OSFI.

RBC, City National, and their subsidiary depository institutions are each considered to be well managed. RBC's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of RBC have substantial knowledge of and experience in the banking and financial services sectors.²¹

The Board also has considered RBC's plans for implementing the proposal. RBC has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. RBC would implement its risk-management policies, procedures, and controls at the combined organization, which are considered acceptable from a supervisory perspective. In addition, RBC and City National's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and RBC plans to integrate City National's existing management and personnel in a manner that augments RBC's management.²²

Section 3 of the BHC Act also prohibits the Board from approving a proposal unless the applicant provides 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.²³ The Board has reviewed the restrictions on disclosure of information in the relevant jurisdictions in which RBC operates and has communicated with relevant government authorities concerning access to information. In addition, RBC has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on its operations and the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act of 1978,²⁴ and other applicable federal laws. RBC also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable it or its affiliates to make such information available to the Board.

Based on all the facts of record, including RBC's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation,

²¹ A commenter alleged that RBC previously had unsuccessful operations in the United States. Notwithstanding any previous difficulties in these markets, RBC is considered well capitalized and well managed.

²² A commenter expressed concerns that RBC's management "may be too far away" to govern effectively in the Los Angeles, California, area. As mentioned above, RBC intends to integrate City National's existing management and personnel in a manner that augments RBC's management and capacity consistent with the combined organization's scope of activities. RBC has successfully managed its operations in the United States.

²³ 12 U.S.C. § 1842(c)(3)(A).

²⁴ 12 U.S.C. § 3101 *et seq.*

and comments received on the proposal,²⁵ 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 access to information by the Board and the records of effectiveness of RBC and City National in combatting money-laundering activities, are consistent with approval.

Supervision of Regulation on a Consolidated Basis

As required by section 3 of the BHC Act, the Board considers whether RBC is subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in its home country.²⁶ The Board previously has determined that RBC is subject to comprehensive supervision on a consolidated basis by its home country supervisor, the OSFI.²⁷ RBC remains supervised by the OSFI on substantially the same terms and conditions. Based on this finding and all the facts of record, the Board concludes that RBC continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

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.²⁸ In its evaluation of the effect of the proposal on the convenience and needs of the communities to be

²⁵ A commenter alleged that RBC and City National collaborated to extend credit to a customer during the pendency of these applications. The BHC Act prohibits an applicant from exercising, or attempting to exercise, a controlling influence over the management or policies of a bank or bank holding company, without prior approval of the Board. *CBG, Inc.*, 91 *Federal Reserve Bulletin* 421, 421–22(2005). RBC represents that after announcing RBC’s proposed acquisition of City National, RBC and City National established internal controls and processes designed to ensure compliance with the applicable limitations of the BHC Act and sent notifications and reminders of such controls to their respective employees. RBC also represents that it did not extend credit to the customer at issue in view of the BHC Act’s limitations.

Some commenters expressed concerns about the level of racial and ethnic diversity among City National Bank’s employees, officers, and directors and about City National Bank’s efforts to do business with minority-owned suppliers. These concerns are outside the scope of 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*, 480 F.2d 749 (10th Cir. 1973). Separately, the Board, together with the other federal financial supervisory agencies, monitors the efforts of regulated entities to promote diversity and inclusion. Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, 80 *Federal Register* 33016 (June 10, 2015). This policy statement implements section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. No. 111-203, 124 Stat. 1376, 1541–44 (2010), codified at 12 U.S.C. § 5452.

²⁶ 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign banking organization is subject to consolidated home country supervision under the standards set forth for foreign banks and parent foreign banks in the Board’s 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 regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings 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 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.

²⁷ *Royal Bank of Canada*, 87 *Federal Reserve Bulletin* 467 (2001); *Royal Bank of Canada*, 83 *Federal Reserve Bulletin* 442 (1997). In addition, in 2013 it was determined that RBC is subject to comprehensive supervision on a consolidated basis by OSFI. *RBC Investor Services Bank S.A.*, FRB Order No. 2013-15 (December 17, 2013).

²⁸ 12 U.S.C. § 1842(c)(2).

served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions 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,²⁹ 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.³⁰

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 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 after consummation, and any other information the Board deems relevant.

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 RBC Bank Georgia and City National Bank, the fair lending and compliance records of both banks, the supervisory views of the Office of the Comptroller of the Currency ("OCC") and the Consumer Financial Protection Bureau ("CFPB"), confidential supervisory information, information provided by RBC, and the public comments received on the proposal.

In this case, the Board also considered the business models of the institutions involved and the organization's plans after consummation. In addition, although RBC currently provides limited retail banking services in the United States, it had a substantially larger retail banking presence in the United States prior to the sale of its wholly owned subsidiary, RBC Bank (USA), Raleigh, North Carolina, to The PNC Financial Group, Inc. ("PNC") in 2012.³¹ To better assess RBC's record of meeting the credit needs of the communities it serves, the Board considered the CRA record of RBC Bank (USA) during the time that the bank was a wholly owned subsidiary of RBC.

The Board placed additional emphasis on City National Bank's record in meeting the convenience and needs of the communities it serves, because City National Bank will remain a separate entity and continue its existing CRA program after consummation of the proposed transaction. Moreover, City National Bank's retail banking business is significantly larger than RBC's current U.S. retail banking business.

Public Comments Regarding the Proposal. In this case, the Board received comments from 32 commenters supporting the proposal. Commenters describe favorable experiences with the community development lending and investment programs of City National. These commenters commend City National Bank and its management for the bank's community outreach efforts and support for various community development programs and initiatives, including board service and contributions to charitable organizations, some of which are aimed at benefitting minority and LMI individuals. Commenters also praise City

²⁹ 12 U.S.C. § 2901(b).

³⁰ 12 U.S.C. § 2903.

³¹ RBC Bank (USA) had total assets of approximately \$27 billion as of June 30, 2011.

National Bank's pro bono legal service, support for programs for at-risk youth and neighborhood improvement, and affordable housing initiatives. Further, commenters praise City National Bank for adopting a five-year, \$11 billion community development plan, emphasizing increased marketing and community outreach, financial education, improved access to credit for small businesses, and increased charitable giving within City National's assessment areas. Commenters, some of which consulted with City National Bank in the development of the community development plan, argue that the bank would provide even greater benefit to the communities served by the combined organization as a result of the plan.

Several commenters oppose the proposal, request that the Board approve the proposal only subject to certain conditions, or express concerns about the proposal.³² Some commenters express concerns regarding the efforts of RBC and City National to serve minority communities. For example, a commenter alleges racial disparities in City National Bank's and RBC Bank Georgia's lending activities based on data reported for 2013 under the Home Mortgage Disclosure Act of 1975 ("HMDA").³³ In addition, commenters allege that City National Bank made a disproportionately small number of Small Business Administration loans to African American-owned businesses, and "redlines" African American-owned businesses.³⁴

Several commenters allege that City National Bank and RBC Bank Georgia predominately serve affluent customers and do not help meet the needs of LMI communities. One commenter alleges disparities by income in City National Bank's lending activities based on 2013 HMDA data.

Businesses of the Involved Institutions and Response to Comments. RBC provides retail and commercial banking, wealth management, insurance, investment banking, and transaction-processing services on a global basis. In the United States, many of RBC's activities are conducted through RBC Capital Markets, LLC, New York, New York, a registered broker-dealer providing capital markets, wealth management, insurance, and treasury services.³⁵ RBC's retail banking presence in the United States is limited to RBC Bank Georgia, which has one physical location and provides retail and business banking services primarily to Canadian cross-border customers in the United States and to RBC's U.S. wealth management customers through online and mobile channels. RBC Bank Georgia's ability to engage in retail banking and small business banking activities in the United States has been restricted by a noncompete agreement with PNC, entered into in connection with RBC's sale of RBC Bank (USA) to PNC, which the Board approved in 2011.³⁶ Pursuant to that noncompete agreement, RBC was generally prohibited from engaging in retail banking and small business banking activities in Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia for the three years following consummation of the sale of RBC Bank (USA) to PNC.³⁷ Only existing RBC customers were permitted to open a new banking relationship with RBC Bank Georgia, impeding the bank's ability to originate

³² Initially, 15 commenters opposed the proposal. Many of these commenters subsequently withdrew or amended their comments to support the proposal.

³³ 12 U.S.C. § 2801 *et seq.*

³⁴ Some commenters questioned whether City National Bank and RBC Bank Georgia were in compliance with HMDA reporting requirements, based on the number of HMDA-reportable loans listed by City National Bank and RBC Bank Georgia as "race not available." OCC examiners tested the accuracy of HMDA data in connection with the CRA evaluations of both institutions. In both evaluations, the OCC concluded that the HMDA data reported by both institutions could be relied upon in the evaluation.

³⁵ As of June 30, 2015, RBC Capital Markets, LLC had total assets of \$81.4 billion.

³⁶ See *PNC Financial Services Group, Inc.* (order dated December 23, 2011), 98 *Federal Reserve Bulletin* 16 (2d Quar. 2012).

³⁷ RBC's sale of RBC Bank (USA) to PNC was consummated on March 2, 2012.

loans or provide deposit services to new customers. Under the noncompete agreement, RBC Bank Georgia also was precluded from opening additional branches beyond its one Atlanta location.

City National Bank's primary focus is business lending, consistent with the bank's goal of providing financial solutions to individuals with \$1 million or more in investable assets and to small- and medium-sized companies with annual revenues between \$1 million and \$250 million. City National Bank also provides private banking, wealth management, and advisory and brokerage services to its customers. In particular, City National Bank provides banking services to customers in the entertainment and real estate industries and to professional services firms and their executives. City National Bank does not actively market home mortgage loan products but rather makes home mortgage loans as an accommodation to existing commercial, entertainment, and trust customers.

RBC asserts that it and City National Bank are helping to meet the credit needs of LMI individuals and communities in other ways. In particular, RBC contends that City National Bank engages in substantial community development lending, services, and investments. RBC maintains that, as demonstrated in the overall CRA ratings, both institutions exhibit satisfactory performance under the CRA. Moreover, RBC contends that both institutions have made efforts to identify and respond to community needs since their most recent CRA performance evaluations. More specifically, RBC represents that it has engaged in continued community outreach efforts with several California community development organizations. Further, RBC represents that City National Bank, along with three Southern California utility companies, has developed plans to implement educational programs and small business lending programs, the latter of which are expected to provide small business loans to qualified utility company suppliers owned by women and minorities and by lesbian, gay, bisexual, and transgender persons. RBC also represents that it and City National have engaged organizations in California 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, City National announced a five-year, \$11 billion community development plan, which is discussed in more detail below.

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 and information and views provided by the appropriate federal supervisors.³⁸

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.³⁹ 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

³⁸ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

³⁹ 12 U.S.C. § 2906.

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;⁴⁰ 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.⁴¹ 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 of the facts of record, including reports of examination of the CRA performance of RBC Bank Georgia and of City National Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC and the CFPB, confidential supervisory information, information provided by RBC, and the public comments received on the proposal.

CRA Performance of RBC Bank Georgia. RBC Bank Georgia was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of July 8, 2013 ("RBC Bank Georgia Evaluation").⁴² The bank received "High Satisfactory" ratings for both the Lending Test and the Investment Test and a "Low Satisfactory" rating for the Service Test.⁴³ Examiners found that the bank's geographic distribution of loans reflected good penetration throughout its assessment area and that the bank's record of lending to borrowers of different incomes was good. As discussed above and as noted by examiners, RBC Bank Georgia was subject to a three-year noncompete agreement beginning in 2011 that impeded the bank's ability to originate loans or provide deposit services to new customers.

⁴⁰ 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).

⁴¹ 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.

⁴² The RBC Bank Georgia Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2012, through June 30, 2013, except for community development loans, which had an evaluation period from January 1, 2012, through July 8, 2013. Conclusions regarding RBC Bank Georgia's HMDA lending were based on loans purchased by the bank. The evaluation period for the Investment Test and the Service Test was from January 1, 2012, through July 8, 2013.

⁴³ The RBC Bank Georgia Evaluation included a full-scope evaluation of the bank's sole assessment area, the Atlanta-Sandy Springs-Marietta, Georgia, Metropolitan Statistical Area ("Atlanta MSA").

Examiners found that RBC Bank Georgia's lending levels reflected good responsiveness to the credit needs of the Atlanta MSA. Examiners noted that the overall distribution of loans reflected good penetration among borrowers of different incomes and that the overall distribution of loans reflected good penetration throughout the Atlanta MSA. The geographic distribution of home mortgage loans was considered good. Examiners found that the bank's geographic distribution of home refinance loans was excellent. The bank's distribution of home refinance loans to borrowers of different incomes also was considered excellent and exceeded the percentage of LMI families in the bank's assessment area. The bank's geographic distribution of home purchase loans in the bank's assessment area reflected adequate penetration. Although examiners found the bank's lending to low-income borrowers to be poor, lending to moderate-income borrowers was excellent, and the distribution of home purchase loans to borrowers of different incomes was good compared to area demographics.

In evaluating the Investment Test, examiners found that RBC Bank Georgia demonstrated good responsiveness to community development needs within the Atlanta MSA. Examiners noted that the bank had a significant level of qualified investments. During the evaluation period, the bank made investments in affordable housing mortgage-backed securities and made financial contributions to organizations providing affordable housing or services to LMI individuals. Examiners also noted that the bank's prior period investments had a continuing impact on the community development needs in the bank's assessment area.

Examiners found that RBC Bank Georgia's performance on the Service Test was adequate in relationship to the bank's resources and community development opportunities. Bank personnel served as home-ownership counselors and as board members to community development organizations, and provided technical assistance to two affordable housing community development organizations.

As discussed above, the Board also considered the CRA performance of RBC Bank (USA), which was a wholly owned subsidiary of RBC until its sale to PNC in 2012. RBC Bank (USA) was a full-service retail bank and operated 434 branches through the southeastern United States.⁴⁴ RBC Bank (USA) was assigned an overall rating of "Satisfactory" at the last CRA performance evaluation by the Federal Reserve Bank of Richmond before the sale to PNC, as of June 21, 2010 ("RBC Bank USA Evaluation").⁴⁵ The bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.⁴⁶ Examiners noted the bank's rating on the Lending Test reflected the bank's overall lending activity, distribution of lending among borrowers and geographies of different income levels, as well as the amount and responsiveness of community development lending in the bank's assessment areas. Further, examiners noted that the lending activity was consid-

⁴⁴ At the time of its sale to PNC, RBC Bank (USA) operated in Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia.

⁴⁵ The RBC Bank USA Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2008, through December 31, 2009, except for community development loans, which had an evaluation period from April 22, 2008, through December 31, 2009. The evaluation period for the Service Test was from April 22, 2008, through June 21, 2010. With respect to the Investment Test, all qualified investments that were outstanding as of June 21, 2010, were considered.

⁴⁶ The RBC Bank USA Evaluation included full-scope evaluations of the following assessment areas: the Charlotte–Gastonia–Rock Hill, North Carolina–South Carolina, MSA; the Raleigh–Durham–Cary, North Carolina, Combined Statistical Area ("CSA"); the Wilmington, North Carolina, MSA; the Greensboro–Winston Salem–High Point, North Carolina, CSA; the Carteret, North Carolina, assessment area; the Huntsville–Decatur, Alabama, CSA; the Birmingham–Hoover, Alabama, MSA; the Atlanta MSA; the Orlando–Deltona–Daytona Beach, Florida, CSA; the Miami–Fort Lauderdale–Pompano Beach, Florida, MSA; the Palm Bay–Melbourne–Titusville, Florida, MSA; the Charleston–North Charleston, South Carolina, MSA; the Myrtle Beach–Conway–North Myrtle Beach, South Carolina, MSA; the Columbia, South Carolina, MSA; and the Virginia Beach–Norfolk–Newport News, Virginia, MSA.

ered good relative to the bank's capacity to lend and the economic conditions within the bank's market. In evaluating the Investment Test, examiners found that the bank made investments in equity housing funds, Low Income Housing Tax Credits, and other qualified investments impacting multiple bank markets. In evaluating the Service Test, examiners found that the bank actively supported community development organizations that provided community development services throughout its various market areas and that these activities showed a relatively high level of community service, as well as support for affordable housing efforts within the markets served by the bank.

RBC Bank Georgia's Efforts Since the 2013 CRA Evaluation. RBC represents that, since the RBC Bank Georgia Evaluation, the bank has made community development loans and investments focused on supporting the construction or financing of affordable housing within its assessment area. RBC Bank Georgia has partnered with community groups that provide homeowner-related services in LMI communities in Atlanta and provided funding for the development and preservation of affordable housing in Atlanta. In addition, the bank has implemented an affordable housing program and participates in the Federal Home Loan Bank of Atlanta's down-payment assistance program. RBC Bank Georgia also has hosted or contributed to a number of financial seminars on home ownership in LMI areas within its assessment area, including seminars on financial literacy, home-ownership counseling, and first-time home buying. The bank also has made charitable donations to nonprofit community groups within the Atlanta area and has provided grants focusing on financial literacy and affordable housing.

CRA Performance of City National Bank. City National Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of December 31, 2012 ("City National Bank Evaluation").⁴⁷ City National Bank received overall ratings of "High Satisfactory" for both the Lending Test and the Service Test and an "Outstanding" rating for the Investment Test.⁴⁸ Examiners found that City National Bank made an excellent level of community development loans and investments, and that the bank provided an overall good level of community development services.

Examiners found that City National Bank exhibited an overall excellent level of community development lending that had a significantly positive impact on lending performance overall. Examiners also noted an overall excellent level of lending activity of home mortgage loans and small loans to businesses. Nevertheless, examiners found that the bank could improve its penetration among businesses of different revenue sizes and borrowers of different income levels, given the demographics of the bank's assessment areas.

In California, where many commenters focused and the state that accounts for approximately 90 percent of City National Bank's total deposits, examiners rated the bank's Lending Test performance "High Satisfactory," noting that the bank's lending activity in

⁴⁷ The City National Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2009, through December 31, 2012, except for community development loans, which had an evaluation period from July 8, 2009, through December 31, 2012. The evaluation period for the Investment Test and the Service Test was from July 8, 2009, through December 31, 2012.

⁴⁸ The City National Bank Evaluation included a full-scope review of the following assessment areas: the Los Angeles–Long Beach–Glendale, California, Metropolitan Division; the assessment area comprising San Francisco and San Mateo counties, both in California; the Santa Ana–Anaheim–Irvine, California, MSA; the New York County, New York, assessment area; the Las Vegas–Paradise, Nevada, MSA; the Carson City, Nevada, MSA; the Davidson County, Tennessee, assessment area; and the assessment area comprising DeKalb and Fulton counties, both in Georgia. A limited-scope review was conducted in the Oakland–Fremont–Hayward, California, MSA; the Oxnard–Thousand Oaks–Ventura, California, MSA; the Riverside–San Bernardino–Ontario, California, MSA; the San Diego–Carlsbad–San Marcos, California, MSA; the Santa Clara County, California, assessment area; the Washoe County, Nevada, assessment area; and the Douglas County, Nevada, assessment area.

the Los Angeles, Santa Ana, and San Francisco assessment areas was excellent. Examiners found that City National Bank's overall geographic distribution of loans, including home mortgage loans and small business loans, reflected good penetration throughout California. Examiners noted that the bank's penetration of loans among borrowers of different income levels and businesses of different sizes was poor; however, examiners also found that City National Bank made a relatively high level of small business loans and community development loans for a variety of purposes, including the construction and development of affordable housing units for LMI individuals and the promotion of economic development. Examiners noted that City National Bank exhibited an excellent level of community development lending in California.

Examiners found City National Bank to have an outstanding level of qualified community development investments and grants, reflecting excellent responsiveness to credit and community economic development needs. Examiners noted that the bank made, or continued to hold, investments and grants to community development organizations; investments in low-income housing projects; and investments in a business-expansion loan program that supports job creation for LMI individuals. Examiners also noted that the bank supported a nonprofit organization providing life-skill programs to at-risk youth and homeless populations.

Examiners found that the bank's overall delivery systems, alternate delivery systems, banking products and services, and business hours within its assessment areas were reasonably accessible to all portions of the bank's assessment areas, including LMI individuals and geographies. City National Bank participated in a number of community development services. Examiners noted that the bank provided direct lending products and participated with federal government agencies in various guarantee programs aimed at providing down-payment assistance to first-time homebuyers and at facilitating affordable housing construction, rehabilitation, and development. Examiners noted that City National Bank's directors, officers, and staff contributed time to qualified community development services during the review period, a majority of which were targeted toward LMI individuals or small businesses.

City National Bank's Efforts Since the 2012 CRA Evaluation. After the City National Bank Evaluation, RBC represents that City National Bank has taken steps to improve its identification of and responsiveness to community needs. City National Bank has engaged in various outreach efforts within the Los Angeles area, including marketing efforts, engagement with community groups, and efforts to offer educational programming to LMI communities. In particular, City National Bank has communicated with and received input from a number of community organizations to ascertain how the proposed combined organization might better meet community needs.

In addition, in 2007 City National Bank announced a 10-year, \$17.5 billion CRA commitment ("2007 CRA Commitment") focused on CRA-related activities, including small business loans, community development loans, CRA-qualified investments, mortgage loans to minority borrowers, and charitable contributions. RBC represents that in the eight years since adopting the 2007 CRA Commitment, City National Bank has met and continues to meet the activity goals set forth in that commitment. From the time City National Bank implemented the 2007 CRA Commitment in 2008 until year-end 2014, the bank represents that it invested approximately \$11.54 billion in CRA-related activities, which accounts for approximately 66 percent of the 10-year commitment.

CRA Efforts of the Combined Organization. City National Bank will remain a separate entity and, except as discussed below, will substantially continue its current CRA program following consummation of the proposed transaction. RBC represents that City National

Bank has adopted a new community development plan to help meet the credit needs of the communities it serves. Under the plan, City National Bank intends to achieve a minimum of \$11 billion in qualified lending, investment, and charitable contributions, including \$4.2 billion in small business loans, \$4.4 billion in qualified CRA community development loans, and \$1.6 billion in qualified CRA investments. The plan outlines specific activities in City National Bank's assessment areas on which the bank plans to focus, including increased marketing and community outreach, financial seminars, small business lending, and services and charitable contributions. For example, City National Bank plans to create, market, and administer an account designed to serve the needs of unbanked and underbanked individuals.⁴⁹ City National Bank intends to improve access to credit for small businesses by providing technical assistance and by designating a portion of total small business lending for LMI communities and minority-owned small businesses. City National Bank intends to purchase between \$50 million and \$100 million in LMI residential loans annually and plans to increase the amount of community development lending for affordable housing in LMI communities. RBC represents that the plan would substantially increase City National Bank's commitments in lending, investments, services, and charitable contributions relative to the 2007 CRA Commitment. A number of community groups, including some of the commenters who initially opposed the proposal, discussed the development of the plan with City National and, after the adoption of the plan, many commenters subsequently withdrew their comments.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. RBC represents that the proposal would provide customers of the combined organization access to additional or expanded services, including capital markets products and services and an expanded range of wealth management and advisory products and services not offered to current City National Bank customers. RBC asserts that the combined organization would be better able to serve its clients, particularly those in small- and middle-market segments. In addition, RBC states that the combined organization will 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, which will result in a stronger and more stable franchise.

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 and the CFPB, confidential supervisory information, information provided by RBC, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, 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

⁴⁹ The account will include savings and checking services and will be done in accordance with the Model Safe Accounts Template developed by the Federal Deposit Insurance Corporation. See Federal Deposit Insurance Corporation, FDIC Model Safe Accounts Pilot Final Report 10 (April 2012), available at <https://www.fdic.gov/consumers/template/SafeAccountsFinalReport.pdf>.

proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”⁵⁰

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.⁵¹ 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.⁵²

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system, including the public comments.⁵³ In the United States, RBC primarily engages in securities brokerage and investment management through various entities under RBC USA Holdco and, on a smaller scale, in retail and business banking through RBC Bank Georgia. City National primarily engages in commercial banking and wealth management. In each of its activities, RBC has, and as a result of the proposal would continue to have, a small share on a nationwide basis, and numerous competitors would remain. The combined organization would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would pose a significant risk to the financial system in the event of financial distress. In addition, the organization would not be a critical services provider or be 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.

Financial Holding Company Election

As noted above, RBC USA Holdco has elected to become a financial holding company in connection with the proposal. RBC USA Holdco has certified that, upon consummation of the proposal, RBC USA Holdco and all depository institutions it controls would be well capitalized and well managed and has provided all the information required under the Board’s Regulation Y.⁵⁴ Based on all the facts of record, the Board determines that RBC USA Holdco’s election will become effective upon consummation of the proposal if, on

⁵⁰ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

⁵¹ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

⁵² For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

⁵³ One commenter alleged that RBC is “too big to fail,” and another commenter alleged that the proposal is the “priciest deal” since the 2008–09 financial crisis.

⁵⁴ See Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(l)(1); 12 CFR 225.82(f).

that date, RBC USA Holdco is well capitalized and well managed and all depository institutions it controls are well capitalized, well managed, and have CRA ratings of at least “Satisfactory.”

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved.⁵⁵ 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 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 the Federal Reserve Bank of New York, acting under delegated authority.

By order of the Board of Governors, effective October 7, 2015.

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

Robert deV. Frierson
Secretary of the Board

⁵⁵ Several commenters requested that the Board hold public hearings or meetings 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 U.S.C. § 1842(b); 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 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 material to the Board’s decision and that would be clarified by a public meeting. In addition, the requests do not demonstrate why written comments do not present the commenters’ views adequately or why a hearing or 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 or meeting is not required or warranted in this case. Accordingly, the requests for a public hearing or meeting on the proposal are denied.

In addition, 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. 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 requests for extension of the comment period are denied.

Baylake Corp.
Sturgeon Bay, Wisconsin

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2015-33 (November 16, 2015)

Baylake Corp. (“Baylake”), Sturgeon Bay, Wisconsin, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with NEW Bancshares, Inc. (“New Bancshares”), and thereby indirectly acquire its subsidiary bank, Union State Bank, both of Kewaunee, Wisconsin.

In addition, Baylake’s subsidiary state member bank, Baylake Bank, also of Sturgeon Bay, has requested the Board’s approval to merge with Union State Bank pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”), with Baylake Bank as the surviving entity.³ Baylake Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Union State Bank.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 35,358 (2015)).⁵ 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”).

Baylake, with consolidated assets of approximately \$981.1 million, is the 717th largest depository organization in the United States.⁶ Baylake controls Baylake Bank, which operates only in Wisconsin. Baylake is the 22nd largest insured depository organization in Wisconsin, controlling deposits of approximately \$737.9 million, which represent less than 1 percent of the total deposits in insured depository institutions in that state.⁷

NEW Bancshares, with consolidated assets of approximately \$86.7 million, is the 4,806th largest depository organization in the United States. NEW Bancshares controls Union State Bank, a nonmember bank that operates only in Wisconsin. NEW Bancshares is the 193rd largest insured depository organization in Wisconsin, controlling approximately \$79.0 million in deposits, which represent less than 1 percent of the total deposits held by insured depository institutions in Wisconsin.

On consummation of this proposal, Baylake would become the 657th largest depository organization in the United States, with consolidated assets of approximately \$1.1 billion, which represent less than 1 percent of the total assets of insured depository institutions in

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. These locations are listed in Appendix A. Baylake will consolidate one branch of Union State Bank with a neighboring branch of Baylake Bank.

⁵ 12 CFR 262.3(b).

⁶ Nationwide deposit, asset, and ranking data are as of June 30, 2015. In this context, insured depository institutions include commercial banks, savings banks, savings associations, and non-deposit trust companies.

⁷ State deposit, market share, and ranking data are as of June 30, 2014.

the United States. Baylake would control total deposits of approximately \$816.9 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Wisconsin, Baylake would become the 20th largest depository institution, controlling deposits of approximately \$816.9 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 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

Baylake and NEW Bancshares have subsidiary depository institutions that compete directly in the Green Bay, Wisconsin, banking market (the “Green Bay banking market”).⁹ The Board received two comments objecting to the proposal on the grounds that consummation of the proposal would result in decreased competition in Kewaunee, Wisconsin. These commenters expressed concern that consummation of the proposal would have an adverse impact on fees and loan rates in Kewaunee, Wisconsin.

The relevant banking market must reflect commercial and banking realities and should consist of the local area where banks offer their services and where local customers can practicably find alternatives. The key question to be considered in making this selection is “where, within the area of competitive overlap, the effect of the merger on competition will be direct or immediate.”¹⁰ In determining the relevant geographic market, the Board reviews a number of factors that identify the geographic area in which competitive forces act to affect the pricing and availability of banking products and services. These include data on worker commuting patterns, as indicated by census data; population density; degree of economic integration; and other similar factors that indicate the geographic scope of competition.¹¹

In this case, the Board has considered that a significant number of Kewaunee County and City of Kewaunee residents commute to Brown County, the central county of the Green Bay Metropolitan Statistical Area (“Green Bay MSA”). While there are numerous banking options in Brown County, the Board also notes that residents of Kewaunee County have closer banking alternatives available in the towns of Casco, Luxemburg, and Algoma, for which the travel time from Kewaunee County is approximately 20 minutes. Based on the proximity and economic integration of Kewaunee County with these other areas, and all the facts of record, the Board concludes that the relevant banking market to consider in reviewing the competitive effects of this proposal is the Green Bay banking market.

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

⁹ The Green Bay banking market is defined as Brown and Kewaunee counties; Morgan, Abrams, Pensaukee, Chase, and Little Suamico townships in Oconto County; Angelica and Maple Grove townships in Shawano County; Oneida township in Outagamie County; and Cooperstown township in Manitowoc County, all in Wisconsin.

¹⁰ *St. Joseph Valley Bank*, 68 *Federal Reserve Bulletin* 673 (1982) (quoting *United States v. Philadelphia National Bank*, 374 U.S. 321, 357 (1963)).

¹¹ See *Crestar Bank*, 81 *Federal Reserve Bulletin* 200, 201 n.5 (1995); *Pennbancorp*, 69 *Federal Reserve Bulletin* 548 (1983); *St. Joseph Valley Bank*, 68 *Federal Reserve Bulletin* 673 (1982); and *U.S. Bancorp*, 67 *Federal Reserve Bulletin* 60, 61 n.2 (1981).

The Board has considered the competitive effects of the proposal in the Green Bay 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 Baylake would control;¹² 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”);¹³ the comments received on the proposal; 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 Green Bay banking market. On consummation of the proposal, the Green Bay 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.¹⁴

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 Green Bay 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 Bank Merger Act, and the FRA, 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 regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations’ significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information

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) 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).*

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 Baylake operates the seventh largest depository institution in the Green Bay banking market, controlling approximately \$288.2 million in deposits, which represent 4.9 percent of market deposits. NEW Bancshares operates the 14th largest depository institution in the same market, controlling deposits of approximately \$75.1 million, which represent 1.3 percent of market deposits. Upon consummation of the proposed transaction, Baylake would become the fifth largest depository institution in the market, controlling deposits of approximately \$363.3 million, which represent 6.2 percent of market deposits. The HHI for the Green Bay banking market would increase by 12 points to a level of 1426, and 19 competitors would remain in the market.

regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. 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 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 their financial and managerial resources and the proposed business plan.

Baylake and Baylake 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.¹⁵ The asset quality, earnings, and liquidity of Baylake and NEW Bancshares are consistent with approval, and Baylake 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.

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 Baylake, NEW Bancshares, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Baylake; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; as well as information provided by commenters.

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

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

Based on all the facts of record, including Baylake's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and comments received on the proposal, 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 Baylake and NEW Bancshares in combatting money-laundering activities, are consistent with approval.

¹⁵ To effect the holding company merger, each share of NEW Bancshares common stock would be converted into a right to receive Baylake common stock and cash, based on an exchange ratio. Baylake expects to fund the cash portion of the exchange with financing from a third-party lender. Baylake has the financial resources to support this obligation.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.¹⁶ 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on 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 assess a depository institution’s record of helping to meet the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods.¹⁹

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 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 applicant institution’s business model, its marketing and outreach plans, the organization’s plans following consummation, and any other information the Board deems relevant.

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 Baylake Bank and Union State Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Baylake, and the public comments received on the proposal.

Records of Performance under the CRA. As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution’s performance in light of examinations and other supervisory information and information and views provided by the appropriate federal supervisors.²⁰

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.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 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

¹⁶ 12 U.S.C. § 1842(c)(2).

¹⁷ 12 U.S.C. § 2901 *et seq.*

¹⁸ 12 U.S.C. § 2901(b).

¹⁹ 12 U.S.C. § 2903.

²⁰ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11,642, 11,665 (March 11, 2010).

²¹ 12 U.S.C. § 2906.

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 ("HMDA"), 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;²² 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.

CRA Performance of Baylake Bank. Baylake Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of August 26, 2013 ("Baylake Bank Evaluation").²³ The bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.²⁴

Examiners found that the bank originated a high percentage of loans within its assessment areas and that the geographic distribution of loans reflected good penetration throughout its assessment areas. Examiners noted that the bank's lending levels reflected a good responsiveness to the credit needs of its assessment areas. Examiners found that the bank's distribution of loans reflected a good penetration among borrowers of different income levels, as well as small businesses and small farms of different sizes. Finally, examiners noted that the bank made an adequate level of community development loans, and made extensive use of innovative and flexible lending practices to serve the credit needs of borrowers in its assessment areas.

Examiners found Baylake Bank to have a good level of qualified community development investments, particularly those that are not routinely provided by private investors. Examiners noted that the bank's investments were focused on affordable housing through the purchase of mortgage-backed securities, revitalization and stabilization through the purchase of bonds that fund improvements in targeted areas, and community service activities that support education. Examiners found that the bank exhibited good responsiveness to credit and community development needs.

²² 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).

²³ The Baylake Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The Baylake Bank Evaluation reviewed HMDA and CRA reportable lending from January 1, 2011, through December 31, 2012. The evaluation period for community development loans, investments, and services was January 1, 2011, through August 26, 2013.

²⁴ The Baylake Bank Evaluation included a full-scope review of three assessment areas: the Green Bay MSA; the Door County Non-Metropolitan Area; and the Waupaca-Waushara-Green Lake County Non-Metropolitan Area. A limited-scope review was performed in the Appleton MSA and the Manitowic County Non-Metropolitan Area.

Examiners noted that Baylake Bank's delivery systems were reasonably accessible to the bank's geographies and individuals of different income levels in its assessment areas. Examiners found that the bank's business hours and banking services did not vary in a way that inconvenienced its assessment areas, particularly LMI geographies or LMI individuals, and that the bank's record of opening and closing branch offices had not adversely impacted LMI geographies or individuals. Finally, examiners noted that the bank provides a relatively high level of community development services.

CRA Performance of Union State Bank. Union State Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 23, 2015 (the "Union State Bank Evaluation"),²⁵ with a rating of "Satisfactory" for the Lending Test.²⁶

Examiners found that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and credit needs within the bank's assessment areas. Examiners noted that the bank originated a majority of home mortgage loans and small business loans within its assessment areas.²⁷ Examiners also noted that the bank's geographic distribution of home mortgage loans and small business loans reflected reasonable penetration among borrowers of different income levels and businesses of different sizes and that home mortgage loans and small business loans reflected a reasonable distribution throughout the bank's assessment areas.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Baylake represents that customers of the combined organization would benefit from increased lending capabilities upon consummation of the proposal and that the proposal would provide such customers with access to an expanded ATM network. In addition, Union State Bank's customers would benefit from expanded availability of products and services that are not currently offered by Union State Bank, including a wider array of deposit products, online banking, and mobile banking.

The Board received a comment from a member of the local school board in Kewaunee County, objecting to the proposal on the basis that it would have an adverse impact on the availability of low-cost products and services offered by the resulting institution to municipal organizations and that, as a result, the school board may be required to look outside of the Kewaunee County community for banking alternatives. Based on consultations with members of school boards in other school districts, this commenter asserts that other school districts do not have access to the same low-cost products and services currently offered by Union State Bank.

²⁵ The Union State Bank Evaluation was conducted using the Small Bank CRA Examination Procedures. The Lending Test included a review of HMDA reportable lending for 2013 and 2014 and a random selection of small business loans originated since January 1, 2014. The lending activities within each category were given equal weight in the Union State Bank Evaluation, as both categories represent the primary lending focus of the institution.

²⁶ The lending test applicable to 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).

²⁷ The Union State Bank Evaluation included a review of the bank's assessment areas consisting of Brown County, Kewaunee County, and Manitowoc County.

Baylake represents that it has no plans to eliminate any products or services in this banking market upon consummation of the proposal and that Baylake Bank would continue to offer the same products and services currently provided by Union State Bank, as well as additional products and services that Baylake Bank currently makes available to its customers. Moreover, as described above, 19 competitors would remain in the Green Bay banking market, the relevant banking market in which the commenter is located, ensuring that alternative banking options are available at competitive prices within the relevant banking market upon consummation of the proposal.

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 FDIC, confidential supervisory information, information provided by Baylake, the public comments received on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, 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 the BHC Act and the Bank Merger 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."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

In this case, 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, Baylake would have approximately \$1.1 billion 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 results in a firm with less than \$25 billion in total consolidated assets, will not pose significant risks to the financial stability of the

²⁸ Dodd-Frank Act §604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. §§ 1828(c)(5) and 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).

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.

Establishment of Branches

Baylake Bank has applied under section 9 of the FRA to establish branches at the current locations of Union State Bank. The Board has assessed the factors it is required to consider when reviewing an application under that section.³¹ Specifically, the Board has considered Baylake Bank's financial condition, management, capital, actions in helping to meet the convenience and needs of the communities to be served, CRA performance, and investments 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 determines 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 Baylake and Baylake 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 three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Chicago acting under delegated authority.

By order of the Board of Governors, effective November 16, 2015.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

³¹ 12 U.S.C. § 322; 12 CFR 208.6.

BB&T Corporation Winston-Salem, North Carolina

Order Approving the Merger of Bank Holding Companies FRB Order No. 2015-35 (December 23, 2015)

BB&T Corporation (“BB&T”), Winston-Salem, North Carolina, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with National Penn Bancshares, Inc. (“National Penn”), and thereby indirectly acquire National Penn Bank, both of Allentown, Pennsylvania. Following the proposed acquisition, National Penn Bank would be merged into BB&T’s subsidiary bank, Branch Banking and Trust Company (“Branch Bank”), also of Winston-Salem.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 58731 (September 30, 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.

BB&T, with consolidated assets of approximately \$209.7 billion, is the 17th largest insured depository organization in the United States, controlling approximately \$146.8 billion in consolidated deposits, which represent approximately 1.1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ BB&T controls Branch Bank, which operates in Alabama, Florida, Georgia, Indiana, Kentucky, Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia. Branch Bank is the 10th largest depository institution in Pennsylvania, controlling deposits of approximately \$9.7 billion, which represent 2.7 percent of the total deposits of insured depository institutions in that state.⁶ Branch Bank is the fifth largest depository institution in Maryland, controlling deposits of approximately \$10.1 billion, which represent 7.7 percent of the total deposits of insured depository institutions in that state. Branch Bank is the 25th largest depository institution in New Jersey, controlling deposits of approximately \$1.7 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

National Penn, with consolidated assets of approximately \$9.6 billion, is the 120th largest insured depository organization in the United States, controlling approximately \$6.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. National Penn controls National Penn Bank, which operates in Maryland, New Jersey, and Pennsylvania. National Penn Bank is the 12th largest depository institution in Pennsylvania, controlling deposits of approximately \$6.7 billion, which represent 1.9 percent of the total deposits of insured depository institutions in that state. In addition, National Penn Bank is the 89th and 95th largest depository institution in New Jersey and in Maryland, respectively, controlling

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of National Penn 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.

⁴ 12 CFR 262.3(b).

⁵ National asset and deposit data are as of June 30, 2015, unless otherwise noted and reflect the acquisition of Susquehanna Bancshares, Inc.

⁶ State deposit data are as of June 30, 2015, unless otherwise noted and reflect the acquisition of Susquehanna Bancshares, Inc. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

deposits of approximately \$207.5 million and \$28.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in those states.

On consummation of this proposal, BB&T would remain the 17th largest insured depository organization in the United States, with consolidated assets of approximately \$219.3 billion, which represent 1.0 percent of the total amount of assets of insured depository institutions in the United States. BB&T would control consolidated deposits of approximately \$153.5 billion, which represent 1.2 percent of the total deposits of insured depository institutions in the United States. BB&T would become the fifth largest depository organization in Pennsylvania, controlling deposits of approximately \$16.4 billion, which represent 4.6 percent of the total amount of deposits of insured depository institutions in that state. BB&T would remain the fifth largest depository organization in Maryland, controlling deposits of approximately \$10.1 billion, which represent 7.7 percent of the total amount of deposits of insured depository institutions in that state. In addition, BB&T would become the 23rd largest depository organization in New Jersey, controlling deposits of approximately \$1.9 billion, which represent less than 1 percent of the total amount of 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 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.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 application if the bank holding company controls or would upon consummation of the proposed transaction 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 BB&T is North Carolina, and National Penn Bank's home state is Pennsylvania.¹⁰ National Penn Bank also operates in Maryland and New Jersey. BB&T is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA")¹¹ rating. Maryland, New Jersey, and Pennsylvania do not have minimum age requirements,¹² and National Penn Bank has been in existence for more than five years.

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). 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 *et seq.*

¹² *See* Md. Code Ann., Fin. Inst. §§ 5-901 to 5-910; N.J. Stat. Ann. § 17:9A-133.1; 7 Pa. Stat. Ann. §§ 1601-1610.

On consummation of the proposed transaction, BB&T would control 1.2 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Maryland and New Jersey impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.¹³ The combined organization would control approximately 7.7 percent and less than 1 percent of the total amount of deposits of insured depository institutions in Maryland and New Jersey, respectively. 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 or tend to create a monopoly in any banking 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 communities to be served.¹⁴

BB&T and National Penn have subsidiary banks that compete directly in seven banking markets in Maryland, New Jersey, and Pennsylvania. The Board has considered the competitive effects of the proposal in the 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”) that BB&T 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 Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁶ 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 all relevant banking markets. On consummation, the Lancaster, Pennsylvania, banking market would become highly concentrated; the Philadelphia, Pennsylvania, banking market would become moderately concentrated; and all other overlapping banking markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in these markets generally would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger

¹³ Md. Code Ann., Fin. Inst. § 5-905(b); N.J. Stat. Ann. § 17:9A-133.1(b). Pennsylvania does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

¹⁴ 12 U.S.C. § 1842(c)(1).

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 1,000 and 1,800, and highly concentrated if the post-merger HHI exceeds 1,800. 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 1,800 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.

Guidelines. In addition, numerous competitors would remain in all relevant banking markets.¹⁷

The Department of Justice has advised the Board that consummation of the transaction would not likely 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 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 seven banking markets in which BB&T and National Penn 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 the future prospects of the institutions involved. In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding 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 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 their 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.¹⁸ The asset quality, earnings, and liquidity of both BB&T and National Penn are consistent with approval, and BB&T 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.

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, National Penn, 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 orga-

¹⁷ These seven banking markets and the competitive effects of the proposal in these markets are described in the appendix.

¹⁸ As part of the proposed transaction, each share of National Penn 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.

nizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

BB&T, National Penn, 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 address all aspects of the post-integration process for this proposal. BB&T would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, BB&T's and National Penn's management have the experience and resources to ensure that the combined organization operates in a safe and sound manner, and BB&T plans to integrate National Penn's existing management and personnel in a manner that augments BB&T's management.¹⁹

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 National Penn 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.²⁰ 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions 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,²¹ 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.²²

In addition, the Board considers the banks' overall compliance records 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 charac-

¹⁹ BB&T represents that it will establish a new community banking region, which will have its headquarters in Allentown, Pennsylvania, and be led by a current National Penn executive. In addition, BB&T will invite the members of the boards of directors of National Penn and National Penn Bank to serve for three years as members of one or more regional advisory boards established by BB&T.

²⁰ 12 U.S.C. § 1842(c)(2).

²¹ 12 U.S.C. § 2901(b).

²² 12 U.S.C. § 2903.

teristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

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 Branch Bank and National Penn Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC, the Office of the Comptroller of the Currency ("OCC"), the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; and information provided by BB&T.²³

Records of Performance under the CRA. As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance in light of examinations and other supervisory information and information and views provided by the appropriate federal supervisors.²⁴

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.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 data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),²⁶ 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;²⁷ the institution's

²³ The Board recently reviewed the CRA and fair lending records of Branch Bank in connection with its approvals of BB&T's acquisitions of The Bank of Kentucky Financial Corporation and Susquehanna Bancshares, Inc. See *BB&T Corporation*, FRB Order No. 201515 (June 3, 2015); *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015).

²⁴ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

²⁵ 12 U.S.C. § 2906.

²⁶ 12 U.S.C. § 2801 *et seq.*

²⁷ 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).

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.

CRA Performance of Branch Bank. Branch Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of May 19, 2014 ("Branch Bank Evaluation").²⁸ Branch Bank received a "High Satisfactory" rating for the Lending Test and "Outstanding" ratings for the Investment Test and Service Test. Examiners found that Branch Bank made an excellent level of qualified investments and made extensive use of innovative investments to support community development initiatives. The Board has consulted with the FDIC regarding the Branch Bank Evaluation.

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. According to examiners, the bank's geographic distribution of loans reflected adequate penetration throughout the bank's assessment areas. 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, low-income individuals, and 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 state-wide lending consortiums. In addition, examiners noted that Branch Bank offered affordable housing loans through several federal and state government programs.

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 multistate MSAs, and its performance was rated "High Satisfactory" in several others.²⁹ Examiners also found the bank to be a leader in affordable

²⁸ The Branch Bank Evaluation 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 evaluation was as of December 31, 2013. The Branch Bank Evaluation covered Branch Bank's 108 assessment areas located in 11 states and five multistate metropolitan statistical areas ("MSAs"): Alabama; Florida; Georgia; Kentucky; Maryland; North Carolina; South Carolina; Tennessee; Texas; Virginia; West Virginia; the Charlotte, North Carolina–South Carolina, MSA ("Charlotte MSA"); the Columbus, Georgia–Alabama, MSA ("Columbus MSA"); the Kingsport–Bristol–Bristol, Tennessee–Virginia, MSA ("Kingsport MSA"); the Louisville, Kentucky–Indiana, MSA ("Louisville MSA"); and the Washington, D.C.–Maryland–Virginia–West Virginia, MSA ("Washington D.C. MSA"). The Branch Bank Evaluation included a full-scope review of 48 of these assessment areas, including all five multistate MSAs, which captured approximately 70 percent or more of the total lending and deposit activity for each state.

²⁹ Examiners found that the bank's performance under the Investment Test was "Outstanding" in Alabama, Florida, Georgia, North Carolina, South Carolina, Texas, Virginia, and West Virginia, as well as in the Columbus and Kingsport MSAs. Examiners also noted Branch Bank's investment test performance was "High Satisfactory" in Kentucky, Maryland, and Tennessee, as well as in the Charlotte, Louisville, and Washington D.C. MSAs.

housing tax credit investments and that the bank provided innovative investments that exhibited excellent responsiveness to assessment area needs.

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.³⁰ 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.

BB&T's Efforts Since the 2014 CRA Evaluation. In the first quarter of 2015, the FDIC approved a proposal by Branch Bank to acquire 41 branches in Texas from Citibank, National Association. In connection with that proposal, the FDIC directed Branch Bank to develop a strategic plan. Branch Bank developed the plan in the context of available aggregate and peer data and demographics, safe and sound lending considerations, and the bank's evaluated performance in majority-minority census tracts, as well as its performance among individual racial and ethnic groups. Branch Bank submitted its strategic plan, which provided for a semi-annual review of Branch Bank's enterprise-wide branching strategy, lending distributions, and marketing efforts, to the FDIC. The FDIC deemed the plan acceptable on February 3, 2015.

In 2015, Branch Bank opened branches in certain moderate-income and majority African American census tracts and has made enhanced investments in mortgage and small business advertising in minority communities. The bank also is working to complete two additional branches in Baltimore and has identified locations for the establishment of new branches in LMI and minority areas in Miami, Florida, and in Austin, Dallas, and Houston, all in Texas. Branch Bank continued to work with agencies involved in homebuyer education and financial literacy and with organizations addressing affordable housing in its assessment areas. In addition, the bank has hosted or participated in several community outreach activities centered on first-time home buying, financial literacy, credit awareness and counseling, budget planning, and business development in minority and LMI communities. Branch Bank has increased its marketing efforts in African American and Hispanic census tracts in the Atlanta, Baltimore, Dallas, and Houston markets. Similarly, Branch Bank has taken steps to enhance its community outreach to minority-owned businesses within its Atlanta, Baltimore, Dallas, and Houston markets.

CRA Performance of National Penn Bank. National Penn Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of June 3, 2013 ("National Penn Bank Evaluation").³¹ National Penn Bank received "Outstanding" ratings for the Lending Test and Service Test and a "High Satisfactory"

³⁰ Examiners noted that Branch Bank demonstrated an "Outstanding" record regarding the Service Test in Florida, Georgia, North Carolina, Virginia, and West Virginia, and in several multistate MSAs. As of December 31, 2013, the bank operated 870 branches in Florida, North Carolina, and Virginia, which together accounted for approximately 48 percent of the bank's branches. Consequently, examiners placed more weight on the institution's performance in Florida, North Carolina, and Virginia.

³¹ The National Penn Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2010, to December 31, 2012, except for community development loans, which had an evaluation period from April 6, 2010, to June 3, 2013. The evaluation period

rating for the Investment Test.³² Examiners noted that National Penn Bank's lending levels reflected excellent responsiveness to community credit needs, and the distribution of loans to borrowers reflected excellent penetration among retail customers of different income levels and business customers of different sizes. Examiners also noted that National Penn Bank was a leader in providing community development services.

Examiners noted that National Penn Bank's overall lending levels reflected excellent responsiveness to assessment area credit needs in Pennsylvania and good responsiveness in the Philadelphia–Camden–Wilmington, Pennsylvania–New Jersey–Delaware–Maryland, MSA. Examiners found that a substantial majority of home mortgage loans and small business loans were originated within the bank's combined assessment areas. Examiners also found that the bank's geographic distribution of loans reflected good penetration throughout the bank's assessment areas and excellent penetration among retail customers of different income levels and businesses of different sizes in Pennsylvania. Examiners noted that the bank's community development lending had a positive impact on the Lending Test rating.

Examiners observed that the bank had a significant level of qualified community development investments, donations, and grants throughout its assessment areas. The bank's investments supported community development financial institutions and were also used to purchase Government National Mortgage Association issued mortgage-backed securities with the underlying collateral consisting of loans to LMI borrowers.

Examiners found that the bank was a leader in providing community development services. Examiners also found that the bank's delivery systems were readily accessible to individuals of different income levels in the assessment areas.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Branch Bank represents that it will apply the bank's CRA lending, investment, and service programs to the operations and activities of National Penn Bank in the communities it serves. BB&T represents that as a result of the proposal, existing customers of National Penn would have access to a complement of products and services that is more expansive than that currently available at National Penn, including Small Business Administration products, prepaid accounts with debit cards, overdraft lines of credit, credit cards, securities brokerage services, fee-based financial planning and investment management services, retirement and institutional services, and corporate trust services. Moreover, BB&T asserts that customers of both institutions would benefit from a more expansive branch and ATM network.

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 FDIC, OCC, and CFPB, confidential supervisory

for the Investment Test and the Service Test was from April 6, 2010, through June 3, 2013. Examiners also considered investments made by National Penn Investment Company, a wholly owned subsidiary of National Penn.

³² The National Penn Bank Evaluation included a full-scope review of the following assessment areas: the Philadelphia, Pennsylvania, Metropolitan Division ("MD"); the Allentown–Bethlehem–Easton, Pennsylvania–New Jersey, MSA; and the Reading, Pennsylvania, MSA. A limited-scope review was performed in the Wilmington, Delaware–Maryland–New Jersey, MD; the Lancaster, Pennsylvania, MSA; the Scranton–Wilkes-Barre, Pennsylvania, MSA; the State College, Pennsylvania, MSA; and the Schuylkill County and Monroe County assessment areas, both in Pennsylvania. The York–Hanover, Pennsylvania, MSA was only reviewed during the evaluation period using 2000 census data. National Penn Bank's sole office in this MSA was closed in 2012, eliminating it as an assessment area.

information, information provided by BB&T, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, 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 risks 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 opacity 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

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.³⁶ 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.

³³ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), 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 No. 2012-2 (February 14, 2012).

³⁶ BB&T primarily accepts retail deposits and engages in mortgage lending, loan servicing, small business lending, other consumer lending, wealth management, asset management, and capital markets services. To a much lesser extent, BB&T engages in insurance agency and wholesale insurance brokerage activities, and securities brokerage services. National Penn accepts retail deposits and engages in mortgage lending, other consumer lending, and business loans. To a much lesser extent, National Penn offers fiduciary, investment advisory, asset management, and retirement plan services, as well as securities and insurance brokerage, risk management, and real estate title and settlement services. In each of its activities, BB&T has, and as a result of the proposal would continue to have, a small share on a nationwide basis, and numerous competitors would remain.

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 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 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 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 the Federal Reserve Bank of Richmond acting under delegated authority.

By order of the Board of Governors, effective December 23, 2015.

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

Robert deV. Frierson
Secretary of the Board

Order Issued Under Sections 3 and 4 of the Bank Holding Company Act

Community Bank System, Inc.
Dewitt, New York

Order Approving the Acquisition of a Savings and Loan Holding Company and Acquisition of a Bank
FRB Order No. 2015-34 (November 18, 2015)

Community Bank System, Inc. (“CBSI”), Dewitt, New York, a financial holding company within the meaning of the Bank Holding Company Act of 1956, as amended (“BHC Act”), has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act¹ to acquire Oneida Financial Corp. (“Oneida”) and thereby indirectly acquire its subsidiary bank, Oneida Savings Bank, a state savings bank that has elected to be treated as a savings association pursuant to section 10(l) of the Home Owners’ Loan Act, as amended,² both of Oneida, New York. CBSI has also requested the Board’s prior approval under section 3 of the BHC Act³ to acquire State Bank of Chittenango (“Bank of Chittenango”), Chittenango, New York, a limited purpose commercial bank wholly owned by Oneida Savings Bank.⁴ Following the proposed acquisition, Oneida Savings Bank and Bank of Chittenango would be merged into CBSI’s subsidiary bank, Community Bank, N.A., Canton, New York.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 27,171 (2015)).⁶ 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 the BHC Act.

CBSI, with consolidated assets of approximately \$7.9 billion, is the 142nd largest insured depository organization in the United States, controlling approximately \$6.1 billion in deposits.⁷ CBSI controls Community Bank, which operates in New York and Pennsylvania. Community Bank is the 26th largest depository institution in New York, controlling deposits of approximately \$4.9 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁸

Oneida, with consolidated assets of approximately \$850 million, is the 819th largest insured depository organization in the United States, controlling approximately \$744 million in deposits. Oneida controls Oneida Savings Bank, which operates solely in New York. Oneida Savings Bank is the 73rd largest insured depository institution in New York,

¹ 12 U.S.C. §§ 1843(c)(8) and (j).

² 12 U.S.C. § 1467a(l).

³ 12 U.S.C. § 1842(a).

⁴ Bank of Chittenango is a state-chartered nonmember commercial bank, the activities of which are limited to municipal deposit-taking. Oneida is not a bank holding company with respect to Bank of Chittenango. *See* 12 U.S.C. § 1841(a)(5)(E).

⁵ The mergers of Oneida Savings Bank and Bank of Chittenango into Community Bank are 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). The OCC approved the bank mergers on November 12, 2015.

⁶ 12 CFR 262.3(b).

⁷ Nationwide asset and deposit data are as of June 30, 2015, unless otherwise noted.

⁸ 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.

controlling deposits of approximately \$676 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁹

On consummation of this proposal, CBSI would become the 126th largest insured depository organization in the United States, with consolidated assets of approximately \$8.8 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. CBSI would control total deposits of approximately \$6.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, CBSI would become the 23rd largest depository organization, controlling deposits of approximately \$5.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that 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.¹⁰ 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(c)(8) of the BHC Act.¹¹ CBSI has committed that all of the activities of Oneida and its subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Factors Governing Board Review of the Transactions

Because this transaction involves the acquisition of a savings association and a bank, the Board has reviewed the transaction under both section 4 and section 3 of the BHC Act, respectively. Section 4 establishes the standards governing the acquisition of a savings association, and section 3 establishes the standards governing the acquisition of a bank.

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Oneida “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 As part of its evaluation, the Board reviews the financial and managerial resources and the future prospects 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.¹³ 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”).

⁹ The total amount of deposits held by Bank of Chittenango are included in the deposit data for Oneida Savings Bank.

¹⁰ 12 CFR 225.28(b)(4)(ii).

¹¹ 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, CBSI will immediately merge Oneida Savings Bank into Community Bank and will not operate the savings association independently.

¹² 12 U.S.C. § 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“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.

¹³ 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); and *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies involved in a transaction to acquire control of a bank. Section 3 also requires the Board to consider the competitive effects of the transaction, the effect of the proposal on the convenience and needs of the communities affected by the proposal, the risks of the proposal to the stability of the U.S. banking or financial system, and certain other factors.

Competitive Considerations

As part of the Board's consideration of the factors under section 4 of the BHC Act, the Board evaluates the competitive effects of a proposal in light of all of the facts of record.¹⁴ The Board also considers the competitive effects of a proposal when acting on an application under section 3 of the BHC Act.¹⁵ Under section 3 of the BHC Act, the Board is prohibited 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 banking market, and from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁶

CBSI and Oneida have subsidiary depository institutions that compete directly in the Utica-Rome, New York ("Utica-Rome market"), and Syracuse, New York ("Syracuse market"), banking markets.¹⁷ 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 share of total deposits in insured depository institutions in the markets ("market deposits") that CBSI would control,¹⁸ the concentration levels 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"),¹⁹ 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 Utica-Rome and Syracuse banking markets. On consummation of the proposal, the Utica-Rome market and Syracuse market would remain moderately concentrated, as measured by the HHI. The changes in the

¹⁴ 12 U.S.C. § 1843(j)(2).

¹⁵ 12 U.S.C. § 1842(c).

¹⁶ 12 U.S.C. § 1842(c)(1).

¹⁷ The Utica-Rome market includes Herkimer and Oneida counties and portions of Madison county, all of New York. The Syracuse market includes Cayuga, Onondaga, and Oswego counties and portions of Cortland and Madison counties, all of New York.

¹⁸ 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).

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 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.

HHI would be minimal, and numerous competitors would remain in the markets following consummation of the proposal.²⁰

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 Utica-Rome and Syracuse markets 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 proposals under sections 3 and 4 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²¹ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both a parent-only and a consolidated basis, 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. 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 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 their financial and managerial resources and the proposed business plan.

CBSI and Community Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a holding company merger that is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.²² The asset quality, earnings, and liquidity of Community Bank, Oneida

²⁰ CBSI operates the ninth largest depository institution in the Utica-Rome market, controlling approximately \$102 million in deposits, which represent 2.5 percent of the market's total weighted deposits. Oneida operates the seventh largest depository institution in the same market, controlling weighted deposits of approximately \$250 million, which represent 6.1 percent of the market's total weighted deposits. On consummation of the proposed transaction, CBSI would become the third largest depository institution in the Utica-Rome market, controlling deposits of approximately \$603 million, which represent 13.9 percent of that market's deposits. The HHI for the Utica-Rome market would increase by 5 points to a level of 1340, and 10 other competitors would remain in the market. In the Syracuse market, CBSI operates the 11th largest depository institution, controlling approximately \$233 million in deposits, which represent 2.1 percent of the market's weighted deposits, and Oneida operates the 16th largest depository institution in the same market, controlling weighted deposits of approximately \$88 million, which represent less than 1 percent of the market's weighted deposits. On consummation of the proposed transaction, CBSI would become the ninth largest depository institution in the Syracuse market, controlling deposits of approximately \$409 million, which represent 3.6 percent of the market's total deposits. The HHI for the Syracuse market would decrease by 11 points to a level of 1212, and 25 other competitors would remain in the market.

²¹ 12 U.S.C. §§ 1842(c)(2) and 1843(j)(4); 12 CFR 225.13(b) and .26(b).

²² As part of the proposed transaction, each share of Oneida common stock would be converted into a right to receive cash or CBSI common stock based on a fixed exchange ratio, or a combination of the two. CBSI has the financial resources to fund the acquisition.

Savings Bank, and Bank of Chittenango are consistent with approval, and CBSI appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

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 CBSI, Oneida, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by CBSI, the Board's supervisory experiences with CBSI and Oneida 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, as well as information provided by the commenter.

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

The Board also has considered CBSI's plans for implementing the proposal. CBSI is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. CBSI would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, CBSI's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and CBSI plans to integrate Oneida's existing management and personnel in a manner that augments CBSI's management.²³

Based on all of the facts of record, including CBSI'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 the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of CBSI and Oneida 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.²⁴ The Board also considers this factor in weighing the possible adverse effects of the transaction against its public benefits, as required by section 4(j) of the BHC Act.²⁵ 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 other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.²⁶ The

²³ On consummation, two individuals currently serving as directors and officers of Oneida and Oneida Savings Bank will be added to the board of directors of CBSI and Community Bank.

²⁴ 12 U.S.C. § 1842(c)(2).

²⁵ 12 U.S.C. § 1843(j)(2).

²⁶ 12 U.S.C. § 2901 *et seq.*

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,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.²⁸

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 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 applicant institution's business model, marketing and outreach plans, plans following consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Community Bank and Oneida Savings Bank,²⁹ the fair lending and compliance records of both banks, the supervisory views of the OCC and the Federal Deposit Insurance Corporation ("FDIC"), confidential supervisory information, information provided by CBSI, and the public comments received on the proposal.

Public Comments Regarding the Proposal. In this case, the Board received comments from a commenter who objects to the proposal on the basis of alleged disparities in the number of conventional home purchase loans offered to African Americans or Hispanics, as compared to whites by Community Bank in the Buffalo/Niagara Falls ("Buffalo/Niagara") Metropolitan Statistical Area ("MSA"), the Rochester MSA, and the Syracuse MSA, all in New York, and by Oneida Savings Bank in the Syracuse MSA, as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")³⁰ for 2013. In addition to the commenter's lending-related comments, the commenter alleges that CBSI is seeking to gerrymander its proposed post-merger CRA assessment areas.³¹ The OCC considered the same adverse comments in connection with its review of the underlying bank merger application.³²

Business of the Involved Institutions and Response to Comment. Community Bank is one of the largest community banking franchises headquartered in upstate New York. It is a full-service bank that offers a wide range of financial services, with a primary focus on loans to consumers. Community Bank has a large residential mortgage loan operation; however, the bank's lending portfolio also consists of other types of loans, including small business loans, commercial and industrial loans, agricultural loans, and consumer loans. In addition to traditional deposit and loan products, Community Bank also offers insurance

²⁷ 12 U.S.C. § 2901(b).

²⁸ 12 U.S.C. § 2903.

²⁹ Bank of Chittenango is currently not subject to the CRA, as the bank is a limited purpose commercial bank that is restricted to accepting municipal deposits.

³⁰ 12 U.S.C. § 2801 *et seq.*

³¹ The commenter's allegation was prompted by CBSI's resubmission of its post-merger assessment areas to correct its inadvertent inclusion of certain entire counties in its post-merger assessment area map originally submitted in connection with its holding company application.

³² The OCC considered the CRA performance evaluation of each bank involved in the transaction, and on a prospective basis, the probable effect of the proposed bank merger on the convenience and needs of the communities to be served.

and investment products, and trust services. Community Bank's branches are generally located in smaller towns and cities within its geographic market areas.

CBSI argues that its lending record to minorities in the Buffalo/Niagara, Rochester, and Syracuse MSAs, as reflected in the 2013 HMDA data, is attributable to the low population of minorities in the communities in which its branches are located and is consistent with the fairly low level of minority mortgage loan applications that are processed by all HMDA reporting institutions in such MSAs generally. CBSI asserts that all mortgage applications received by Community Bank are reviewed in accordance with the bank's policies and procedures for underwriting and are subject to all of the bank's policies and procedures with respect to fair lending. CBSI further asserts that its lending practices are based on criteria that ensure both safe and sound lending and equal access to credit by creditworthy applicants, and that the bank has comprehensive procedures and policies in place to accomplish these goals, which include a "second review" process for any loan denial of a minority applicant; ongoing fair lending training for the bank's lending personnel; an annual fair lending risk assessment; and quarterly reports from the bank's chief compliance officer, director of internal audit, and chief risk officer to the board of directors of the bank regarding consumer protection, fair lending, CRA, and other laws and regulations.

Oneida Savings Bank maintains 12 full-service offices in rural areas of New York. Oneida Savings Bank offers products and services for business and retail consumers and has a significant lending focus in serving the home mortgage credit needs of its assessment areas. CBSI states that Oneida Savings Bank did not receive any conventional home purchase applications from African American or Hispanic applicants in 2013 in the Syracuse MSA, and argues that the bank's lack of HMDA-reportable conventional home purchase applications in 2013 was largely attributed to the under-representation of African Americans and Hispanics in the communities in which Oneida Savings Bank's branches are located. CBSI asserts that Oneida Savings Bank maintains comprehensive fair lending policies and procedures that are designed to ensure equal access to credit for all qualified applicants, a second review process of loan denials, annual fair lending training for all employees and directors, and an annual fair lending audit conducted by Oneida's internal audit department.

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.³³

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.³⁴ 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 institu-

³³ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11,642, 11,665 (March 11, 2010).

³⁴ 12 U.S.C. § 2906.

tion'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;³⁵ 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.³⁶ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Community Bank. Community Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of March 12, 2012 ("Community Bank Evaluation").³⁷ Community Bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.³⁸ Examiners found that Community Bank provided a good level of community development services.

Examiners found that Community Bank's lending levels reflected excellent responsiveness to credit needs and an excellent ratio of loans within its assessment areas. Examiners also found that the bank had a good distribution of lending among census tracts and borrowers of different income levels and businesses of different sizes. The examiners highlighted that

³⁵ 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).

³⁶ 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.

³⁷ The Community Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and CRA data collection requirements from January 1, 2008, through December 31, 2011. The evaluation period for community development loans, investments, and services was from December 12, 2008, through March 11, 2012. As of the evaluation date, 13 of the bank's 15 assessment areas were located within the state of New York. Consequently, the greatest weight was given to New York State in the determination of the bank's overall CRA rating.

³⁸ Examiners conducted full-scope reviews of the Northern Region Non-MSA and Southern Region Non-MSA assessment areas of the bank, since those areas combined represented 79 percent of the bank's total lending, 65 percent of the bank's total number of branches, and 64 percent of the bank's total deposits in the state of New York. The examiners performed limited-scope reviews of the bank's performance in the MSA portions of the bank's assessment areas, including the Buffalo/Niagara, Rochester, and Syracuse MSAs, and found that the bank's overall performance under the Lending Test, Investment Test, and Service Test in such areas was not inconsistent with its performance in the assessment areas that received full-scope reviews.

Community Bank's innovative and flexible lending activity had a positive impact on the evaluation of its lending performance in New York.

Examiners found Community Bank to have investments that reflected good responsiveness to the credit and community development needs of the bank's assessment areas. Examiners noted that the bank's investments in its assessment areas included investments in mortgaged-backed securities comprised of mortgage loans made to LMI individuals or to finance residences located in LMI neighborhoods, and investments in municipal bonds that supported the revitalization and stabilization of LMI tracts or middle income census tracts designated as distressed or underserved.

Examiners found that the bank's delivery systems were accessible to census tracts and individuals of different income levels throughout its assessment areas. Examiners also found that Community Bank's hours and services offered throughout its assessment areas were good, and services offered were comparable among its branch locations regardless of the income level of the census tract. Examiners further noted that the bank's performance in providing community development services was good. Examiners highlighted Community Bank's low-cost and free banking service products, including its free checking, savings, and online banking products.

Community Bank's Activities since the Community Bank Evaluation. CBSI contends that, since the Community Bank Evaluation, it has significantly increased its community development lending and investments, and has continually engaged in community development and outreach efforts in its assessment areas. CBSI asserts that, between the years 2013 and 2014, Community Bank's employees donated their time and expertise on behalf of Community Bank to organizations, within the Syracuse, Rochester, and Buffalo/Niagara assessment areas, that have community development as their primary mission, including affordable housing agencies and organizations focused on business development, women and children advocacy, and other charitable causes Community Bank represents that following consummation of the proposed transaction, it intends to implement additional measures to maintain and expand its outreach activities, staff, and other resources to continue to service minority individuals in its expanded assessment areas.

CRA Performance of Oneida Savings Bank. Oneida Savings Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of June 30, 2014 ("Oneida Savings Bank Evaluation").³⁹ The bank received "Satisfactory" ratings for the Lending Test⁴⁰ and Community Development Test.

³⁹ The Oneida Savings Bank Evaluation was conducted using the Intermediate Small Bank Evaluation Procedures, which include the Lending and Community Development Tests. The Lending Test evaluated the bank's loan originations for loans reportable under HMDA for 2012 and 2013. The Community Development Test evaluated community development loans, qualified investments, and community development services for the period of February 14, 2011, through June 30, 2014. Commercial, consumer, and farm loans, however, were not considered, as they did not represent a substantial portion of the bank's loan portfolio. The Oneida Savings Bank Evaluation included a full-scope review of Oneida Savings Bank's two assessment areas located within the Syracuse and Utica-Rome MSAs. The bank's performance in its assessment area located within the Syracuse MSA received more weight in the overall performance conclusions and ratings since a majority of the bank's offices and lending occurs in that area.

⁴⁰ 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 the credit needs in its assessment areas. See, e.g., 12 CFR 228.26(b).

In evaluating the Lending Test, examiners found Oneida Savings Bank's net loan-to-deposit ratio to be reasonable. Focusing on the Syracuse MSA, examiners noted that a substantial majority of the bank's loans were made within its assessment areas, and the geographic distribution of loans reflected a reasonable dispersion throughout the assessment areas. Examiners also found that the bank's distribution of borrowers reflected reasonable penetration among individuals of different income levels given the demographics of the bank's assessment areas. The examiners also noted that Oneida Savings Bank's assessment areas had been defined in accordance with the requirements of the CRA regulation and did not arbitrarily exclude low- and moderate-income geographies.

In evaluating the Community Development Test, examiners found that Oneida Savings Bank was adequately responsive through community development loans, qualified investments, and community development services. Examiners noted that the bank offered three low-cost deposit accounts that would particularly benefit low- and moderate-income individuals throughout its assessment areas. The OCC found that Community Bank's and Oneida Savings Bank's records of helping to meet the credit needs of their communities and the probable effects on the convenience and needs of those communities were consistent with approval of the bank merger application, subject to certain conditions related to Community Bank's delineation of its post-merger assessment areas.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. CBSI represents that the proposal would provide customers of the combined organization access to additional or expanded services, due to an expanded network of branch and ATM locations in its market areas.⁴¹ Upon consummation of the bank mergers, Community Bank would offer the former depositors of Oneida Savings Bank its products and services, which Community Bank has represented are in many cases broader than the products and services offered by Oneida Savings Bank and Bank of Chittenango. CBSI expects that the merger would also enable it to compete more effectively with national financial institutions in its market areas and improve its ability to meet the needs of its customers and the communities in its market areas. Community Bank also represents that no significant reductions in products or services would be expected as a result of the proposal.

As noted, the commenter alleged the existence of HMDA data disparities in Community Bank's conventional home purchase lending to whites compared to its lending to African Americans and Hispanics in the Syracuse, Rochester, and Buffalo/Niagara markets and in Oneida Savings Bank's conventional home purchase lending in the Syracuse market. As discussed above, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution. The OCC conducted reviews of Community Bank's and Oneida Savings Bank's 2013 HMDA data and conducted supervisory activities to assess fair lending risk at Community Bank. In that connection, the OCC evaluated supervisory information as well as other information provided by Community Bank. The Board has conferred with the OCC regarding its review and has taken into consideration supervisory reviews and other relevant information.

The commenter also disputed the appropriateness of Community Bank's pro forma assessment areas. The OCC conducted a review of Community Bank's current and proposed assessment areas. Community Bank committed, in an October 29, 2015 letter to the OCC, to expand its post-merger CRA assessment areas in recognition of the bank's continued

⁴¹ Bank of Chittenango would be merged out of existence under the proposal, and its sole office located in Chittenango, New York, would be closed upon consummation of the merger. CBSI has represented that Community Bank would offer municipal deposit-taking services at all of its branches, including the former branches of the Oneida Savings Bank acquired by Community Bank under the proposal.

growth.⁴² The OCC indicated that the commitment addressed concerns with respect to the areas directly impacted by the proposed transaction.

In addition, as a condition of approval of the bank merger application, the OCC is requiring that Community Bank create a CRA Assessment Area Delineation Policy (“Policy”)⁴³ and modify, as appropriate, its assessment areas in accordance with the Policy. Community Bank must submit the Policy and any proposed modifications to the Policy or its assessment areas to the OCC for approval.

The Board expects CBSI to ensure that Community Bank complies with the conditions and commitments imposed by the OCC. More generally, the Board expects CBSI to implement policies and procedures that are commensurate with an institution of its size and complexity, including policies and procedures to ensure full compliance with CRA requirements.

Conclusion on Convenience and Needs. The Board has considered all of the facts of record, including the records under the CRA of the relevant depository institutions involved, the institutions’ records of compliance with fair lending and other consumer protection laws, consultations with the OCC and the FDIC, confidential supervisory information, information provided by CBSI, the public comments on the proposal,⁴⁴ and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, 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 sections 3 and 4 of the BHC Act to require the Board to consider the extent to which a proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system.⁴⁵

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

⁴² In the letter (“Commitment Letter”), dated October 29, 2015, from Community Bank, N.A., to Marva V. Cummings, OCC Director of District Licensing, Community Bank committed to delineating its post-consummation assessment areas to include the following areas: (i) all of Oswego County, New York, including the areas north of the Oswego River and the north shore of Oneida Lake; (ii) all of Oneida County, New York, including the City of Utica; (iii) three census tracts previously excluded that form a triangle between the bank’s Boiceville (Ulster County) and Fleischmanns (Delaware County) branches, both of New York; (iv) the City of Binghamton, New York, and the census tracts south of the Susquehanna River and north of the state border; (v) all of Tioga County, New York; (vi) all of Chemung County, New York; (vii) the City of Ithaca and all of Tompkins County, both of New York; and (viii) the census tracts in Carbon County and Schuylkill County, between the Lansford (Carbon County) and Lehighton (Carbon County) branches and its Hazelton (Luzerne County) branch, all of Pennsylvania.

⁴³ 12 CFR 25.41.

⁴⁴ The commenter also expressed concern about possible job losses resulting from the proposal. CBSI has described certain steps it would take to minimize such job losses, including offering comparable positions in the post-merger organization and providing displaced employees with severance and health care benefits, as well as re-employment services and other assistance through the New York State Department of Labor. This concern, however, is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. See, *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973); see also, e.g., *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445, 457 (1996).

⁴⁵ Sections 604(d) and (e) of the Dodd-Frank Act, codified at 12 U.S.C. § 1842(c)(7) with respect to the acquisition of bank shares or assets and at 12 U.S.C. § 1843(j)(2)(A) with respect to the acquisition of savings associations.

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.⁴⁶ 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 opacity 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.⁴⁷

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, CBSI would have approximately \$8.8 billion in consolidated assets and, by any of a number of alternative measures of firm size, CBSI 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.

Weighing of Public Benefits of the Proposal

As noted above, in connection with a proposal under section 4 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.”⁴⁸ As discussed above, the Board has considered that the proposed transactions would provide greater services, product offerings, and geographic scope to customers of Oneida Savings Bank. In addition, the acquisitions would ensure continuity and strength of service to customers of Oneida Savings Bank.

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 interest, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, 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 to the public, financial stability, and other factors weighs in favor of approval of this proposal.

⁴⁶ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁴⁷ For further discussion of the financial stability standard, see *Capital One Order*.

⁴⁸ 12 U.S.C. § 1843(j)(2).

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.⁴⁹

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application and notice should be, and hereby are, approved.⁵⁰ 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 CBSI 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 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 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 November 18, 2015.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

⁴⁹ 12 U.S.C. § 1843(j)(2)(A).

⁵⁰ The commenter requested that the Board hold a public hearing 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 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 comments do not present the commenter's 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 request for a public hearing on the proposal is denied.

Order Issued Under Bank Merger Act

Farmers Bank of Northern Missouri
Unionville, Missouri

Order Approving the Merger of Banks and the Establishment of Branches
FRB Order No. 2015–32 (November 13, 2015)

Farmers Bank of Northern Missouri (“Farmers Bank”), Unionville, Missouri,¹ a state member bank, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act² (“Bank Merger Act”) to merge with Flowers National Bank (“Flowers Bank”), Cainsville, Missouri, a national bank.³ In addition, Farmers Bank has applied under section 9 of the Federal Reserve Act (“FRA”)⁴ to establish and operate branches at the main office and branches of Flowers Bank.⁵

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.⁶ 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.

Farmers Bank’s top-tier holding company, NMB, with total consolidated assets of \$346.4 million, operates in Missouri and Iowa. NMB is the 58th largest depository organization in Missouri, controlling deposits of approximately \$365.8 million, which represent less than 1 percent of the total amount of deposits in insured depository institutions in Missouri (“state deposits”).⁷

Flowers Bank, with total assets of approximately \$42.4 million, operates only in Missouri. Flowers Bank is the 275th largest insured depository institution in Missouri, controlling deposits of approximately \$35.9 million, which represent less than 1 percent of the total amount of state deposits.

On consummation of the proposal, NMB would become the 54th largest depository organization in Missouri, controlling deposits of approximately \$401.7 million, which represent less than 1 percent of the total amount of state deposits.

¹ Farmers Bank is a wholly owned subsidiary of Harrison County Bancshares, Inc. (“HCB”), Unionville, Missouri, a bank holding company. HCB is a wholly owned subsidiary of Northern Missouri Bancshares, Inc. (“NMB”), Unionville, Missouri, a financial holding company with total consolidated assets of approximately \$346.4 million (as of June 30, 2015). NMB also owns 54 percent of Exchange Bancorp of Missouri, Inc., parent of Exchange Bank of Missouri, both of Fayette, Missouri, and 80 percent of Concordia Banc-Management, Inc., parent of Concordia Bank, both of Concordia, Missouri.

² 12 U.S.C. § 1828(c).

³ Flowers Bank is wholly owned by J. Christopher Flowers in his individual capacity.

⁴ 12 U.S.C. § 321.

⁵ Flowers Bank’s branches are located at 1415 Washington Street in Cainsville and 3601 Miller Street in Bethany, both in Missouri.

⁶ 12 CFR 262.3(b).

⁷ Data are as of June 30, 2014. In this context, insured depository institutions include insured commercial banks, savings banks, and savings 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 any attempt to monopolize the business of banking.⁸ 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.⁹

Farmers Bank and Flowers Bank compete directly in the Harrison County, Missouri, banking market (the “Harrison County market”).¹⁰ 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 Farmers Bank would control,¹¹ 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”),¹² and other characteristics of the market.

Using the initial competitive screening data, in the Harrison County market, Farmers Bank is the third largest insured depository institution, controlling deposits of approximately \$60.9 million, which represent approximately 14.0 percent of market deposits. Flowers Bank is the fourth largest insured depository institution in the market, controlling deposits of approximately \$35.9 million, which represent approximately 8.3 percent of market deposits. On consummation of the proposal, Farmers Bank would become the second largest insured depository institution in the Harrison County market, controlling deposits of approximately \$96.8 million, which would represent approximately 22.3 percent of market deposits. The HHI in the market would increase by 232 points, from 2582 to 2814.¹³

Although consummation of this proposal would eliminate some existing competition, certain factors indicate that the competitive effects of the proposal would not likely be significantly adverse. After consummation of the proposal, seven depository institutions would remain in the Harrison County market, including Bethany Bankshares, a depository

⁸ 12 U.S.C. § 1828(c)(5)(A).

⁹ 12 U.S.C. § 1828(c)(5)(B).

¹⁰ The Harrison County market is defined as Harrison and Mercer counties, the eastern half of Gentry County, including Albany, and the northwestern portion of Daviess County, including Coffey and Pattonsburg, all of Missouri.

¹¹ Deposit and market share data are as of June 30, 2014, and are based on data reported by insured depository institutions in the Federal Deposit Insurance Corporation’s Summary of Deposits data.

¹² 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 DOJ Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹³ Analysis of the Harrison County market using data on small business lending results in an HHI similar to that derived using deposit data. Depending on the assumptions made in the analysis, the structural effect of the transaction on small business lending would either marginally exceed the Board’s delegation criteria or meet those delegation criteria by a small margin.

institution that would control 43 percent of deposits.¹⁴ One other depository institution would control at least 20 percent of market deposits. The proposed transaction would reduce the dominance of Bethany Bankshares by creating a competitor that, while still sizably smaller than the largest competitor in the market, is better situated to compete in the market and is only marginally larger than the firm that is currently the second largest in the market.

The DOJ has also analyzed the effect of the transaction on competition in the relevant markets 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 of 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 Harrison County 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 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 information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding 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 acquiring organization 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 consistently 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.

Farmers Bank is well capitalized and would remain so on consummation of the proposal. The proposal is structured as a merger of two depository institutions with each share of Flowers Bank to be canceled in exchange for cash consideration to be funded entirely by excess undivided profits held in the capital of Farmers Bank. The asset quality, earnings, and liquidity of Farmers Bank and Flowers Bank are consistent with approval, and Farmers Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the target branches into Farmers Bank's operations. In addition, future prospects are considered consistent with approval.

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 Farmers Bank and Flowers Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory

¹⁴ Bethany Bankshares' large market presence is the primary cause of the market's high HHI, contributing over 1850 points to the current HHI of 2582. Bethany Bankshares also dominates the market's small business lending.

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. The Board also has considered Farmers Bank's plans for implementing the proposal.

Farmers Bank and Flowers Bank are each considered to be well managed. The directors and senior management of Farmers Bank have significant banking experience and are considered to be satisfactory. In addition, Farmers Bank would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered to be acceptable from a supervisory perspective.

Based on all the facts of record, including Farmers Bank'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 Farmers Bank and Flowers 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 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on 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 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 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 assessments by 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 applicant institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

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 Farmers Bank and Flowers Bank, the fair lending and compliance records of both banks, the supervisory views of the Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, and information provided by Farmers Bank.

¹⁵ 12 U.S.C. § 2901 *et seq.*

Record of Performance under 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 lending in its communities.

In general, federal financial supervisors apply a 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 lending test specifically evaluates the institution's lending-related activities 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 available data reported under the Home Mortgage Disclosure Act, automated loan reports, and other reports generated by the institution to assess the institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas, record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to written complaints about its performance. In addition to the lending test, intermediate small institutions are also subject to a community development test that evaluates the number and amount of the institution's community development loans and qualified investments, the extent to which the institution provides community development services, and the institution's responsiveness through such activities to community development lending, investment, and service needs.¹⁸

CRA Performance of Farmers Bank. Farmers Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of Kansas City, as of October 22, 2012.¹⁹ Farmers Bank received "Satisfactory" ratings for both the lending test and the community development test.

Examiners determined that the bank's average net loan-to-deposit ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. In addition, examiners noted that Farmers Bank's distribution of loans by business and farm income level was reasonable in its assessment areas. For residential real estate loans, examiners noted that the level of lending by income level exceeded expectations in the Iowa assessment area and was reasonable in the Missouri assessment area. Examiners noted that the bank's lending in moderate income geographies exceeded demographics for small businesses, small farms, and residential real estate loans and was approaching excellent levels.

Examiners noted that the bank's community development performance demonstrated adequate responsiveness to community development needs throughout its assessment areas, and the bank had an adequate level of community development loans, investments, dona-

¹⁶ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

¹⁷ 12 U.S.C. § 2906.

¹⁸ See 12 CFR 228.26.

¹⁹ Farmers Bank's CRA evaluation was conducted using Intermediate Small-Bank CRA Examination Procedures, consisting of the lending and community development tests described above. Examiners performed full-scope reviews of the bank's activities in Putnam, Daviess, Grundy, Harrison, and Mercer counties, Missouri, and Appanoose, Decatur, and Wayne counties, Iowa, during the six-month period ended on July 31, 2012.

tions, and services for the review period. Examiners also noted that the bank's delivery systems to geographies and individuals of different income levels were reasonably accessible. Examiners found no evidence of discriminatory or other illegal credit practices.

CRA Performance of Flowers Bank. Flowers Bank received an overall rating of "Outstanding" at its most recent CRA performance examination by the OCC, as of October 24, 2011.²⁰ Examiners determined that the bank's lending activities reflected excellent penetration among businesses and farms of different sizes. Examiners found that the bank's distribution of loans to small businesses was excellent and its loans to businesses with revenues of less than \$1 million per year exceeded demographics. Examiners noted that Flowers Bank's loan-to-deposit ratio reflected reasonable responsiveness to the credit needs of the community. Examiners also noted that a substantial majority of the bank's lending was within its assessment area and that Flowers Bank's investment activities enhanced credit availability in its assessment area.

Additional CRA Activities of Farmers Bank. Farmers Bank represents that it provides a wide variety of products and services that are designed to fit the needs of its entire community. Farmers Bank states that it encourages its employees to identify and engage in opportunities to provide financial education to low- and moderate-income families in the community, including schools and senior citizens' groups. Farmers Bank represents that its employees help provide courses on financial education at a local community college. Farmers Bank notes that it is currently considering investments in CRA-eligible small business investment companies.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Farmers Bank represents that customers of both banks will benefit by gaining access to the full range of products and services currently offered by both banks. For example, customers of Flowers Bank will gain access to new deposit account, mortgage, and variable-rate IRA products, and customers of Farmers Bank will gain access to a new fixed-rate IRA product. In addition, Farmers Bank's status as a preferred lender under the Farm Service Agency's guidelines will benefit customers of Flowers Bank because they will gain access to an abbreviated approval process for low- and moderate-income farmers, including beginning farmers. Moreover, Farmers Bank represents that customers of both banks will benefit from a larger network of branches and ATMs.

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, information provided by Farmers Bank, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, 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 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."²¹

²⁰ Flowers Bank's CRA evaluation was conducted using the Small Bank CRA Examination Procedures, consisting of the lending test described above. Examiners performed a full-scope review of the bank's activities in five census tracts in Harrison and Mercer counties, Missouri, from January 1, 2009, through June 30, 2011.

²¹ 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).

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.²² 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 opacity 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.²³

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, NMB would have approximately \$388.8 million 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.

Establishment of Branches

Farmers Bank has applied under section 9 of the FRA to establish and operate branches at the current locations of Flowers Bank, 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 Farmers 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 Farmers 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 Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

²³ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

²⁴ 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 Kansas City acting pursuant to delegated authority.

By order of the Board of Governors, effective November 13, 2015.

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

Chemical Bank
Midland, Michigan

*Order Approving Establishment of a Branch
FRB Order No. 2015–36 (December 30, 2015)*

Chemical Bank, a state member bank subsidiary of Chemical Financial Corporation, both of Midland, Michigan, has requested the Board’s approval under section 9 of the Federal Reserve Act (“FRA”)¹ and the Board’s Regulation H² to operate a mobile branch to collect deposits and bank-related documents from business customers in certain counties in Michigan.³ The proposed mobile branch would be a branch under federal law because it would take deposits from Chemical Bank’s customers.⁴ However, Chemical Bank proposes to operate the mobile branch as a messenger service for purposes of Michigan law.⁵ Chemical Bank must obtain Board approval prior to expanding the branch activities of the proposed mobile branch beyond those activities permitted as state-law messenger services.⁶

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board’s Rules of Procedure.⁷ The time for submitting comments has expired, and the Board has considered the application and all comments received in light of the factors specified in the FRA.

Chemical Financial Corporation is the eighth largest depository organization in Michigan, with 187 branches throughout the state and approximately \$7.3 billion in deposits, which represents approximately 3.8 percent of the total amount of deposits of insured depository institutions in the state.⁸

Under the Board’s Regulation H, which implements section 9 of the FRA, the factors that the Board must consider in acting on branch applications include (1) the financial history

¹ 12 U.S.C. § 321. See 12 U.S.C. § 36; Mich. Comp. Laws 487.13711 (permitting a Michigan state-chartered bank to establish and operate a mobile branch at any location within the State of Michigan). Although state law permits a state-chartered bank to establish and operate a mobile branch, Chemical Bank has not filed an application to establish a mobile branch with the Michigan Department of Insurance and Financial Services (“DIFS”). Instead, Chemical Bank proposes to operate the mobile branch as a messenger service under Michigan state law, which does not require the filing of a prior notice or application with the DIFS. Mich. Comp. Laws 487.14101.

² 12 CFR part 208.

³ The mobile branch would operate in the following counties, all in Michigan: Alcona, Allegan, Alpena, Antrim, Arenac, Bay, Barry, Benzie, Berrien, Branch, Calhoun, Cass, Cheboygan, Charlevoix, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ionia, Iosco, Isabella, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Midland, Missaukee, Montcalm, Montmorency, Newaygo, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, Sanilac, Tuscola, Van Buren, and Wexford. Chemical Bank previously received approval to operate a mobile branch in the counties of Shiawassee and Genesee, both in Michigan. Chemical Bank would not operate the mobile branch in any other county in Michigan.

⁴ The Board’s Regulation H defines a branch as “any branch bank, branch office, branch agency, additional office, or any branch place of business that receives deposits, pays checks, or lends money.” 12 CFR 208.2(c)(1). Regulation H specifically provides that a branch may include a mobile facility. *Id.*

⁵ Under Michigan law, a Michigan state-chartered bank may operate a messenger service that engages in limited activities, including among other things, collecting deposits and picking up or delivering cash, currency, checks, drafts, securities, and certain other items. Mich. Comp. Laws 487.11202(m).

⁶ Under Michigan law, Chemical Bank must provide prior notice to the director of the DIFS to establish a mobile branch. Mich. Comp. Laws 487.13711.

⁷ 12 CFR 262.3(b).

⁸ Data are as of June 30, 2015. In this context, insured depository institutions include insured commercial banks, savings and loan associations, and savings banks.

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"),⁹ and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.¹⁰ The Board must consider these same factors in acting on mobile branch applications.

The Board has considered the application in light of these factors and the public comment on the proposal received from the chief executive officer of a prospective bank competitor headquartered in Cheboygan County, Michigan. The commenter asserts that its community's financial services needs are adequately met by the financial institutions currently operating there. The commenter also contends that Chemical Bank does not currently have, nor does it plan to establish, a physical presence in Cheboygan County.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Chemical Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Chemical Bank, and the comment received. Chemical Bank is well capitalized and would remain so upon consummation of the proposal. After considering all the facts of record, the Board concludes that the financial history and condition, capital adequacy, and future earnings prospects of Chemical Bank are consistent with approval of the proposal. The Board also has reviewed Chemical Bank's proposed investment in the mobile branch and concludes that its investment is consistent with regulatory limitations on investment in bank premises.¹¹

In considering Chemical 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 Chemical Bank and the bank's record of compliance with applicable banking laws, including anti-money-laundering laws, and the bank security procedures that would apply to the mobile branch.¹² Chemical Bank is considered to be well managed. Based on this review and all the facts of record, the Board concludes that the character of Chemical Bank's management, including the effectiveness of Chemical Bank in combatting money-laundering activities and Chemical Bank's branch security procedures, is consistent with approval of the proposal.

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.¹³ In this evaluation, the Board places particular emphasis on the record of the relevant depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage

⁹ 12 U.S.C. § 2901 *et seq.*

¹⁰ 12 CFR 208.6(b).

¹¹ 12 CFR 208.21(a).

¹² *See* 12 CFR 208.61(c).

¹³ 12 CFR 208.6(b)(3).

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, the Board considers the bank's 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 assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. In addition, the Board may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

Record of Performance under the CRA. In evaluating the convenience and needs factor and CRA performance, the Board considers an institution's performance in light of examinations and other supervisory information and information and views provided by the appropriate federal supervisors.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 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 1975¹⁸ 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 (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) 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; (3) 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;¹⁹ (4) the institution's community development lending, including the number and amount of community devel-

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 (March 11, 2010).

¹⁷ 12 U.S.C. § 2906.

¹⁸ 12 U.S.C. § 2801 *et seq.*

¹⁹ 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).

opment loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

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 Chemical Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Chemical Bank, and the public comment received on the proposal.

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, as of August 26, 2013 ("Chemical Bank Evaluation").²⁰ Each rating Chemical Bank received under the lending, investment, and service tests was an "Outstanding."²¹

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 was a leader in making community development loans inside its assessment areas and used 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.

Examiners found that Chemical Bank 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.

Examiners noted that Chemical Bank's branch location changes had improved the accessibility of its delivery systems, particularly in LMI geographies and to 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.

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

²⁰ The Chemical Bank Evaluation was conducted using 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, Michigan, Metropolitan Statistical Area ("MSA"); the Niles–Benton Harbor, Michigan, MSA; the Bay City, Michigan, MSA; the Kalamazoo–Portage, Michigan, MSA; and the assessment area comprising 24 non-MSA counties of North Central Michigan. A limited-scope review was performed in the Battle Creek, Michigan, MSA; the Flint, Michigan, MSA; the Holland–Grand Haven, Michigan, MSA; the Saginaw–Saginaw Township North, Michigan, MSA; the Cass County, Michigan, Assessment Area; the assessment area comprising Huron, Sanilac, and Tuscola Counties, all in Michigan; the Branch County, Michigan, Assessment Area; and the Allegan County, Michigan, Assessment Area.

uses innovative and flexible lending practices designed to expand homeownership opportunities for LMI borrowers, such as offering mortgages insured by the Federal Housing Administration, government-guaranteed Rural Development mortgages, and the Michigan State Housing Development Authority's single-family mortgages. In addition, Chemical Bank is involved in the Michigan State Housing Development Authority Property Improvement Program, which provides home improvement loans to LMI individuals with incomes below 80 percent of the area median income. Chemical Bank also represents that it is a leader in its assessment areas in terms of its involvement in qualified community development organizations, including in underserved rural markets in which it operates. Chemical Bank offers several commercial loan products with flexible terms to serve the needs of small business customers in its communities, including Small Business Administration loans, loans under the Capital Access Program operated by the State of Michigan, and loans under the Federal Home Loan Bank Programs for Community Investments.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Chemical Bank would use the mobile branch to expand the availability of services to customers throughout its current CRA assessment areas. As noted above, a commenter objected to the proposal and alleged that Cheboygan County's financial services needs are adequately met by the financial institutions currently operating there. The Board generally considers the entry of a new competitor into a community to be a positive factor when assessing the effect of a proposal on the convenience and needs of the community because new entry provides additional alternatives for consumers and businesses.²² Chemical Bank represents that its business relationships already extend into Cheboygan County, and the proposed mobile branch would allow it to better serve the county's residents and the surrounding communities. Chemical Bank notes that the mobile branch would enhance the convenience and efficiency of the services it provides to its business customers as well as to public schools, municipalities, and other governmental entities.

Conclusion on Convenience and Needs Considerations. The Board has considered all the facts of record, including the records of Chemical Bank under the CRA, the bank's record of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Chemical Bank, the public comment on the proposal, and the potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is 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. The Board's approval is specifically conditioned on Chemical 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 Board's approval is limited to conducting the proposed deposit- and document-collection services. Chemical Bank must seek Board approval before engaging in additional branch activities through the mobile branch. Furthermore, Chemical Bank must seek Board approval if it wishes to expand the areas in which it may provide mobile branch services.²³ 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.

²² See *Adams Bank & Trust*, FRB Order 2013-6 (September 4, 2013).

²³ See *supra* note 3.

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 Federal Reserve Bank of Chicago acting under delegated authority.

By order of the Board of Governors, effective December 30, 2015.

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

Robert deV. Frierson
Secretary of the Board

Orders Issued Under International Banking Act

Royal Bank of Canada
Montreal, Canada

*Order Approving Establishment of a Branch
FRB Order No. 2015–29 (October 7, 2015)*

Royal Bank of Canada, Montreal, Canada (“RBC”), a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 7(d) of the IBA¹ to establish a limited federal branch in Jersey City, New Jersey. 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 Jersey City, New Jersey (*The Jersey Journal*, September 12, 2014). The time for submitting comments has expired, and the Board has considered all comments received.

RBC, with consolidated assets of approximately \$832 billion, is the second largest bank in Canada.² RBC offers a range of commercial, wealth management, and retail banking products. In addition to its Canadian and U.S. activities, RBC operates in over 44 countries through a network of branches, local banks, and nonbank subsidiaries.³ RBC is a qualifying foreign banking organization under Regulation K.⁴

Under section 5 of the IBA, a foreign bank may establish a branch outside its home state under certain conditions. One set of conditions permits a foreign bank to establish a branch outside its home state if the establishment and operation of such branch is permitted by the state in which the branch is to be established and the branch limits its deposit-taking to that of an Edge corporation operating under section 25A of the Federal Reserve Act.⁵ RBC meets the requirements to establish an interstate branch pursuant to these conditions in section 5 of the IBA in this case.⁶ Consistent with the restrictions on a limited branch, the proposed branch would not take any deposits other than those permitted for a corporation organized under section 25A of the Federal Reserve Act.⁷ The proposed branch would also provide similar services to those provided by its New York branches, which include credit and financial services primarily focused on institutional clients and capital market activities.

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

¹ 12 U.S.C. § 3105(d).

² Asset and ranking data are as of July 31, 2015, and are based on the exchange rate as of that date.

³ In the United States, RBC operates a bank subsidiary, RBC Bank (Georgia), National Association, Atlanta, Georgia; three federal branches in New York, New York (“New York branches”); an agency in Dallas, Texas; representative offices in San Francisco, California, Wilmington, Delaware, and Seattle, Washington; and a broker-dealer, RBC Capital Markets LLC, in New York, New York.

⁴ 12 CFR 211.23(a).

⁵ 12 U.S.C. § 3103(a)(7)(A).

⁶ A foreign bank may also establish a full-service branch if it meets other conditions in the IBA. 12 U.S.C. § 3103(a)(7)(B).

⁷ RBC’s home state is New York. Under section 25A of the Federal Reserve Act, an Edge corporation may receive deposits outside the United States and may receive only such deposits in 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 Edge corporations. 12 CFR 211.6(a)(1).

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.⁸ The Board also considers the financial and managerial resources of the organization, the convenience and needs of the community, and other factors set forth in the IBA and Regulation K.⁹

As noted above, RBC engages directly in the business of banking outside the United States. RBC also has provided the Board with information necessary to assess the application through its submissions that address the relevant issues.

With respect to supervision by home country authorities, the Board has previously determined that RBC is subject to comprehensive supervision on a consolidated basis by its home country supervisor, the Office of the Superintendent of Financial Institutions (“OSFI”).¹⁰ Based on all the facts of record, it has been determined that RBC continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The Board has also considered the financial and managerial, and other, factors required by the IBA. Canada’s risk-based capital standards are consistent with those established by the Basel Capital Accord (“Accord”). RBC’s capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of RBC are considered consistent with approval, and RBC appears to have the experience and capacity to support the proposed limited branch. In addition, RBC has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

⁸ 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 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.

⁹ 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).

¹⁰ *RBC Investor Services Bank S.A.*, FRB Order No. 2013-15 (Dec. 17, 2013); *Royal Bank of Canada*, 94 *Federal Reserve Bulletin* C45 (2008); *Royal Bank of Canada*, 83 *Federal Reserve Bulletin* 442 (1997).

The OSFI has no objection to the establishment of the proposed branch. Canada is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with these recommendations, Canada has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Canada, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. RBC has policies and procedures to comply with these laws and regulations, and RBC's compliance with applicable laws and regulations is monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information on RBC's operations, the restrictions on disclosure in relevant jurisdictions in which RBC operates have been reviewed, and relevant government authorities have been contacted regarding access to information. RBC 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 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, RBC 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 RBC 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.¹¹ 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 RBC in its home jurisdiction; the size, type, and scope of the activities RBC proposes to conduct in the United States, including the potential for those activities to increase or transmit financial instability; and the framework in place for supervising RBC in its home jurisdiction. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by RBC as well as to the terms and conditions set forth in this order, RBC's application to establish a limited federal branch in New Jersey is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹² Should any restrictions on access to information on the operations or activities of RBC and its affiliates subsequently interfere with the Board's ability to determine and enforce compliance by RBC or its affiliates with applicable federal statutes, the Board may require termination of any of RBC's direct or indirect activities in the United States. Approval of this application also is specifically condi-

¹¹ Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1440 (2010), codified at 12 U.S.C. §3105(d)(3)(E).

¹² 12 CFR 265.7(d)(12).

tioned on compliance by RBC 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 October 7, 2015.

Robert deV. Frierson
Secretary of the Board

¹³ The Board's authority to approve the establishment of branches parallels the continuing authority of the Office of the Comptroller of the Currency ("OCC") to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the OCC to license the proposed branch of RBC in accordance with any terms and conditions that it may impose.

Korea Exchange Bank Seoul, Republic of Korea

Order Approving the Establishment of an Agency FRB Order No. 2015–31 (October 27, 2015)

Korea Exchange Bank (“KEB”), Seoul, Republic of Korea, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA¹ to retain the agency currently operated in New York, New York, by Hana Bank, Seoul, Republic of Korea, following an internal reorganization that involved KEB’s merger with its affiliate, Hana Bank.² The IBA provides that a foreign bank must obtain the approval of the Board to establish an agency 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*, July 30, 2015). The time for submitting comments has expired, and the Board has considered all comments received.

KEB, with total consolidated assets of approximately \$107 billion, is the fifth largest commercial bank in Korea by asset size.³ KEB’s shares are widely held, with no shareholder or group of shareholders controlling more than 10 percent of its outstanding shares.⁴ KEB engages in a broad range of retail and commercial banking activities through numerous offices and subsidiaries located throughout the world. Outside Korea, KEB has operations in the United States and over 20 other countries.

In the United States, KEB operates three wholly owned subsidiaries: KEB NY Financial Corp., New York, New York; KEB LA Financial Corp., Los Angeles, California; and KEB USA International Corp., New York, New York.⁵ KEB is a qualifying foreign banking organization under Regulation K.⁶

KEB and Hana Bank have been affiliated foreign banks since 2012. On August 27, 2015, KEB received approval, pursuant to section 211.24(a)(6) of the Board’s Regulation K, to proceed with the merger of KEB and Hana Bank prior to Board action on KEB’s application to establish an agency in the United States through retention of the Hana Bank agency.⁷ The merger of KEB and Hana Bank was completed on September 1, 2015.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish an agency, 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

¹ 12 U.S.C. § 3105(d).

² On September 1, 2015, Hana Bank merged with and into Korea Exchange Bank to form “KEB Hana Bank.”

³ Asset data are as of March 31, 2015. Ranking data are as of December 31, 2014.

⁴ As of December 31, 2014, the National Pension Service of Korea, Franklin Resources, and BlackRock owned 9.5 percent, 7.0 percent, and 5.1 percent, respectively, of the voting shares of Hana Financial Group, Seoul, Republic of Korea, the ultimate parent of KEB. No other person owned 5 percent or more of the voting shares of KEB and its ultimate parent. There are no voting agreements or other mechanisms that exist among shareholders for the exercise of control over Hana Financial Group.

⁵ KEB USA International Corp. engages in activities limited to providing administrative back-office functions to KEB, pursuant to section 4(c)(1)(C) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(c)(1)(C)).

⁶ 12 CFR 211.23(a).

⁷ See Letter dated August 27, 2015, from the Board to Mr. William S. Eckland, Sidley Austin LLP. Consistent with 12 CFR 211.24(a)(6), KEB provided commitments to the Board to not engage in any new lines of business or expand its U.S. activities until the disposition of the application and to abide by the Board’s decision on KEB’s application to establish an agency, including, if necessary, a decision to require the termination of the activities of the agency.

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.⁸ The Board also considers additional standards set forth in the IBA and Regulation K.⁹

As noted above, KEB engages directly in the business of banking outside the United States. KEB also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

The Board previously has determined that KEB is subject to comprehensive supervision on a consolidated basis by its home country supervisor, the Korean Financial Supervision Service (“FSS”).¹⁰ KEB remains supervised by the FSS on substantially the same terms and conditions. Based on all the facts of record, it has been determined that KEB 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 FSS has no objection to the establishment of the proposed agency.

The Board has also considered the financial and managerial factors and other factors required by the IBA. Korea’s risk-based capital standards are consistent with those established by the Basel Capital Accord (“Basel Accord”). KEB’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 KEB are considered consistent with approval, and KEB appears to have the experience and capacity to support the proposed agency. In addition, KEB has established controls and procedures for the proposed agency to ensure compliance with U.S. law and for its operations in general.

⁸ 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 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.

⁹ 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).

¹⁰ *Hana Financial Group*, FRB Order No. 2013-4 (August 14, 2013).

Korea is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with these recommendations, Korea 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 Korea, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. KEB 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.

KEB 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 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, KEB 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 KEB 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 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.¹¹ 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 (1) the size and scope of KEB'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 (2) the framework in place for supervising KEB in its home jurisdiction. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by KEB as well as to the terms and conditions set forth in this order, KEB's application to establish an agency in New York is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹² Should any restrictions on access to information on the operations or activities of KEB and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by KEB or its affiliates with applicable federal statutes, the Board may require termination of any of KEB's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.¹³

¹¹ Pub. L. No. 111-203, 124 Stat. 1376, 1440 (2010), codified at 12 U.S.C. § 3105(d)(3)(E).

¹² 12 CFR 265.7(d)(12).

¹³ The Board's authority to approve the establishment of an agency 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 agency of KEB in accordance with any terms and conditions that the New York State Department of Financial Services might impose. The New York State Department of Financial Services approved KEB's application to establish the agency on August 31, 2015.

By order, approved pursuant to authority delegated by the Board, effective October 27, 2015.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Taiwan Business Bank, Ltd.
Taipei, Taiwan

*Order Approving Establishment of a Branch
FRB Order No. 2015–37 (December 31, 2015)*

Taiwan Business Bank, Ltd. (“TBB”), Taipei, Taiwan, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 7(d) of the IBA¹ 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*, January 16, 2015). The time for submitting comments has expired, and the Board has considered all comments received.

TBB, with consolidated assets of approximately \$45 billion, is the 14th largest bank in Taiwan.² TBB is a subsidiary of Bank of Taiwan (“BOT”), Taipei.³ Taiwan Financial Holding Company, Ltd. is wholly owned by Taiwan’s Ministry of Finance and owns all of BOT’s shares. TBB offers a variety of traditional banking products and services, including corporate and consumer loans, trade finance, foreign exchange, trust, and credit card services. Outside Taiwan, TBB operates branches in Hong Kong, Shanghai, Sydney, and Brisbane. In the United States, TBB operates a state-licensed branch in Los Angeles, California. TBB is a qualifying foreign banking organization under Regulation K.⁴

TBB’s parent bank, BOT, with consolidated assets of approximately \$151 billion, is the largest commercial bank in Taiwan. The bank offers a range of commercial, investment, and retail banking products. Outside Taiwan, BOT operates branches in Hong Kong, Johannesburg, London, Singapore, Tokyo, and Shanghai, and a representative office in Mumbai. In the United States, BOT operates state-licensed branches in New York, New York, and Los Angeles, California. BOT is a qualifying foreign banking organization under Regulation K.

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

¹ 12 U.S.C. § 3105(d).

² Asset data are as of June 30, 2015, and are based on the exchange rate as of that date. Ranking data are as of December 31, 2014.

³ BOT owns approximately 17.2 percent of the voting shares of TBB and has three of the 15 seats on TBB’s board of directors.

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 supervisors receive 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, 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,

As noted above, TBB and BOT engage directly in the business of banking outside the United States. TBB also has provided the Board with information necessary to assess the application through submissions that address the relevant issues.

The Federal Reserve previously has determined that TBB and BOT are subject to comprehensive supervision on a consolidated basis by their home country supervisor, the Financial Supervisory Commission (“FSC”).⁷ TBB and BOT remain supervised by the FSC on substantially the same terms and conditions. Based on all the facts of record, it has been determined that TBB and BOT continue to be subject to comprehensive supervision on a consolidated basis by their 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”). TBB’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 TBB are considered consistent with approval, and TBB appears to have the experience and capacity to support the proposed branch. In addition, TBB 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 Financial Action Task Force 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. TBB has policies and procedures to comply with these laws and regulations, and TBB’s compliance with applicable laws and regulations is monitored by governmental entities responsible for anti-money-laundering compliance.

TBB 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 to determine and enforce

audit reports, or otherwise; (iii) obtain information on the dealings 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 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) and 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 Business Bank*, 81 *Federal Reserve Bulletin* 746 (1995); *Bank of Taiwan* (order dated June 27, 2011), 97 *Federal Reserve Bulletin* 56 (2nd Quar. 2011).

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, TBB 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 TBB 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 TBB in its home jurisdiction; the scope of TBB’s activities, including the types 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 TBB in its home jurisdiction. Based on these and other factors, financial stability considerations for 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. TBB’s home state is California. 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 TBB under section 5(a) of the IBA.

On the basis of all the facts of record, and subject to the commitments made by TBB as well as the terms and conditions set forth in this order, TBB’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 Counsel, pursuant to authority delegated by the Board.¹² Should any restrictions on access to information on the operations or activities of TBB and its affiliates subsequently interfere with the Board’s ability to

⁸ Pub. L. No. 111-203, 124 Stat. 1376, 1440 (2010), codified at 12 U.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 and 12 U.S.C. § 1831u(b)(1), (b)(3), and (b)(4)). It has been determined that TBB is in compliance with state filing requirements. TBB was adequately capitalized as of the date the application was filed, and on consummation of this proposal TBB would be well capitalized and well managed.

¹² 12 CFR 265.7(d)(12).

obtain information to determine and enforce compliance by TBB or its affiliates with applicable federal statutes, the Board may require termination of any of TBB's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by TBB 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 December 31, 2015.

Robert deV. Frierson
Secretary of the Board

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 TBB in accordance with any terms and conditions that the New York State Department of Financial Services may impose.

Order Issued Under Home Owners' Loan Act

Synchrony Financial
Stamford, Connecticut

Order Approving a Savings and Loan Holding Company and Certain Activities
FRB Order No. 2015-30 (October 14, 2015)

Synchrony Financial, Stamford, Connecticut, has requested the Board's approval under section 10(e) of the Home Owners' Loan Act, as amended ("HOLA"),¹ to operate as a publicly owned savings and loan holding company ("SLHC") and retain control of its subsidiary federal savings association, Synchrony Bank ("Synchrony Bank" or the "Bank"), Draper, Utah. Synchrony Financial has also requested the Board's approval under section 10(c) of HOLA and section 238.51(b) of the Board's Regulation LL to continue to engage in certain business activities through its control of numerous non-savings association subsidiaries.² General Electric Company ("GE"), General Electric Capital Corporation ("GECC"), and GE Consumer Finance, Inc. ("GECFI"), currently own and control, either directly or indirectly, 84.6 percent of the outstanding shares of Synchrony Financial's common stock.³ Under the proposal, GE would offer its shareholders the opportunity to exchange shares of GE common stock for shares of Synchrony Financial common stock. Synchrony Financial will become a stand-alone SLHC upon consummation of the exchange offer.

Notices of the proposal, affording interested persons an opportunity to submit comments, have been published (80 *Federal Register* 26257 (May 7, 2015); 80 *Federal Register* 29321 (May 21, 2015)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and the factors set forth in sections 10(c) and (e) of HOLA in light of all the information of record.⁵

Synchrony Financial, with consolidated assets of approximately \$75.8 billion, controls Synchrony Bank and is the 36th largest insured depository organization in the United States, controlling approximately \$37.8 billion in deposits, which represent less than 1 percent of the total amount of deposits in the United States.⁶ Synchrony Financial provides a range of credit and deposit products to North American consumers. Synchrony Bank has a main office in Utah and operates a single branch in New Jersey.

Factors Governing Evaluation of the Proposal

In evaluating a proposal to establish an SLHC under section 10(e) of HOLA, the Board is required to consider the competitive effects of the proposal; the financial and managerial resources and future prospects of the applicant and savings association involved; the conve-

¹ 12 U.S.C. § 1467a(e).

² 12 U.S.C. § 1467a(c). See the appendix for a listing of these subsidiaries and their respective activities.

³ The remaining 15.4 percent of Synchrony Financial's common stock is publicly traded. No single shareholder holds more than 5 percent of the publicly traded stock.

⁴ 12 CFR 238.14(c)(2) and 238.53(e).

⁵ 12 U.S.C. §§ 1467a(c)(4)(B) and (e)(2); see also 12 CFR 238.54(c) and 238.15.

⁶ Asset, deposit, and ranking data are as of June 30, 2015, unless otherwise noted.

nience and needs of the community to be served, including the record of performance under the Community Reinvestment Act (“CRA”);⁷ and the effect of the acquisition on the savings association and the insurance risk to the Deposit Insurance Fund.⁸

Section 10(c)(4) of HOLA, governing SLHC holding company activities, requires the Board to consider whether the performance of a particular activity 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 of such activity (such as undue concentration of resources or decreased or unfair competition, conflicts of interest, or unsound financial practices).⁹ As part of this evaluation, the Board is also required to consider the managerial and financial resources, including capital, of the companies involved.¹⁰

Competitive Considerations

Section 10(e)(2) of HOLA prohibits the Board from approving a proposal that would result in a monopoly, or that would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States.¹¹ HOLA also prohibits the Board from approving a proposal the effect of which in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or that in any other manner would be in restraint of trade, 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 In addition, the Board must consider the competitive effects of a proposal to acquire a non-savings association company under the balancing test of section 10(c)(4) of HOLA.¹³

The proposal is a re-organization and divestiture of a savings association by its current owner without a combination with another depository institution. Accordingly, the proposal would not decrease competition in any market.

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.

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 market, including any savings and loan markets. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial and Managerial Resources and Future Prospects

In reviewing proposals under HOLA, 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 regarding the financial condition of the organiza-

⁷ 12 CFR 238.15(b)(3).

⁸ 12 U.S.C. § 1467a(e)(2); *see also* 12 CFR 238.15.

⁹ 12 U.S.C. § 1467a(c)(4)(B)(i); *see also* 12 CFR 238.54(c).

¹⁰ 12 U.S.C. § 1467a(c)(4)(B)(ii)-(iii); *see also* 12 CFR 238.54(c).

¹¹ 12 U.S.C. § 1467a(e)(2)(A); *see also* 12 CFR 238.15(a)(1).

¹² 12 U.S.C. § 1467a(e)(2)(B); *see also* 12 CFR 238.15(a)(2).

¹³ 12 U.S.C. § 1467a(c)(4)(B)(i).

tions involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding 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. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Board.¹⁴ 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.

Synchrony Financial and Synchrony Bank are both well capitalized and would remain so on consummation of the proposal.¹⁵ As described above, the proposed transaction is structured as a share exchange, in which GE shareholders will be given the opportunity to exchange shares of GE common stock for shares of Synchrony Financial common stock. Consummation of the proposal would eliminate GE as a source of strength for Synchrony Financial and Synchrony Bank; however, it would also allow Synchrony Financial direct and full access to the capital markets in the same manner and degree as other depository institutions of similar size, structure, and operations. The asset quality, earnings, and liquidity of Synchrony Financial and Synchrony Bank are consistent with approval. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved.¹⁶ In evaluating the managerial resources of the company or savings association, the Board considers the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or savings association; their record of compliance with laws and regulations; and the record of the company or savings association and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.¹⁷ Synchrony expects to replace five existing directors with five new, independent directors. The management of Synchrony Financial and Synchrony Bank are otherwise proposed to remain the same as currently. Accordingly, the Board has reviewed the examination records of Synchrony Bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered information provided by Synchrony Financial, the Board's supervisory experiences with Synchrony Financial and those of other relevant bank supervisory agencies with the organization, and Synchrony Financial's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Synchrony Financial's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Synchrony Financial have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Synchrony Financial's plans for implementing the proposal. Synchrony Financial is devoting significant financial and other resources to expand its

¹⁴ 12 CFR 238.15(b)(1).

¹⁵ The Board considered the leverage ratio, total risk-based capital ratio, tier 1 risk-based capital ratio, and common equity tier 1 risk-based capital ratio of the consolidated assets of Synchrony Financial and Synchrony Bank.

¹⁶ 12 CFR 238.15(b)(2).

¹⁷ See 12 U.S.C. § 1467a(e)(1)(B); 12 CFR 238.15(b)(2).

infrastructure to support its operation as a stand-alone organization. In particular, Synchrony Financial has developed stand-alone corporate governance, capital planning, information technology, compliance, regulatory, internal audit, and other control operations and infrastructure. Synchrony Financial has also developed its own stand-alone risk-management policies and processes. These actions are considered acceptable from a supervisory perspective. In addition, Synchrony Financial's management has the experience and resources to ensure that the organization can continue to operate in a safe and sound manner.

Based on all the facts of record, including Synchrony Financial's supervisory record, managerial and operational resources, and plans for operating the institution on a stand-alone basis after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organization involved in the proposal, as well as Synchrony Financial's record of compliance with applicable banking laws, including anti-money-laundering laws, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 10(e) of HOLA, the Board considers the effect of the transaction on the convenience and needs of the communities to be served.¹⁸ The Board also takes the convenience and needs of the communities to be served into consideration in the balancing test under section 10(c)(4) of HOLA.¹⁹ 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.²⁰ 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,²¹ 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.²²

In addition, the Board considers the institution's 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 assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. 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. 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 Synchrony Bank, the fair lending and compliance records of Synchrony Bank, the supervisory views of the Office of the Comptroller of the Currency ("OCC") and the Consumer Financial Protection Bureau ("CFPB"), confidential supervisory information, and information provided by Synchrony Financial.

¹⁸ 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(3).

¹⁹ 12 U.S.C. § 1467a(e)(4)(B)(i).

²⁰ 12 CFR 238.15(b)(3).

²¹ 12 U.S.C. § 2901(b).

²² 12 U.S.C. § 2903.

The OCC and CFPB have each conducted consumer compliance examinations of Synchrony Bank. The Board has reviewed those examination reports and consulted with the OCC and CFPB regarding Synchrony Bank'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. Synchrony Bank intends to maintain these policies and procedures following consummation of the transaction.

Record of Performance Under the CRA. 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.²³ 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 Home Mortgage Disclosure Act 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 loans 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;²⁴ 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 Synchrony Bank. Synchrony Bank was assigned an overall "Outstanding" rating by the OCC at its most recent CRA performance evaluation, as of December 31, 2012 ("CRA Evaluation").²⁵ Due to Bank's designation as a limited-purpose

²³ 12 U.S.C. § 2906.

²⁴ 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).

²⁵ At the time of the CRA Evaluation, Synchrony Bank operated under the name "GE Capital Retail Bank, FSB." The institution changed its name to "Synchrony Bank" on June 2, 2014. The Bank was designated as a limited-purpose savings association for CRA evaluation purposes effective May 1, 2009; therefore, the CRA Evaluation was conducted using examination procedures for limited-purpose institutions. Examiners reviewed community development activities from October 1, 2009, through December 31, 2012, and reviewed the level and nature of qualified investments, community development lending, and community development services.

savings association for CRA evaluation purposes, examiners considered the following rating criteria: (1) level of community development lending, community development services, and qualified investment activity; (2) use of innovative or complex qualified investments, community development loans, and community development services; and (3) responsiveness to credit and community development needs in the institution's assessment area. Synchrony Bank was found to demonstrate (1) a high level of community development lending, community development services, and qualified investment activities; (2) occasional use of innovative or complex qualified investments, community development loans, and community development services; and (3) excellent responsiveness to credit and community development needs in the Bank's assessment area.

Examiners found that Bank provided significant levels of community development lending, community development services, and qualified investment activity in and outside Bank's assessment area. Examples of community development loans cited by examiners included Bank's partnership and leadership role with a consortium of 29 financial institutions that offers flexible financing for new construction or rehabilitation of multifamily affordable-housing development projects; its leadership role in the creation of a small business loan pool in response to community needs; and its extension of credit with flexible terms to support a local city government in the acquisition and rehabilitation of targeted single-family properties. Examiners noted that employees of Bank and its affiliates contributed significant time to community development services during the review period, including service with organizations dedicated to affordable housing, financial education, and support for women seeking employment. In particular, examiners noted Bank officers' efforts to initiate a small business educational program that guides women entrepreneurs to develop skills in planning and operating their own businesses and provides mentors and access to financing for graduates of the program. Significant qualified investment activities included the purchase of securities backed by mortgages to LMI borrowers in the assessment area, investments in small business investment companies, and grants and financial support for programming at schools serving primarily LMI households in the assessment area.

Examiners noted Bank's use of innovative or complex qualified investments, community development loans, and community development services. In particular, examiners cited projects that included financing a multifinancial institution consortium that offers permanent financing for low-income housing and multifamily affordable housing in the Utah area; assembling a complex small business loan pool with several other banks; and creating a program to assist women in developing the skills and knowledge needed to become small business entrepreneurs.

Examiners found Bank to be responsive to credit and community development needs in its assessment area. In particular, examiners noted that identified needs in Bank's assessment area for small business development, financial education, and affordable housing were addressed by Bank through such initiatives as the creation of the small business education program for women noted above, Bank's investment in a small business investment company, and community development loans and investments designed to finance affordable housing.

At Bank's request, examiners also considered qualified investments, community development lending, and community development services provided by Bank's affiliates. The assessment area of the CRA Evaluation was defined as the Salt Lake City, UT Metropolitan Statistical Area ("Salt Lake City MSA"). The Salt Lake City MSA is comprised of Salt Lake, Summit, and Tooele Counties. If a bank has adequately addressed its assessment area needs, examiners consider community development activities a bank submits that benefit areas outside its assessment area in the evaluation of its performance. As discussed further below, because Bank had adequately addressed the needs of its assessment area, community development activities benefiting areas outside the assessment area were considered in evaluating Bank's performance.

Synchrony Bank's Efforts Since the 2012 CRA Evaluation. Synchrony Bank represents that since the CRA Evaluation, Bank has made additional community development loans and qualified investments benefiting its assessment area. The Bank has also expanded its CRA staff and provided volunteer community development services focused on financial education for LMI households in Utah. Synchrony Bank has indicated that it will continue its focus on community development services and on internal targets for CRA performance.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Synchrony Financial has represented that its separation from GE would enable it to operate as a finance company independent of the needs of its current parent holding companies, GE and GECC. In particular, Synchrony Financial stated that its strategic and competitive actions will no longer be limited by the broader strategic and commercial considerations that are inherent in being a subsidiary of large, highly complex organizations such as GE and GECC.

Synchrony Financial also represented that it does not anticipate any diminution in the products and services it currently offers. Rather, Synchrony Financial intends to offer additional products to its customers and may expand its small business lending activities. Synchrony Bank intends to re-launch a consumer-based general purpose credit card that will offer customers greater financial flexibility and convenience as well as permit Bank to expand its consumer banking experience. The Bank also intends to introduce a demand-deposit checking account with features such as debit card access, overdraft protection, and bill payment capabilities. The Bank further intends to enhance its digital platform by integrating credit card accounts into “digital wallets” that can be accessed through mobile devices that allow consumers to shop and pay for goods and services using their smart phones and tablets. In addition, Synchrony Financial has invested resources into developing a stand-alone risk-management function and information security capabilities to strengthen the safety and soundness of its own operations.

The proposal will also reduce the systemic footprint of GECC – a large systemically important institution – and will accordingly simplify GECC’s organizational structure, thus making GECC easier to resolve.

Conclusion on Convenience and Needs Considerations. The Board has considered all the facts of record, including the record of Synchrony Bank under the CRA, its record of compliance with fair lending and other consumer protection laws, consultations with the OCC and the CFPB, confidential supervisory information, information provided by Synchrony Financial, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Effect of Transaction on the Bank and Insurance Risk to the Deposit Insurance Fund

In acting on a proposal under section 10(e) of HOLA, the Board considers the likely effect of the transaction on the savings association and any insurance risk to the Deposit Insurance Fund.²⁶ The proposal would establish of Synchrony Financial as a stand-alone SLHC. As discussed above, the financial and managerial resources and future prospects of the organization are consistent with approval. The proposal would provide Synchrony Financial with direct and full access to capital markets. In addition, Synchrony Financial and

²⁶ 12 U.S.C. § 1467a(e)(2).

Synchrony Bank have taken and continue to take steps to strengthen their internal risk-management systems in connection with this transaction. The Board has considered the likely effect of the transaction on the Bank and believes that it is consistent with approval. In addition, in view of Synchrony Financial and Synchrony Bank's current resources, capital, and future prospects; the significant financial and other resources being devoted to support the independent operation of Synchrony Financial and Synchrony Bank; and the managerial resources of Synchrony Financial and Synchrony Bank; the Board after consulting with the Federal Deposit Insurance Corporation, believes that the proposal would not appear likely to have any material effect on the insurance risk to the Deposit Insurance Fund.

SLHC Business Activities

Synchrony Financial has also requested approval under section 10(c) of HOLA to retain control of certain non-savings association subsidiaries and thereby engage in business activities permissible for an SLHC. Section 10(c)(4) of HOLA requires the Board to consider whether the performance of a particular activity can reasonably be expected to produce benefits to the public that outweigh possible adverse effects of such activity,²⁷ taking into consideration the managerial and financial resources, including capital, of the companies involved.²⁸ As noted above, the proposal does not involve any new concentrations of resources or decrease in competition because Synchrony Financial is not acquiring any other entities as part of this proposal. Moreover, the proposal will enhance the stability of the U.S. financial system by reducing the complexity and interconnectedness of GE, GECC, and GECFI, and the proposal is expected to result in expanded products and services to customers of Synchrony Financial. In addition, as discussed above, considerations relating to Synchrony Financial's financial and managerial resources, including capital, are consistent with approval.

For the reasons discussed above, and based on the entire record, the Board finds that the proposed retention of non-savings association subsidiaries and activities by Synchrony Financial is likely to result in benefits to the public that outweigh any possible adverse effects from the transaction and is consistent with approval under the standard of section 10(c)(4) of HOLA.

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 HOLA. The Board's approval is specifically conditioned on compliance by Synchrony Financial 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 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.

²⁷ 12 U.S.C. § 1467a(c)(4)(B)(i); *see also* 12 CFR 238.54(c).

²⁸ 12 U.S.C. § 1467a(c)(4)(B)(ii)-(iii); *see also* 12 CFR 238.54(c).

By order of the Board of Governors, effective October 14, 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. Retail Finance Credit Services, LLC, Stamford, Connecticut, which engages in extending credit and servicing loans.
2. Retail Finance International Holdings, Inc., Draper, Utah, which engages in servicing activities and community development activities and indirectly engages in activities that are usual in connection with the transaction of banking or other financial operations abroad.
3. Synchrony Holding Company, Mississauga, Ontario, Canada, which indirectly engages in activities that are usual in connection with the transaction of banking or other financial operations abroad.
4. Synchrony Financial Canada Company, Mississauga, Ontario, Canada, which indirectly engages in activities that are usual in connection with the transaction of banking or other financial operations abroad.
5. Synchrony Financial Canada, Mississauga, Ontario, Canada, which engages in activities that are usual in connection with the transaction of banking or other financial operations abroad.
6. Synchrony International Services Private Limited, Madhapur, India, which engages in servicing activities.
7. Synchrony Global Services Philippines, Inc., Muntinlupa City, Philippines, which engages in servicing activities.
8. CareCredit LLC, Costa Mesa, California, which engages in servicing activities.
9. Retail Finance Servicing, LLC, Draper, Utah, which engages in servicing activities.
10. Blue Trademark Holding, LLC, Stamford, Connecticut, which engages in servicing activities.
11. Synchrony International Resource Management, LLC, Draper, Utah, which engages in servicing activities.
12. RFS Holding, Inc., Stamford, Connecticut, which indirectly engages in extending credit and servicing loans; activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit; and private-placement services.
13. SBFE, LLC, Beachwood, Ohio, which engages in data processing.
14. a mobile commerce software development company, which engages in data processing.
15. SRT Holdings, LLC, Stamford, Connecticut, which engages in extending credit and servicing loans and activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit.
16. RFS Holding, LLC, Stamford, Connecticut, which engages in extending credit and servicing loans; activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit; and private-placement services.
17. PLT Holding, LLC, Stamford, Connecticut, which engages in extending credit and servicing loans and activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit.
18. Synchrony Receivables Trust, Newark, Delaware, which engages in extending credit and servicing loans and activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit.
19. Synchrony Credit Card Master Note Trust, New York, New York, which engages in extending credit and servicing loans and activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit.
20. Synchrony Lending, Inc., which engages in extending credit and servicing loans; activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit; and private-placement services.
21. Synchrony Sales Finance Holding, LLC, which engages in extending credit and servicing loans; activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit; and private-placement services.

22. Synchrony Sales Finance Master Trust, which engages in extending credit and servicing loans and activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit.

Legal Developments: First Quarter, 2016

Order Issued Under Bank Merger Act

Goldman Sachs Bank USA
 New York, New York

Order Approving the Acquisition of Assets and Assumption of Liabilities
 FRB Order No. 2016-03 (March 21, 2016)

Goldman Sachs Bank USA (“GS Bank”), the state member bank subsidiary of The Goldman Sachs Group, Inc. (“Goldman Sachs”), both of New York, New York, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)¹ to assume substantially all the deposit liabilities and acquire certain limited assets from GE Capital Bank, Holladay, Utah, the industrial bank subsidiary of General Electric Capital Corporation (“GECC”), Norwalk, Connecticut.²

Under the proposal, GS Bank would assume approximately \$17 billion of GE Capital Bank’s \$18.2 billion in deposits. GS Bank also would acquire certain technology and intangible assets used by GE Capital Bank to manage its online retail deposit-taking platform; these assets represent approximately 1 percent of the total assets of GE Capital Bank. GS Bank also would hire certain employees of GE Capital Bank who manage and provide support for the online deposit platform. The deposits to be acquired are currently held at GE Capital Bank’s Utah office and, upon consummation of the proposal, would be held at GS Bank’s branch located in Salt Lake City, Utah.

Goldman Sachs, with consolidated assets of approximately \$859.9 billion, is the fifth largest insured depository organization in the United States by assets.³ Goldman Sachs is the 21st largest insured depository organization in the United States by deposits, controlling deposits through GS Bank of approximately \$78.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. GS Bank has offices in Massachusetts, New Jersey, New York, and Utah, and holds its deposits in a branch in Salt Lake City, Utah. GS Bank is the second largest insured depository institution in Utah, controlling approximately 15.1 percent of the total deposits held in insured depository institutions in that state.

GE Capital Bank, with total assets of approximately \$23.0 billion, operates a single nonretail banking office in Holladay, Utah. GE Capital Bank solicits deposits nationwide

¹ 12 U.S.C. § 1828(c). The Bank Merger Act applies to a merger or consolidation between insured depository institutions, an acquisition by an insured depository institution of the assets of another insured depository institution, or an assumption by an insured depository institution of liability to pay deposits made in another insured depository institution. 12 U.S.C. § 1828(c)(2).

² GE Capital Bank is a depository institution that is insured by the Federal Deposit Insurance Corporation (“FDIC”).

³ Asset, deposit, ranking, and market-share data are as of June 30, 2015, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, savings associations, and industrial loan companies.

through an Internet-based deposit-taking platform. GE Capital Bank is the ninth largest insured depository institution in Utah, controlling approximately \$18.2 billion in deposits, which represent approximately 3.5 percent of the total amount of deposits of insured depository institutions in that state.

On consummation of the proposal, Goldman Sachs would control approximately \$95.1 billion in deposits through GS Bank. Goldman Sachs would remain the fifth largest insured depository organization in the United States by assets and would become the 17th largest insured depository organization in the United States by deposits. GS Bank would remain the second largest depository institution in Utah, controlling approximately 18 percent of the total deposits of insured depository institutions in the state.

Public Comments on the Proposal

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.⁴ The Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until October 30, 2015, a total period of more than 70 days, to submit written comments. The time for submitting comments has expired. The Board received comments concerning the proposal from 84 individuals and organizations.

Approximately 31 commenters submitted comments supporting the proposal.⁵ Many of these commenters describe favorable experiences with GS Bank and commended the company and its management for its support for various community development programs, initiatives, projects, and partnerships. Supporting commenters also asserted that GS Bank has worked to expand credit in distressed areas, provided low- and moderate-income ("LMI") households with access to financial services, and developed innovative projects to benefit low-income and minority communities.

Approximately 53 commenters submitted comments either opposing the proposal, requesting that the Board approve the proposal only subject to certain conditions, or expressing concerns about the proposal.⁶ Many of these commenters express concerns about the involved institutions' performance under the Community Reinvestment Act of 1977 ("CRA")⁷ as well as the CRA performance of GS Bank after consummation of the proposal. These commenters also express concerns about the level of GS Bank's and GE Capital Bank's small business lending and argue that GS Bank should invest more in the communities in which it would accept deposits as a result of the proposal. Some opposing commenters allege that GS Bank's community development activities are not commensurate with the bank's size and that there are racial disparities in GS Bank's origination of certain mortgage products, based on data reported for 2013 and 2014 under the Home Mortgage Disclosure Act of 1975 ("HMDA").⁸

Many opposing commenters question whether the proposal would result in public benefits, alleging that GS Bank and its affiliates have violated laws and have been investigated for

⁴ 12 U.S.C. § 1828(c)(3); 12 CFR 262.3(b).

⁵ One commenter submitted a form supporting the proposal signed by 199 of the commenter's affiliated local organizations from 46 states.

⁶ Of the opposing commenters, approximately 16 commenters submitted individualized written comments, and approximately 37 commenters submitted substantially identical form letters. One commenter submitted a petition in opposition to the proposal with the names of 14 individuals.

⁷ 12 U.S.C. § 2901 *et seq.*

⁸ 12 U.S.C. § 2801 *et seq.*

possible violations of laws in the United States and abroad related to mortgage servicing, mortgage securitization, and asset-price manipulation. Commenters state that the Goldman Sachs organization should not be allowed to increase in size and complexity, arguing that it is “too big to fail.” Several other opposing commenters question the relationship between the Federal Reserve and Goldman Sachs.⁹

Factors Governing Board Review of the Transaction

The Bank Merger Act sets forth the factors that the Board must consider when reviewing certain transactions between insured depository institutions.¹⁰ These factors include the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the involved institutions; the effectiveness of the involved institutions in combatting moneylaundering 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 risk to the stability of the United States banking or financial system. In proposals involving interstate transactions, 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.

In evaluating the statutory factors under the Bank Merger Act, the Board considered the information and views presented by all commenters. The Board also considered all the information presented in the application and supplemental filings by GS Bank, 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 institutions involved. As required by the Bank Merger Act, a report on the competitive effects of the proposal was requested from the United States Attorney General. 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 Bank Merger Act are consistent with approval of the proposal.

Interstate and Deposit Cap Analyses

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹¹ amended the Bank Merger Act¹² to provide that, in general, the Board may not approve an application to engage in a transaction under the Bank Merger Act if the transaction involves insured depository institutions with different home states 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

⁹ Some opposing commenters suggest that consideration of this proposal by the Federal Reserve would create conflicts of interest due to what commenters argue are close relationships between the institutions involved and employees of some Federal Reserve Banks. The Bank Merger Act requires that the Board act on an application filed under the Act if, as in this case, the resulting bank is to be a state member bank. 12 U.S.C. § 1828(c)(2). Although the Board has delegated to the Federal Reserve Banks the authority to act on Bank Merger Act applications meeting certain criteria (*see, e.g.*, 12 CFR 265.11(c)(11)), this matter was decided by the Board directly, without any involvement by any individuals identified by commenters.

In addition, several commenters point to press reports concerning the illegal disclosure of confidential supervisory information by an employee of the Federal Reserve Bank of New York (“New York Reserve Bank”) and an employee of the Goldman Sachs organization. As noted in the press reports cited by commenters, the employment of these individuals has been terminated by the New York Reserve Bank and the Goldman Sachs organization, respectively. The individuals have been charged for their illegal activities, have entered a plea concerning their activities, and are awaiting sentencing.

¹⁰ 12 U.S.C. § 1828(c)(5) and (11).

¹¹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

¹² Dodd-Frank Act § 623(a), 124 Stat. at 1634, codified at 12 U.S.C. § 1828(c)(13).

States. For purposes of the Bank Merger Act, the home state of GS Bank is New York and the home state of GE Capital Bank is Utah.¹³ Consummation of the proposal would result in GS Bank controlling less than 1 percent of the deposits of U.S. insured depository institutions. The proposed acquisition of deposits and assets of GE Capital Bank would not be prohibited by the law of any state in which GE Capital Bank is located.¹⁴ Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under the interstate merger provisions of the Bank Merger Act.¹⁵

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 effect of the transaction in meeting the convenience and needs of the communities to be served.

GS Bank and GE Capital Bank do not directly compete in any local retail banking market. The Department of Justice has 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 proposal.

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.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁷ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved, as well as information regarding the financial condition of the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. 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

¹³ 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). GE Capital Bank is considered to be a bank for purposes of the Bank Merger Act.

¹⁴ The proposal also is subject to the approval of the New York Department of Financial Services and the Utah Department of Financial Institutions. GSBank has complied with the relevant state filing requirements.

¹⁵ For purposes of the Riegle-Neal Interstate Banking and Branch Efficiency Act of 1994 ("Riegle-Neal Act"), both GS Bank and GE Capital Bank are authorized under federal law to, and currently do, operate in Utah. In 2008, GS Bank was formed through the merger of two Goldman Sachs subsidiaries, a New York trust company and a Utah bank; the merger was approved by the FDIC pursuant to the Bank Merger Act and the Riegle-Neal Act. See *The Goldman Sachs Trust Company*, 2008 WL8014759 (Federal Deposit Insurance Corporation 2008); see also 12 U.S.C. § 1831 u(d)(2).

¹⁶ 12 U.S.C. § 1828(c)(5).

¹⁷ 12 U.S.C. § 1828(c)(5) and (11).

transaction. The Board also considers the ability of the organization 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 their financial and managerial resources and the proposed business plan. In this case, the Board also has consulted with the FDIC and the Consumer Financial Protection Bureau (“CFPB”).

GS Bank and GE Capital Bank are well capitalized, and the resulting bank would remain so on consummation of the proposal. As noted, the proposed transaction involves the assumption of deposits and an acquisition of certain related assets, including technology, systems, and records used by GE Capital Bank to manage and accept deposits.¹⁸ GS Bank also would hire a limited number of GE Capital Bank employees responsible for managing and operating the deposit platform. The asset quality, earnings, and liquidity of GS Bank and GE Capital Bank are consistent with approval, and GS Bank appears to have adequate resources to absorb the costs of assuming and integrating GE Capital Bank’s deposits and related technology and systems. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the bank after consummation of the proposal. The Board has considered GS Bank’s plans for implementing the proposal and has reviewed the examination records of GS Bank and GE Capital Bank, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by GS Bank, the Board’s supervisory experiences and those of other relevant bank supervisory agencies with the organizations, the organizations’ records of compliance with applicable banking, consumer protection, and anti-money-laundering laws, as well as information provided by commenters.

The directors and senior executive officers of GS Bank have substantial knowledge of and experience in the banking and financial services sectors. Moreover, GS Bank has conducted comprehensive due diligence and is devoting the necessary financial and other resources to address all aspects of the post-integration process for this proposal. The proposal represents a limited acquisition and would not appear to require substantial managerial or operational resources to integrate effectively. GS Bank would supplement its existing risk-management policies, procedures, and controls to address the additional business lines and risks associated with the operations to be acquired. In addition, GS Bank management has the experience and resources to ensure that the bank operates in a safe and sound manner after consummation of the proposal, and GS Bank plans to integrate the employees of GE Capital Bank that would be hired by GS Bank as part of this proposal in a manner that augments GS Bank’s management.

Based on all the facts of record, including GS Bank’s supervisory record, managerial and operational resources, plans for operating the resulting bank after consummation, and comments received on the proposal,¹⁹ the Board concludes that considerations relating to

¹⁸ GS Bank would assume GE Capital Bank’s liability to pay certain deposits and would receive a payment from GE Capital Bank equal to the value of the assumed deposits, subject to certain adjustments.

¹⁹ Commenters allege that GS Bank “has entered into numerous legal settlements since 2004” and that there are public reports of investigations in the United States and abroad into possible wrongdoing by affiliates of GS Bank. Commenters also allege that Goldman Sachs and GS Bank engaged in wrongful mortgage servicing practices, noting that in 2011, Goldman Sachs and GS Bank entered into a consent order with the Board related to its mortgage servicing and foreclosure activities. *See* Consent Order among The Goldman Sachs Group, Inc., Goldman Sachs Bank USA, and Board, Docket Nos. 11112 BHC and 11-112 BSM (amended February 28, 2013), available at www.federalreserve.gov/newsevents/press/enforcement/enf20130228a13.pdf. As

the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of GS Bank and GE Capital 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.²⁰ 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions 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,²¹ 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.²² In this regard, the federal financial supervisory agencies evaluate the performance of each institution in the context of the bank's product offerings, business strategy, and institutional capacity and constraints.²³

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 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 applicant institution's business model, its marketing and outreach plans, the institution's plans after consummation, and any other information the Board deems relevant.

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 GS Bank and GE Capital Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC and the CFPB, confidential supervisory information, information provided by GS Bank, and the public comments received on the proposal. The Board also has considered the limited scope of the proposed transaction and the limited consumer banking activities of GS Bank.

Summary of Public Comments on Convenience and Needs

As noted above, the Board received comments from 31 commenters supporting the proposal. These commenters point to the benefits that GS Bank provides to the communities it serves, including the bank's 10,000 Small Businesses Initiative, which provides small

noted above, the Board has considered the supervisory history and taken the firm's record of compliance into account in considering this case. In this regard, the consent order resulted from interagency on-site reviews of several mortgage servicing companies, including GS Bank's indirect subsidiary Litton Loan Servicing LP ("Litton"), Houston, Texas, that found critical weaknesses in these servicers' mortgage servicing and foreclosure processes that resulted in unsafe and unsound practices. Goldman Sachs sold Litton in 2011 and has made remediation payments to affected borrowers under the terms of the consent order.

²⁰ 12 U.S.C. § 1828(c)(5)(B).

²¹ 12 U.S.C. § 2901(b).

²² 12 U.S.C. § 2903.

²³ See, e.g., 12 CFR 228.21(b).

business owners with free one-on-one business counseling as well as training and advice from business experts, and various other projects and partnerships with community groups. Supporting commenters also assert that GS Bank has a long history of expanding credit in distressed areas, providing access to financial services to LMI households, and working with other financial institutions, local governments, and community groups on innovative and sophisticated projects to benefit low-income and minority communities. Supporting commenters contend that GS Bank extends its community reinvestment programs beyond its CRA assessment areas and argue that beneficial projects within the commenters' communities would not have been possible without the support of GS Bank. For example, one commenter states that the Goldman Sachs organization was a key partner in a project that developed 262 units of new affordable housing alongside a mixed-use retail, educational, healthcare, and art space in Memphis, Tennessee.

The Board also received comments from 53 commenters opposing the proposal. Many of these commenters argue that GS Bank's CRA investments were inadequate with regard to small business loans in LMI communities, that GS Bank had unsuitably low levels of corporate philanthropy, and that the level of community development grants by GS Bank was inadequate for a bank of its size and importance. One commenter contends that GS Bank does not consider financial inclusion and empowerment as a part of its CRA strategy. One commenter states that GS Bank's CRA assessment areas should include California because 25 percent of complaints regarding GS Bank to the CFPB are lodged on behalf of individuals or entities in California. Another commenter alleges that GS Bank has a limited presence in South Bronx, New York. Commenters also argue that GS Bank gives limited support to community organizations.

Commenters also express concerns regarding the future performance of GS Bank under the CRA. Commenters argue that GS Bank should provide clarity on its future banking activities; they urge the Board not to approve the application until GS Bank provides more detail regarding how its CRA assessment areas would change as a result of the proposal and how GS Bank would increase CRA activity in its primary assessment areas. Several commenters argue that GS Bank be required to work with community groups to create a binding community reinvestment plan.

In addition, several commenters allege that GS Bank neglects minority communities. In this regard, two commenters allege that HMDA data reported for 2013 and 2014 by GS Bank showed discriminatory lending practices in California and in the New York City area. Other commenters raise issues about the CRA performance of GE Capital Bank, especially with regard to small business lending in LMI communities.

Many commenters allege that the proposal would provide no clear public benefit. Commenters also allege that the proposal does nothing to address the convenience and needs of the communities GE Capital Bank currently serves. A commenter alleges that GS Bank does not show commitment to serve the public interest. Another commenter criticizes Goldman Sachs for purchasing residential properties in foreclosure and then leasing the properties to residential tenants—a practice commonly referred to as “REOrental.”

Businesses of the Involved Institutions

GS Bank is a wholesale bank whose activities are focused on highnetworth individuals, institutional clients, and corporations. The bank's primary activities include accepting deposits; lending to high-net-worth individuals, institutional clients, and corporations; and making markets in overthecounter derivatives, specifically as an interest rate risk-management service to its institutional and corporate clients. GS Bank's consumer banking activities are currently limited to banking services provided to Goldman Sachs's wealth-

management customers. For example, GS Bank's mortgage-lending activities are limited to loans made as an accommodation to existing highnetworth customers.

GE Capital Bank is a commercial finance bank that focuses on extending commercial loans and leases. The bank funds its lending activities primarily through brokered deposits and deposits sourced nationwide through an online deposit-taking platform. As noted, GE Capital Bank operates a single office in Holladay, Utah. The proposed transaction is a component of a plan to dissolve GE Capital Bank; this is part of a broader strategy by GECC, the parent of GE Capital Bank, to reduce the size of GECC's financial-services businesses and thereby reduce the firm's systemic footprint and achieve other business purposes.

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 and information and views provided by the appropriate federal supervisors.²⁴

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.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.

The CRA permits a bank to apply to its primary federal regulator to be designated as a wholesale or a limited-purpose bank.²⁶ The CRA performance of a wholesale or limited-purpose bank is assessed by evaluating the bank's community development activities.²⁷ This evaluation involves an assessment of (i) the number and amount of community development loans (including originations and purchases of loans, and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services; (ii) the use of innovative or complex qualified investments, community development loans, or community development services, and the extent to which the investments are not routinely provided by private investors; and (iii) the bank's responsiveness to credit and community development needs.²⁸ Based on its business activities, GS Bank has been designated as a wholesale bank.

As noted above, two commenters allege that HMDA data reported for 2013 and 2014 by GS Bank show that GS Bank made a disproportionately low number of conventional home purchase and refinance loans to African American, Asian, and Hispanic borrowers in the New York City area and in California. The Board is concerned by these types of disparities because they may indicate weaknesses in the adequacy of policies and programs at an

²⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Fed. Reg.* 11642, 11665 (March 11, 2010).

²⁵ 12 U.S.C. § 2906.

²⁶ 12 CFR 228.25. A limited-purpose bank is one that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited-purpose bank is in effect. A wholesale bank is one that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers.

²⁷ 12 CFR 228.25(c).

²⁸ *Id.*

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.²⁹ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution. In this case, as noted above, the Board has considered all the facts of record, including the fair lending and compliance records of both banks, the supervisory views of the FDIC and the CFPB, confidential supervisory information, information provided by GS Bank, and the public comments received on the proposal. The Board also considered that, as a wholesale bank, GS Bank is not in the business of extending home mortgage loans to retail customers, and that the small number of home mortgage loans the bank does make are extended as an accommodation to existing high-net-worth customers.

CRA Performance of GS Bank

GS Bank was assigned an overall "Outstanding" rating at its most recent CRA public evaluation by the New York Reserve Bank, as of November 5, 2012 ("GS Bank Evaluation").³⁰ Examiners found that GS Bank provided a high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors. Examiners found that the bank made extensive use of innovative or complex qualified investments, community development loans, and community development services. Examiners further noted that GS Bank exhibited excellent responsiveness to credit and community economic development needs in its assessment areas.

In the New York City AA, an area on which commenters focused,³¹ examiners found that GS Bank provided a high level of community development loans, qualified investments, and services, particularly investments not provided by private investors. GS Bank exhibited excellent responsiveness to credit and community economic development needs in the New York City AA, especially after Hurricane Sandy. Examiners found that GS Bank's level of annualized community development loans and investments as a percentage of assets compared very favorably to eight similarly situated wholesale banks operating in the assessment area.³² GS Bank's community development activities primarily targeted affordable housing and revitalization and stabilization, which were identified by community contacts as essential needs within the assessment area.

Examiners found that GS Bank was a leader in community development lending in the New York City AA, in identifying key community needs and bringing financing innova-

²⁹ 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.

³⁰ As a wholesale bank, GS Bank was evaluated under the Community Development Test. The evaluation period for the GS Bank Evaluation was from October 1, 2010, through December 31, 2012. Examiners reviewed the level of GS Bank's qualified community development loans, investments, and services in the bank's two assessment areas, which are located in the following Metropolitan Statistical Areas ("MSAs"): the New York–Northern New Jersey–Long Island, New York–New Jersey–Pennsylvania, MSA ("New York City AA") and the Salt Lake City, Utah, MSA ("Salt Lake City AA"). The New York Reserve Bank began a new CRA public evaluation of GS Bank in 2015; this public evaluation is not yet complete.

³¹ Commenters allege that GS Bank did not provide an adequate level of philanthropic support to, and did not participate in community development initiatives with, New York City–based community groups. Commenters urged GS Bank to commit to increasing its corporate philanthropy. GS Bank contends that Goldman Sachs is routinely among the leaders in corporate philanthropy, providing charitable grants through a number of different channels. The CRA does not authorize the federal banking agencies to direct a bank's charitable grants and other community development activities to specific groups, individuals, projects, or types of investments.

³² A commenter alleges that GS Bank was behind peer institutions in its percentage of assets devoted to community development.

tions to these markets.³³ GS Bank engages in community development lending through a dedicated business unit, the Urban Investment Group. Examiners found that a majority of GS Bank’s community development loans used innovative and/or complex structures and involved projects that have multiple layers of financing and that require collaboration with city and state government partners.

Examiners also noted that GS Bank was a leader, when compared to similarly situated banks, in the number of community development services it provides in the New York City AA. Qualifying community development services were provided through ongoing board and committee memberships, the provision of technical financial assistance, and the development of new programs that respond to identified needs within distressed communities. Examiners found that the bank’s community development activity within the New York City AA reflected an extensive level of innovativeness and complexity. In addition to Low Income Housing Tax Credit investments,³⁴ New Markets Tax Credit investments,³⁵ and predevelopment financing, GS Bank employed innovative programs, including the first social impact bond,³⁶ equity investments to acquire and refurbish foreclosed properties and sell them to LMI individuals, and a program targeting small business development.

Examiners also assigned GS Bank an “Outstanding” rating for its CRA activities in the Salt Lake City AA. In particular, examiners found that GS Bank had a high level of community development loans, qualified investments, and community development services. Examiners also noted that GS Bank made use of innovative and/or complex structures for community development lending and qualified investment opportunities. The bank’s community development activities exhibited excellent responsiveness to the credit and community development needs of the Salt Lake City AA.

GS Bank’s Efforts Since the 2012 CRA Evaluation

GS Bank represents that, since the 2012 CRA evaluation, the bank has made community development loans and investments focused on supporting the construction or financing of affordable housing within its assessment areas. GS Bank has partnered with community groups that provide homeowner-related services in LMI communities in New York and has provided funding for the development and preservation of affordable housing in New York.

Goldman Sachs and GS Bank, through the 10,000 Small Businesses Initiative, have committed funds to provide business education and support services as well as access to capital to small businesses in Utah. GS Bank has further invested in a joint venture focused on acquiring single-family homes in LMI neighborhoods in the Salt Lake City area with the purpose of buying foreclosed-upon properties and rehabilitating them for rental, as well as providing homebuyer education and emergency financial counseling to tenants. Goldman Sachs and GS Bank also have partnered with nonprofit organizations on many volunteer projects in the Salt Lake City area.

³³ Commenters allege that GS Bank made few of its community development loans and investments with nonprofit organizations generally, and with community development corporations in particular. In addition, a commenter alleges that GS Bank does not make financial inclusion and empowerment a part of its CRA strategy. As noted above, the CRA does not authorize the federal banking agencies to direct a bank’s community development activities to specific groups, individuals, projects, or types of investments.

³⁴ See 26 U.S.C. § 42.

³⁵ See 26 U.S.C. § 45D.

³⁶ A social impact bond is a contract under which private investors provide capital and management for a public project aimed at improving specific social outcomes, such as increased educational performance. If the project achieves its stated objectives, the government entity with which the contract is made repays the private investors with returns that are based on the savings the government accrues as a result of the project’s success.

As noted, the New York Reserve Bank began a new CRA public evaluation of GS Bank in 2015. While the evaluation is not complete, preliminary information indicates that levels of community development grant-making, loans, and investments by GS Bank appear to be appropriate for a bank of its size when compared to peers with similar activities. Preliminary information also indicates that the bank continues to provide flexible and innovative lending for community development purposes. There does not appear to be a reversal of any positive trends observed in the previously completed public evaluation.

CRA Performance of GE Capital Bank

GE Capital Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of October 15, 2012 (“GE Capital Bank Evaluation”).³⁷ GE Capital Bank received an overall rating of “Low Satisfactory” for the Lending Test and overall ratings of “High Satisfactory” for both the Investment Test and the Service Test.³⁸

When evaluating the Lending Test, FDIC examiners focused on GE Capital Bank’s community development lending performance.³⁹ Based on this focus, examiners assigned GE Capital Bank a “Low Satisfactory” rating, finding that the bank made a small but adequate level of community development loans within its assessment area. In addition, FDIC examiners assigned GE Capital Bank overall ratings of “High Satisfactory” for both the Investment Test and the Service Test because the bank provided a relatively high level of community development services, as well as a significant level of qualified community development investments and numerous grants and donations relative to the institution’s business strategy, available opportunities, and competition within the assessment area. FDIC examiners found that the bank exhibited good responsiveness to the credit and community economic development needs of the assessment area; the bank’s qualified investments primarily targeted affordable housing, which was identified as a community need within the assessment area.

Additional Convenience and Needs Considerations

While this proposal is limited in nature and does not involve the acquisition of branches, loans, or lending operations, this proposal does involve the acquisition of deposits and increased deposit-taking capabilities, and GS Bank is expected to adopt and implement appropriate policies and programs to ensure that it helps to meet the convenience and needs of its communities following this transaction. GS Bank has recognized this responsibility

³⁷ The GE Capital Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for the Lending Test, the Investment Test, and the Service Test was from November 5, 2008, through September 30, 2012.

³⁸ The GE Capital Bank Evaluation included a full-scope review of the bank’s sole assessment area in Salt Lake County, Utah. Examiners also considered community development loans made by GE Commercial Finance Corporate Lending, the GE Healthcare Equipment Finance Group, GS Real Estate Business Property, and GE Equity. In addition, examiners considered community development investments made by the GE Public Finance Unit.

³⁹ Several commenters criticized GE Capital Bank’s record of small business lending in the Monroe County, New York City, and Rochester areas, all in New York, alleging that the bank made a disproportionately low number of small business loans to businesses with gross annual revenue of \$1 million or less and to businesses located in LMI census tracts. Commenters also criticized GE Capital Bank’s limited lending in its Salt Lake County assessment area.

In this regard, some commenters criticize the GE Capital Bank Evaluation for omitting an analysis of the bank’s commercial lending activities as part of the Lending Test. As explained in the GE Capital Bank Evaluation, in assessing the Lending Test, FDIC examiners focused on the bank’s community development lending within its delineated assessment area of Salt Lake County, Utah. As noted in the FDIC evaluation, the lower number of CRA-reportable originations in the assessment area results from the bank’s focus on commercial financing on a nationwide basis.

and stated that it would continue its policies, practices, and activities in a manner consistent with its current “Outstanding” record of performance under the CRA. The bank also states that it would continue to implement its community development strategy, which focuses on innovative and complex community development projects, direct investment and lending, and public-private partnerships with local governments and community groups.⁴⁰

Moreover, to address the allegations of a number of commenters that the proposal would not provide a clear or significant public benefit, GS Bank has indicated that no reduction in deposit-related products or services is expected as a result of the proposal. Consummation of the proposal would also provide continuity for GE Capital Bank’s deposit customers as GE Capital Bank winds down its operations and reduces its deposit-taking activities.

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 FDIC and the CFPB, confidential supervisory information, information provided by GS Bank, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

As part of its application, GS Bank states that it is separately exploring a potential expansion of its lending activities, including an expansion of its lending to consumers. The Board expects that GS Bank will continue to help meet the credit needs of all the communities it serves, including LMI neighborhoods, in a manner commensurate with consummation of this proposal and with any future expansion of GS Bank’s lending activities. The Board will monitor GS Bank’s performance in this regard through the supervisory process.⁴¹

Financial Stability

The Dodd-Frank Act added “risk to the stability of the United States banking or financial system” as a factor that must be considered under the Bank Merger Act.⁴²

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

⁴⁰ A commenter alleges that GS Bank intends to expand its activities into consumer and small business lending and, in view of that future expansion, urged GS Bank to create a CRA plan in partnership with community development organizations. 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., CIT Group, Inc.*, FRB Order No. 2015-20 at 24n.54 (July 19, 2015); *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.

⁴¹ Commenters express concerns about the wholesale-bank designation of GS Bank for CRA evaluation purposes and that the bank’s future evaluations would not review the bank’s future lending performance under the CRA. Under the Board’s regulations implementing the CRA, the Board reserves the right to revoke a bank’s designation as a wholesale or limited-purpose bank on its own initiative. *See* 12 CFR 228.25(b). As part of the CRA evaluation process, examiners verify whether an institution continues to meet the requirement for designation as a wholesale or limited-purpose bank. The Board will continue to monitor GS Bank’s wholesale-bank designation through the supervisory process.

⁴² Dodd-Frank Act § 604(f), Pub. L. No. 111-203, 124 Stat. 1376, 16(2010), amending 12 U.S.C. § 1828(c)(5).

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.⁴³ 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 opacity 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.⁴⁴

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 proposal.⁴⁵ The Board has considered the effect of the proposal on Goldman Sachs's and GS Bank's systemic footprints. The approximately \$17 billion of deposits to be assumed would have a negligible effect on the systemic footprint of these organizations, increasing its shares of U.S. financial-system assets and liabilities by less than 0.1 percentage points, and deposits by less than 0.2 percentage points. The acquisition would also have a negligible effect on measures of Goldman Sachs's and GS Bank's interconnectedness, increasing Goldman Sachs's shares of U.S. intrafinancial system assets and liabilities, as well as its share of short-term funding liabilities, by less than 0.2 percentage points each.⁴⁶

The Board also has considered the net change to stability-related risks posed by the involved institutions. In this regard, the transaction would provide GS Bank with approximately \$17 billion in deposits, a deposit customer base, and a platform for increasing its deposit funding in the future. As a result, the proposal would immediately improve the stability of GS Bank's funding profile by diversifying sources of funding and increasing stable funding and would allow the bank to maintain and further improve its funding profile in the future. This should enhance financial stability. Moreover, the proposal would facilitate GECC's efforts to reduce its overall systemic footprint by exiting from its financial activities. On balance, the proposal would appear to reduce the risks posed by Goldman Sachs, GECC, and their subsidiary depository institutions.

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 Public Hearings or Meetings

Several commenters requested that the Board hold public hearings or meetings on the application. Some requesters argued that the Board should afford the public an opportunity to provide oral testimony on this application because the public did not have an oppor-

⁴³ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁴⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁴⁵ Some commenters generally allege that Goldman Sachs is already systemically important and should be broken up. Two commenters also express concern over Goldman Sachs's role in the 2008–09 financial crisis.

⁴⁶ Intrafinancial system assets and liabilities represent the amount of financial obligations that U.S. banks have to and from other U.S. and foreign financial firms. These metrics, along with short-term funding liabilities, are used to measure the interconnectedness of U.S. banks.

tunity to comment on the application in 2008 by Goldman Sachs to become a bank holding company.⁴⁷

The Bank Merger Act and the CRA do not require a public meeting or a formal public hearing on an application. Under its rules, the Board also may, in its discretion, hold a public hearing or meeting 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 submit comments on the proposal. As noted above, the Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until October 30, 2015, a total period of 72 days, to submit written comments. 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 public hearing or meeting. In addition, the requests do not demonstrate why written comments do not present the commenters' views adequately or why a hearing or 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 or meeting is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

In addition, several commenters requested a further extension of the comment period for the proposal. The Board has already provided for an extended comment period of 72 days. During this time, a number of commenters, including the requesters, submitted detailed comments in writing regarding 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.⁴⁸ The commenters' requests for additional time do not identify circumstances that would warrant an extension of the public comment period for this proposal.⁴⁹ Accordingly, the Board has determined not to extend further the public comment period.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal 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 Bank Merger Act and other applicable statutes. Approval of this proposal is specifically conditioned on compliance by GS Bank with all the conditions set forth in this order. The

⁴⁷ The Board's order issued in connection with the application explained the basis for waiving public notice. *The Goldman Sachs Group, Inc.*, 94 *Federal Reserve Bulletin* C101 (2008). In 2009 and 2010, the Board invited public comment on applications and notices filed by Goldman Sachs under the Bank Holding Company Act of 1956 to acquire or retain shares in certain bank holding companies and savings and loan holding companies. *See* 75 *Fed. Reg.* 17142 (April 5, 2010); 74 *Fed. Reg.* 48970 (September 25, 2009).

⁴⁸ 12 CFR 262.25(b)(2).

⁴⁹ Two commenters express concerns about GS Bank's use of the Board's prefiling process, suggesting that commenters could not participate in the resolution of substantive issues raised by the proposal because these issues were resolved before the filing of this application. One of these commenters withdrew its comments in full following its discussions with GS Bank.

The Federal Reserve has established a prefiling process to provide potential applicants with information about the procedural requirements, such as timing and the applicable forms, associated with a proposal. *See* SR Letter 12-12. This process also helps to identify information that may be needed in connection with issues that the Board typically considers in connection with a particular type of application or notice, such as competition or financial stability. The prefiling process is not used, and was not used in this case, to resolve or predetermine the outcome of any substantive issues. As in every case, the substantive issues involved in this case were considered and resolved as part of the processing of GS Bank's formal application. In doing so, the Board considered all public comments on the proposal.

conditions 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 proposed transaction 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 the New York Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective March 21, 2016.

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

Frost Bank
San Antonio, Texas

Order Approving the Establishment of Branches
FRB Order No. 2016-02 (March 14, 2016)

Frost Bank, a state member bank subsidiary of Cullen/Frost Bankers, Inc. (“Cullen/Frost”), both of San Antonio, Texas, has requested the Board’s approval under section 9 of the Federal Reserve Act (“FRA”)¹ and the Board’s Regulation H² to establish two branches in Texas.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board’s Rules of Procedure.⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors specified in the FRA.

Cullen/Frost is the sixth largest depository organization in Texas with 136 offices throughout Texas, controlling approximately \$23.9 billion in deposits, which represent approximately 3.3 percent of the total amount of deposits of insured depository institutions in that state.⁵ Frost Bank operates only in Texas, and the bank’s main office is in San Antonio, Texas.

Under section 208.6 of 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.⁸

The Board has considered the applications in light of these factors and the public comment received on the proposal. One commenter objects to the proposal, alleging that Frost Bank discriminates against African Americans and “redlines” African American neighborhoods, particularly in the Dallas and Houston areas, both in Texas, with respect to its branching, marketing, and lending activities.⁹

¹ 12 U.S.C. § 321.

² 12 CFR Part 208.

³ Frost Bank proposes to establish one branch at 314 South WW White Road, San Antonio (the “San Antonio Branch”), and one branch at 2421 East Seventh Street, Austin, Texas (the “Austin Branch”).

⁴ 12 CFR 262.3(b).

⁵ Data are as of June 30, 2015. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

⁶ 12 CFR 208.6(b).

⁷ 12 U.S.C. § 2901 *et seq.*

⁸ 12 CFR 208.21(a).

⁹ 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.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Frost Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Frost Bank, and the comment received. Frost Bank is well capitalized and would remain so upon consummation of the proposal. After considering all the facts of record, the Board concludes that the financial history and condition, capital adequacy, and future earnings prospects of Frost Bank are consistent with approval of the proposal. The Board also has reviewed Frost Bank's proposed investment in the branches and concludes that its investment is consistent with regulatory limitations on investment in bank premises.¹⁰

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

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.¹¹ In this evaluation, the Board places particular emphasis on the record of the relevant depository institution 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,¹² 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.¹³

In addition, the Board considers the bank's 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 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 after consummation, and any other information the Board deems relevant.

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 Frost Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Frost Bank, and the public comment received on the

¹⁰ 12 CFR 208.21(a).

¹¹ 12 CFR 208.6(b)(3).

¹² 12 U.S.C. § 2901(b).

¹³ 12 U.S.C. § 2903.

proposal. As noted above, a commenter objects to the proposal, alleging that Frost Bank has engaged in discriminatory practices in Houston and Dallas, both in Texas. In particular, the commenter alleges that Frost Bank disfavors certain African American neighborhoods in Houston and Dallas and has limited its lending, marketing activities, community development activities, and branching in those neighborhoods.

Frost Bank denies the commenter's allegations, arguing that it has received a "Satisfactory" rating in its most recent CRA performance evaluation. Frost Bank asserts that the allegations regarding alleged discriminatory activities in Houston are substantially similar to allegations made in 2013 and 2014 by the same commenter in connection with the applications by Cullen/Frost and Frost Bank to acquire WNB Bancshares, Inc., and to merge with Western National Bank,¹⁴ both of Odessa, Texas (the "WNB Applications"). In acting on those applications, the Board considered the commenter's allegations and determined that they did not preclude approval of the proposed acquisition.¹⁵ In the Dallas area, Frost Bank contends that it has recently opened branches that directly contribute to serving the needs of majority-minority census tracts. In addition, Frost Bank represents that the proposed Austin and San Antonio branches also would directly serve majority-minority tracts.

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 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 and information and views provided by the appropriate federal supervisors.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 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 ("HMDA"),¹⁸ 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 (1) the number and amount of home mortgage,

¹⁴ *Cullen/Frost Bankers, Inc.*, FRB Order No. 2014-10 (May 14, 2014) ("*Cullen/Frost Order*").

¹⁵ In connection with the Board's action on the WNB Applications, Cullen/Frost provided commitments to the Board related to the compliance and fair lending programs of Cullen/Frost and Frost Bank. These commitments are discussed further below.

¹⁶ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

¹⁷ 12 U.S.C. § 2906.

¹⁸ 12 U.S.C. § 2801 *et seq.*

small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) 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; (3) 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;¹⁹ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of Frost Bank

Frost 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 May 13, 2013 ("Frost Bank Evaluation").²⁰ Frost Bank received a "High Satisfactory" rating for the Lending Test, an "Outstanding" rating for the Investment Test, and a "High Satisfactory" rating for the Service Test.²¹

Examiners found that Frost Bank's overall lending activity in its assessment areas was good and that Frost Bank made a substantial majority of its loans inside its assessment areas. According to examiners, the bank's geographic distribution of HMDA and small business lending reflected excellent penetration in LMI geographies. Examiners also found that the bank had an excellent overall distribution of loans among borrowers of different income levels and business customers of different sizes. Examiners noted that the bank made an adequate level of community development loans during the review period. Frost Bank's community development loans were made for a variety of purposes, but the majority of loans were for the purpose of providing community services to individuals or LMI areas and for affordable housing.

In the Houston AA, an area where the commenter focused, Frost Bank exhibited good lending performance. The bank's lending activity reflected good responsiveness to assessment area credit needs, and the bank's geographic distribution of loans reflected excellent penetration throughout the assessment area. The bank's distribution of borrowers reflected good penetration among borrowers of different income levels and businesses of different revenue sizes. Frost Bank made a relatively high level of community development loans in the assessment area.

In the Dallas AA, another area of concern to the commenter, Frost Bank showed good lending performance. The bank's lending activity reflected adequate responsiveness to

¹⁹ 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).

²⁰ The Frost Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2010, through December 31, 2011, except for community development loans, which had an evaluation period from August 8, 2008, through December 31, 2011. The evaluation period for the Investment Test and the Service Test was from August 8, 2008, through December 31, 2011.

²¹ The Frost Bank Evaluation included a full-scope review of the bank's assessment areas within the following Metropolitan Statistical Areas ("MSAs"): the Austin–Round Rock–San Marcos, Texas, MSA; the Dallas–Plano–Irving, Texas, Metropolitan Division ("Dallas AA"); the Fort Worth–Arlington, Texas, Metropolitan Division; the Houston–Sugar Land–Baytown, Texas, MSA ("Houston AA"); and the San Antonio–New Braunfels, Texas, MSA ("San Antonio AA"). A limited-scope review was conducted in the bank's assessment areas within the Brownsville–Harlingen, Texas, MSA; the Corpus Christi, Texas, MSA; and the McAllen–Edinburg–Mission, Texas, MSA, as well as in the Willacy County, Texas, assessment area.

assessment area credit needs, and the bank's geographic distribution of loans reflected good penetration throughout the assessment area. The bank's distribution of borrowers reflected good penetration among borrowers of different income levels and businesses of different revenue sizes. Frost Bank made a low level of community development loans in the assessment area.

Examiners found that Frost Bank had an excellent level of qualified community development investments and grants in its assessment areas.²² Examiners noted that Frost Bank's investments demonstrate excellent responsiveness to the most pressing credit and community development needs throughout its assessment areas. Frost Bank invested in small business investment companies, purchased mortgage-backed securities issued by the Government National Mortgage Association, and invested in mortgage revenue bonds issued by the Texas Department of Housing & Community Affairs that are targeted to LMI individuals.

In the Houston and Dallas AAs, Frost Bank's performance on the Investment Test was excellent. Frost Bank exhibited excellent responsiveness to credit and community development needs through its investment activities in these assessment areas, which included investments for affordable housing.

Examiners noted that Frost Bank's retail delivery systems were reasonably accessible to the geographies and individuals of different income levels. Examiners further noted that Frost Bank's opening and closing of branches did not adversely affect the accessibility of banking services to LMI geographies and that the banking services and business hours did not vary in a way that inconvenienced any portion of the bank's assessment areas, particularly LMI geographies and individuals. Examiners also noted that Frost Bank offered no- or low-cost deposit accounts and various alternative delivery systems. Examiners indicated that the bank overall was a leader in providing community development services that benefit LMI residents and small businesses of the assessment areas. Examiners noted that the bank's directors, officers, and staff members were involved in numerous organizations and activities that promote or facilitate affordable housing for LMI individuals, services for LMI individuals, and economic development and revitalization of LMI areas and were involved in financial literacy outreach efforts.

In the Houston and Dallas AAs, Frost Bank's performance on the Service Test was good. The bank's retail and community development services reflected good responsiveness to the needs of these assessment areas. The bank's delivery systems were reasonably accessible to the bank's geographies and to individuals of different income levels in these assessment areas. In the Dallas AA, Frost Bank was a leader in providing community development services; in the Houston AA, the bank provided a relatively high level of community development services.

Frost Bank's Efforts Since the 2013 CRA Evaluation

Frost Bank represents that, since the Frost Bank Evaluation, it has continued to help meet the credit needs of its assessment areas, including the needs of LMI communities and individuals within these areas. Frost Bank has made community development loans that promote affordable housing and that support organizations providing community services. Frost Bank has continued to purchase mortgage-backed securities secured by mortgage loans made to LMI borrowers and, since 2012, has made community development invest-

²² Frost Bank's performance in the San Antonio AA had the greatest impact on the Investment Test due to a higher concentration of deposits, branches, and combined HMDA and CRA small business lending than the other assessment areas.

ments in school bonds that fund economically disadvantaged school districts throughout Texas. Frost Bank has made donations to support CRA-qualified nonprofit organizations or other entities providing community development services in each of its assessment areas. Frost Bank has continued to provide a low-cost checking account and low-cost unsecured and secured home improvement loans for LMI individuals. The bank has provided financial education for youths, adults, and seniors and, beginning in 2013, has conducted educational events for LMI homeowners on home improvement, home improvement loan options, and the availability of utility bill assistance.

The Reserve Bank began a CRA examination of Frost Bank in the third quarter of 2015. Overall, examiners found that Frost Bank's CRA performance remained satisfactory, including in the Houston and Dallas AAs.²³

As noted above, in 2014, in connection with the Board's action on the WNB Applications, Cullen/Frost committed not to engage in any expansionary activities, including branching within its existing market areas, until such time that the Board has deemed Cullen/Frost to have clearly developed a policy to support future expansion in its compliance program, including fair lending, and to hire additional staff with requisite knowledge and experience to manage and control the bank's fair lending risk, which might be heightened by expansion (the "Commitments").²⁴ Under the Commitments, Cullen/Frost may apply to establish branches within existing market areas if the proposed branch would directly contribute to serving the needs of majority-minority census tracts.

Consistent with the Commitments, the proposed branches would increase the availability of banking services in minority neighborhoods. Both of the proposed branches would be located in low-income, majority-minority census tracts. Four of the six census tracts surrounding the census tract that would contain the Austin Branch are LMI tracts, and five of these are majority-minority census tracts. In the case of the San Antonio Branch, four of the seven census tracts surrounding the census tract that would contain the branch are LMI tracts, and all are majority-minority census tracts.

Cullen/Frost and Frost Bank have made improvements to the bank's compliance program, particularly its fair lending program. Frost Bank represents that the bank has strengthened its board and senior manager oversight of compliance, fair lending, and CRA risks. The bank has expanded its electronic fair lending data collection and conducts regular analyses to assess and monitor fair lending risks and trends. In addition, the bank has added staff in its Compliance Department and has increased the number of analysts that conduct fair lending analyses and manage fair lending data.

As part of the bank's wider marketing and branching efforts, Frost Bank has implemented plans to help serve the needs of historically underserved neighborhoods, focusing on majority-minority census tracts. Frost Bank has developed a marketing and outreach program designed to inform underserved individuals and communities of credit availability, increase outreach efforts with neighborhood groups in all of the bank's market areas, and target minority publications to increase lending to underserved individuals and communities. Frost Bank also has developed a branch strategy to help serve the credit needs of majority-minority areas. All of Frost Bank's branching activities proposed after entering into the Commitments have contributed to servicing the needs of minority neighborhoods in the bank's existing market areas; in 2015, Frost Bank established three new branches in

²³ The review period for the Lending Test, Investment Test, and the Service Test was January 1, 2012, through December 31, 2014.

²⁴ *Cullen/Frost Order* at 19 n.33. The commenter alleged that Cullen/Frost and Frost Bank are not in compliance with the Commitments.

the Dallas–Plano–Irving, Texas, Metropolitan Division, all of which were located in majority-minority census tracts.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. As discussed above, the proposal would increase the availability of banking services in LMI and minority neighborhoods. Frost Bank proposes to offer its full array of products through each branch and to install an ATM at each branch to increase the availability of banking services at each location.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of Frost Bank under the CRA, the bank's records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Frost Bank, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. The Board's approval is specifically conditioned on Frost Bank's compliance with all the commitments made to the Board in connection with the proposal as well as all conditions imposed in this order.²⁵ The conditions and commitments 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.

Approval of these applications is also subject to the establishment of the proposed branches 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 March 14, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

²⁵ This order does not grant relief from the Commitments.

Order Issued Under International Banking Act

Unione di Banche Italiane, S.p.A.
Bergamo, Italy

Order Approving the Establishment of a Representative Office
FRB Order No. 2016-01 (January 19, 2016)

Unione di Banche Italiane, S.p.A. (“UBI”), Bergamo, Italy, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in New York, New York. The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office 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 Daily News*, March 30, 2015). The time for submitting comments has expired, and the Board has considered all comments received.

UBI is organized as a joint stock corporation under Italian law with more than 147,000 shareholders.² UBI’s shares are widely held, and each shareholder holds less than 5 percent of UBI’s shares.

UBI, with total assets of approximately \$108 billion, is the fifth largest bank in Italy by asset size.³ UBI engages in a range of commercial and retail banking activities through its 1,560 domestic branches and eight bank subsidiaries located in Italy. Outside Italy, UBI operates representative offices in the People’s Republic of China (including Hong Kong SAR), Brazil, Russia, and India. UBI also has one banking subsidiary, UBI Banca International SA, located in Luxembourg. UBI has no operations in the United States.

The proposed representative office would act as a liaison between UBI’s customers and U.S. service providers and business contacts. The proposed representative office would also engage in other representational activities, including gathering information and conducting research.⁴

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside the United States, and (3) the foreign bank and any foreign bank parent are subject

¹ 12 U.S.C. § 3107(a).

² In October 2015, UBI converted from a cooperative bank into a joint stock corporation under Italian law operating pursuant to the new regulatory framework in Italy for the reform of cooperative banks with consolidated assets exceeding €8 billion. *See* Law No. 33 of March 24, 2015, converting Legislative Degree No. 3 of January 24, 2015. Although this change in corporate structure impacts shareholder rights—in particular, establishing the right to one vote for each ordinary share—no substantial impact is expected on UBI’s business model or operational activities.

³ Asset and ranking data are as of June 30, 2015.

⁴ A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank’s head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

to comprehensive supervision on a consolidated basis by their home country supervisor.⁵ The Board also considers additional standards set forth in the IBA and Regulation K.⁶

As noted above, UBI engages directly in the business of banking outside the United States. UBI also has provided the Board with the information necessary to assess the application through submissions that address the relevant issues.

The Board has previously determined, in connection with applications involving other banks in Italy, that those banks were subject to comprehensive supervision on a consolidated basis by the Bank of Italy.⁷ As of November 4, 2014, UBI is subject to the direct prudential supervision of the European Central Bank within the context of the Single Supervisory Mechanism (“SSM”) because the total value of its assets exceeds €30 billion. The SSM is a system of financial supervision composed of the European Central Bank (“ECB”) and the national competent authorities of the participating Member States in which specific tasks concerning policies relating to the prudential supervision of credit institutions and the stability of the financial system within the Union and each Member State are specifically allocated between the ECB and the national competent authority.⁸ Under the SSM, the ECB has direct prudential supervisory responsibility for UBI, while the Bank of Italy, as the relevant national competent authority for UBI, retains supervisory authority over all other areas, including consumer protection and the prevention of money laundering and terrorist financing.

Under the SSM, a joint supervisory team composed of staff members from the ECB and the relevant national competent authorities is established for the consolidated supervision of each significant supervised entity or significant supervised group, such as UBI, in participating European Union member states. The responsibilities of these joint supervisory teams include implementation of the supervisory examination program approved by the ECB and of any ECB supervisory decisions concerning that entity or group; performance of the supervisory review and evaluation process required by European Union law;

⁵ 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which 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 the 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 essential, and other elements may inform the Board’s determination.

⁶ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include: whether the bank’s home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; 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; whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank’s record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards 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 See, e.g., *Banca Popolare di Vicenza S.C.p.A.* (order dated September 27, 2011), 97 *Federal Reserve Bulletin* 11 (3rd Quar. 2011); Board letter to Luigi L. De Ghenghi dated September 25, 2007 (comprehensive consolidated supervision for *Intesa Sanpaolo S.p.A.*); *Banca di Roma, S.p.A.*, 2002 WL 1848520 (2002); *Banca Intesa, S.p.A.*, 86 *Federal Reserve Bulletin* 433 (2000).

⁸ Information regarding the SSM is derived from Council Regulation 1024/2013, 2013 O.J. (L 287) 63 (EC); Regulation 468/2014 of the European Central Bank, 2014 O.J. (L 141) 1 (ECB); and Directive 2013/36/EU of the European Parliament and of the Council, 2013 O.J. (L 176) 338 (EU).

coordination with on-site inspection teams; and liaising with the national competent authorities where relevant.

Under the SSM, UBI is subject to regular on-site and off-site examinations; supervisory reviews, including stress tests; and supervision on a consolidated basis by the ECB. The ECB reviews compliance with all relevant European Union law, including directives concerning capital requirements as implemented by national legislation and European Union regulations. The ECB may also impose additional capital or liquidity requirements or other prudential measures that are provided for under applicable European Union law.⁹ In fulfilling their responsibilities under the SSM, the ECB and the relevant national competent authorities agree to provide information to each other in a timely and accurate manner, with regular access to updated information as necessary.

Based on all the facts of record, including the above information, the Board has determined that UBI is subject to comprehensive supervision on a consolidated basis by the ECB and the Bank of Italy acting through the SSM.

The Board has also considered the following additional standards set forth in the IBA and Regulation K: (1) 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; (2) the financial and managerial resources of the bank; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.¹⁰

Italy is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, Italy has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Italy, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. UBI has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

UBI appears to have the experience and capacity to support the proposed representative office. In addition, UBI has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration UBI's record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of the proposed representative office.

UBI has committed to make available to the Board such information on the operations of UBI and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, UBI has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclo-

⁹ Articles 4(1)(f) and 16 of Council Regulation 1024/2013, 2013 O.J. (L 287) 63, 74, 81 (EC).

¹⁰ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

sure of such information. In addition, subject to certain conditions, the ECB and the Bank of Italy may share information on UBI's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that UBI has provided adequate assurances of access to any necessary information that the Board may request. In addition, the Bank of Italy and the ECB have no objection to the establishment of the proposed representative office.

The Board has also considered whether UBI's proposal would present a risk to the stability of the United States. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of UBI in its home country; the scope of UBI's activities, including the types 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 UBI in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record and subject to commitments made by UBI, the Board has determined that UBI's application to establish the proposed representative office should be, and hereby is, approved. Should any restrictions on access to information on the operations or activities of UBI and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by UBI or its affiliates with applicable federal statutes, the Board may require termination of any of UBI's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by UBI with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹¹ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective January 19, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

¹¹ The Board's authority to approve the establishment of the proposed representative office 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 or its agent, the New York State Department of Financial Services, to license the proposed office of UBI in accordance with any terms or conditions that they may impose.

Legal Developments: Second Quarter, 2016

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Republic Bancorp, Inc.
 Louisville, Kentucky

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2016-04 (May 2, 2016)

Republic Bancorp, Inc. (“Republic”), Louisville, Kentucky, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Cornerstone Bancorp, Inc. (“Cornerstone”), and thereby indirectly acquire Cornerstone Community Bank (“Cornerstone Bank”), both of St. Petersburg, Florida. Immediately following the proposed merger, Cornerstone Bank would be merged into Republic’s subsidiary bank, Republic Bank & Trust Company (“Republic Bank”), Louisville, Kentucky.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 68870 (November 6, 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.

Republic, with consolidated assets of approximately \$4.1 billion, is the 263rd largest insured depository organization in the United States. Republic currently controls approximately \$2.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Republic controls Republic Bank, which operates in Kentucky, Indiana, Ohio, Tennessee, and Florida. Republic Bank is the 208th largest insured depository institution in Florida, controlling deposits of approximately \$72.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁶

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of Cornerstone Bank into Republic 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 February 10, 2016.

⁴ 12 CFR 262.3(b).

⁵ Asset data and nationwide deposit-ranking data are as of June 30, 2015, unless otherwise noted.

⁶ State deposit data are as of June 30, 2015, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

Cornerstone, with consolidated assets of approximately \$241.2 million, is the 2,615th largest insured depository organization in the United States. Cornerstone currently controls approximately \$206 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Cornerstone controls Cornerstone Bank, which operates solely in Florida. Cornerstone Bank is the 138th largest insured depository institution in Florida, controlling deposits of approximately \$206 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Republic would become the 257th largest depository organization in the United States, with consolidated assets of approximately \$4.3 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Republic would control consolidated deposits of approximately \$2.5 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Florida, Republic Bank would become the 110th largest depository organization, controlling deposits of approximately \$278.8 million, 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 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.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 application if the bank holding company controls or would upon consummation of the proposed transaction 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 Republic is Kentucky, and Cornerstone Bank's home state is Florida.¹⁰ Republic is well capitalized and well managed under applicable law, and Republic Bank has a satisfactory Community Reinvestment Act ("CRA")¹¹ rating. Florida does not have minimum age requirements,¹² and Cornerstone Bank has been in existence for more than five years.

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). 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 *et seq.*

¹² Fla. Stat. Ann. § 658.2953.

On consummation of the proposed transaction, Republic 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 30 percent of the total amount of deposits of insured depository institutions in Florida, the only state in which Republic and Cornerstone have overlapping banking operations. 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 or tend to create a monopoly in any banking 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.¹³

Republic and Cornerstone have subsidiary depository institutions that compete directly in one geographic banking market, Tampa Bay Area, Florida (“Tampa Bay market”).¹⁴ 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 Republic 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 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 Tampa Bay market. On consummation, the Tampa Bay market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI would be small, and numerous competitors would remain in the market.¹⁷

¹³ 12 U.S.C. § 1842(c)(1).

¹⁴ The Tampa Bay market is defined as Hernando, Hillsborough, Pinellas, and Pasco counties, Florida.

¹⁵ Deposit and market share data are as of June 30, 2015, 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/2010/August/10-at-938.html.

¹⁷ Republic operates the 44th largest depository institution in the Tampa Bay market, controlling approximately \$72.9 million in deposits, which represent 0.1 percent of market deposits. Cornerstone operates the 28th largest depository institution in the same market, controlling deposits of approximately \$206 million, which represent about 0.3 percent of market deposits. On consummation of the proposed transaction, Republic would

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 Tampa Bay 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 section 3 of 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 regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. 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 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 their financial and managerial resources and the proposed business plan.

Republic and Cornerstone 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 for cash.¹⁸ The asset quality, earnings, and liquidity of Republic Bank and Cornerstone Bank are consistent with approval, and Republic 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.

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 Republic, Cornerstone, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by Republic; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the

become the 25th largest depository organization in the market, controlling deposits of approximately \$278.8 million, which represent 0.4 percent of market deposits. The HHI for the Tampa Bay market would increase by less than 1 point to 1,054, and 60 competitors would remain in the market.

¹⁸ As proposed, Republic Acquisition Corp., a subsidiary of Republic recently formed to facilitate the transaction, would merge with and into Cornerstone with Cornerstone as the surviving entity ("Acquisition Merger"). At the effective time of the Acquisition Merger, shares of Cornerstone would be converted into the right to receive cash, based on an exchange ratio. All outstanding stock options would be canceled in exchange for cash payment equal to the spread between the option exercise prices and the exchange ratio. Immediately after the Acquisition Merger, Cornerstone would merge with and into Republic, with Republic as the surviving entity, and Cornerstone Bank would merge with and into Republic Bank, with Republic Bank as the surviving entity. Republic has the financial resources to fund these merger transactions.

organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; as well as information provided by the commenter.

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

The Board also has considered Republic's plans for implementing the proposal. Republic has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Republic would implement its risk-management policies, procedures, and controls at the combined organization, which are considered acceptable from a supervisory perspective. In addition, Republic's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Republic plans to integrate Cornerstone's existing management and personnel in a manner that augments Republic's management.¹⁹

Based on all the facts of record, including Republic'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 Republic and Cornerstone 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.²⁰ 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions 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,²¹ 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.²²

In addition, the Board considers the banks' overall compliance records 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 assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the appli-

¹⁹ On consummation, five individuals currently serving as senior management officials at Cornerstone or Cornerstone Bank will serve as senior management officials at Republic Bank, including Cornerstone Bank's CEO who will be retained as Republic Bank's Market President of the Florida market.

²⁰ 12 U.S.C. § 1842(c)(2).

²¹ 12 U.S.C. § 2901(b).

²² 12 U.S.C. § 2903.

cant, 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 after consummation, and any other information the Board deems relevant.

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 Republic Bank and Cornerstone Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Republic; and the public comments received on the proposal.

Public Comments Regarding the Proposal

In this case, the Board received comments from a commenter who objects to the proposal on the basis of alleged disparities in the number of residential real estate loans made to African Americans and Hispanics, as compared to whites, by Republic Bank in the Louisville-Jefferson County, Kentucky-Indiana Metropolitan Statistical Area ("Louisville MSA") and the Nashville, Tennessee MSA ("Nashville MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA") for 2014.²³ The commenter also criticizes the rate at which Republic Bank denied applications by African Americans, compared to that for whites, for home purchase and home improvement loans in the Louisville MSA, as reported under HMDA for 2014. In addition, the commenter expresses general concerns regarding Republic Bank's Build Card program, a recently launched credit card that the commenter describes as a subprime credit card. The commenter expresses concerns over the annualized interest rate that the bank charges cardholders. The commenter also generally contends that Republic Bank's past tax refund anticipation loan product is an example of problems with Republic Bank's lending record.²⁴ The FDIC considered the same comments in connection with its review of the underlying bank merger application and found the CRA record and convenience and needs factor consistent with approval of the proposal on February 10, 2016.²⁵

Businesses of the Involved Institutions and Response to Comments

Republic Bank is a full-service bank, offering a broad range of financial products and services to consumers and businesses. Through its branch network in Kentucky, Indiana, Florida, Ohio, and Tennessee, it offers a variety of traditional banking products to consumers, including mortgage loan products, consumer loans, credit cards, and checking and savings products. Republic Bank's business-focused products and services include community development loans, Small Business Administration loans, commercial real estate and development loans, and equipment finance products.

²³ The commenter's concerns focus on the number of home purchase loans, home refinance loans, and home improvement loans that Republic Bank offered to African Americans and Hispanics compared to whites in the Louisville MSA, as well as the number of home purchase loans that Republic Bank offered to African Americans and Hispanics compared to whites in the Nashville MSA.

²⁴ Through partnerships with tax preparers and tax software preparation companies, Republic Bank offered tax refund anticipation loans whereby the bank extended tax refund advances to taxpayers shortly after they filed their tax returns. The advances were secured by the taxpayers' refunds. In response to safety and soundness and consumer compliance concerns raised by the FDIC regarding this tax refund anticipation loan product offered by Republic Bank, the product was discontinued in 2012 pursuant to an agreement between the FDIC and Republic Bank. Republic Bank recently launched a new product that offers advances of taxpayers' refunds; however, as discussed in more detail below, Republic represents that the new product has significantly different terms and protections that address the FDIC's concerns regarding the prior product.

²⁵ Letter from M. Anthony Lowe, Regional Director of FDIC Chicago Regional Office, to Cynthia W. Young, Wyatt, Tarrant & Combs, LLP (February 10, 2016).

Cornerstone Bank is a full-service bank that offers a more limited range of retail and commercial banking products and services through four branches in Pinellas County, Florida. Its products and services include home equity loans, auto loans, a variety of checking and savings products, construction and land acquisition development loans, equipment financing, and loans for business acquisitions and expansions.

Republic denies that the HMDA data presented by the commenter reflect discriminatory or unfair lending practices by Republic Bank in the Louisville or Nashville MSAs. Republic represents that its denial rates to African Americans in the Louisville MSA reflect judgments based on credit history, loan-to-value ratios, debt-to-income ratios, and other nondiscriminatory factors. Republic also represents that it continuously deploys strategies to increase its lending to minorities in the Louisville MSA, as well as in its other markets. Republic represents that these efforts have resulted in its applications from African Americans increasing by 45 percent between the 2014 and 2015 calendar years and in its originations to African Americans increasing by 100 percent in the Louisville MSA during the same period.

In response to allegations about low levels of lending to African Americans in the Nashville MSA, Republic explains that the bank entered the Nashville market in 2012 after acquiring a failed bank with a single branch that was primarily engaged in commercial lending and had no minority applicants. Since the acquisition, Republic represents that it has added a second branch in the market, conducted significant outreach to community organizations, and engaged in marketing efforts in areas with high minority concentrations. Republic represents that these efforts have resulted in recent improvements in its consumer lending footprint in the market, including increases in applications by and originations to minority applicants.

Republic asserts that it has policies and procedures to ensure compliance with fair lending laws and to monitor fair lending risk, including annual fair lending risk assessments, and HMDA and fair lending monitoring conducted by dedicated staff as well as an outside firm to gain additional insight into applicable risks.

Republic argues that its Build Card program is an affordable alternative to other short-term financing options, such as payday loans. Republic contends that its Build Card is appropriately priced for risk, provides customers with transparency regarding the total cost of credit, does not have hidden fees or add-on products, and has simple pricing that is easy for consumers to understand.

Republic acknowledges that it discontinued a tax refund anticipation loan product in 2012 and launched a new tax refund product in January 2016 under the brand name Easy Advance. However, Republic represents that the new product was designed with terms and features that address supervisory concerns with the prior product, and that the bank reviewed the product with the FDIC prior to launch. Republic represents that, unlike the prior product, no fee or interest is charged to the customer for an Easy Advance loan; rather, for each origination a flat fee is paid by the bank's tax preparation partners, who are contractually prohibited from passing the cost of the fee to the customer.²⁶ Further, Republic represents that its Easy Advance loans are capped at a much lower amount than the prior product, and that there is no recourse against the customer if the tax refund is insufficient to repay the loan. Republic also represents that it requires each tax preparer that offers the Easy Advance product to undergo training for compliance with relevant

²⁶ Republic represents that its tax preparation partners offer the Easy Advance product as a marketing tool for attracting customers to their tax preparation services. Republic asserts that it closely monitors its partners for compliance with the prohibition against passing the origination fees to customers.

laws, regulations, and program terms, and that it monitors its partners through on-site reviews and audits.

Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance in light of examinations and other supervisory information, information provided by public commenters, and information and views 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 (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) 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; (3) 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 (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) 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.³⁰ Consequently, HMDA data disparities must be evaluated in the context of other informa-

²⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642, 11665 (March 11, 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 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.

tion regarding the lending record of an institution. In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Republic Bank and Cornerstone Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Republic, and the public comments received on the proposal.

CRA Performance of Republic Bank

Republic Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of June 23, 2014 (“Republic Bank Evaluation”).³¹ The bank received “High Satisfactory” ratings for both the Lending Test and the Investment Test and an “Outstanding” rating for the Service Test.³²

Examiners found that Republic Bank’s overall lending levels reflected good responsiveness to credit needs in its assessment areas. According to examiners, the bank used innovative and flexible lending practices in order to serve assessment area credit needs. Examiners found that a substantial majority of the bank’s loans were made to borrowers within its assessment areas. Overall, the examiners also found that geographic distribution of the bank’s loans reflected adequate penetration throughout its assessment areas.³³ Exceptionally, in the Nashville MSA, examiners found the geographic distribution of the bank’s loans to be poor; however, examiners noted that the bank did not enter this assessment area until 2012 and operated only two branches in the assessment area. Further, examiners found that, overall, the bank exhibited adequate responsiveness to the credit needs of the assessment area.

Examiners found that the distribution of the bank’s borrowers reflected adequate penetration among customers of different income levels and businesses of different sizes. Examiners noted that Republic Bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, low-income individuals, and very small businesses. For example, examiners found that the bank made a relatively high level of community development loans within its assessment areas. Republic Bank’s community development lending efforts primarily focused on lending to community development organizations that provide essential services to LMI individuals and revitalizing and stabilizing economically distressed geographies within the bank’s assessment areas.

Examiners found that Republic Bank made a significant level of qualified community development investments and grants within its assessment areas, including the Louisville MSA. The bank was occasionally found to be a leader in providing investments not routinely provided by private investors. Examiners found that the types of qualified investments held by Republic Bank demonstrated a commitment to meeting community needs. These investments included low-income housing tax credits and equity investments in community development housing and development organizations within the bank’s assessment areas.

³¹ The Republic Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reported, pursuant to HMDA and CRA data collection requirements (geographic distribution and borrower distribution) in 2012 and 2013. The evaluation period for community development lending, investments, and services was September 12, 2011, through June 23, 2014.

³² The Republic Bank Evaluation included a full-scope evaluation of the Louisville MSA; Lexington-Fayette, Kentucky MSA; and Nashville MSA.

³³ Examiners also concluded that geographic distribution of the bank’s home purchase lending in LMI census tracts was adequate, and noted strong competition in the Louisville MSA for home purchase loans and other residential and small business loans.

Examiners found Republic Bank's delivery systems to be accessible to all portions of the bank's assessment areas. The hours and services offered at Republic Bank's branch locations were found to be comparable, regardless of the income level of the census tract. Examiners found that the bank was a leader in providing community development services and technical assistance to organizations that provide community development services, particularly in the Louisville MSA. In particular, examiners noted that the bank is a leader in supporting programs that connect individuals who lack adequate access to financial services with financial institutions that provide free or low-cost products. Examiners also noted that the bank is a leader in supporting programs that promote financial literacy within its assessment areas.

Republic Bank's Efforts Since the 2014 CRA Evaluation

Republic represents that, since the Republic Bank Evaluation, Republic Bank has remained active in marketing a wide selection of products and services specifically designed for LMI borrowers and has made a number of community development loans to support affordable housing and small businesses in its assessment areas. Republic represents that the bank has engaged in various outreach efforts and community service opportunities with organizations that serve LMI persons and communities, including organizations that focus on financial education initiatives, neighborhood rehabilitation efforts, and affordable housing. In addition, Republic represents that the bank has routinely advertised and marketed products and services in census tracts with high minority populations within its assessment areas.

CRA Performance of Cornerstone Bank

Cornerstone Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of June 1, 2015 ("Cornerstone Bank Evaluation").³⁴ Examiners concluded that the bank offers a variety of business and consumer credit products that meet the needs of the communities that it serves. Examiners found that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and the credit needs of its assessment area. Examiners also noted that a substantial majority of the bank's small business loans were originated within its assessment area. Further, examiners found that the geographic distribution of the bank's loans reflected a reasonable dispersion throughout its assessment area, and that the bank's distribution of loans to borrowers reflected excellent penetration among businesses of different sizes.

Views of Other Regulators, and FDIC Approval of the Bank Merger

The Board has consulted with the FDIC, the primary federal supervisor of Republic Bank, regarding the FDIC's review of the proposed merger of Republic Bank and Cornerstone Bank. The FDIC conducted a review of the same comments that were submitted to the Board, taking into consideration the HMDA data cited by the commenter; Republic Bank's CRA, consumer compliance, and fair lending records; and the bank's outreach to African Americans and Hispanics and in LMI communities.³⁵ The FDIC also conducted a recent consumer compliance examination and fair lending review of Republic Bank. The Board reviewed the examination report and consulted with the FDIC regarding Republic

³⁴ The Cornerstone Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed the bank's lending activity from June 22, 2009, through June 1, 2015. The Cornerstone Bank Evaluation reviewed the bank's Pinellas County assessment area.

³⁵ The FDIC also considered the comments regarding Republic Bank's Build Card and former tax refund product. Further, as noted, Republic Bank informed the FDIC of a new tax refund loan product prior to its launch. The FDIC will continue to monitor Republic Bank's product offerings as part of the ongoing supervisory process.

Bank'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. Republic Bank intends to implement those policies and procedures at the combined organization following consummation of the transaction.

After a full review of the proposal, including consideration of the public comments, the FDIC determined that the proposal met the standards of the Bank Merger Act and approved the proposal. The FDIC did not impose any special conditions related to fair lending or CRA performance.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Republic represents that upon consummation of the proposal, existing customers of Cornerstone would have access to a complement of products and services that are more expansive than those currently available to Cornerstone customers, including a wider variety of checking and savings products, enhanced small business accounts, treasury management services, credit cards, home mortgage loans, and enhanced internet and mobile banking platforms. Republic also represents that no products would be discontinued as a result of the proposal. Moreover, Republic asserts that customers of both institutions would benefit from a more expansive branch and ATM network.

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 FDIC, confidential supervisory information, information provided by Republic, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, 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 risks 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 deci-

³⁶ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), 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.

sion. 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

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Republic would have approximately \$4.3 billion in consolidated assets and, by any of a number of alternative measures of firm size, Republic 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 determines that the application should be, and hereby is, approved.³⁹ 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 Bank Holding Company Act (BHC Act), orders issued under Republic 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 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 thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis, acting under delegated authority.

³⁸ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

³⁹ The commenter requested that the Board hold public hearings or meetings 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 U.S.C. § 1842(b); 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 written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision and that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

By order of the Board of Governors, effective May 2, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

BNC Bancorp High Point, North Carolina

Order Approving the Merger of Bank Holding Companies FRB Order No. 2016-0 (June 2, 2016)

BNC Bancorp (“BNC”), High Point, North Carolina, a bank holding company, has requested the Board’s approval under section 3 of the Bank Holding Company Act of 1956, as amended (“BHC Act”),¹ to acquire Southcoast Financial Corporation (“Southcoast”), a bank holding company, and thereby indirectly acquire its subsidiary state-chartered bank, Southcoast Community Bank (“Southcoast Bank”), both of Mount Pleasant, South Carolina. Following the proposed acquisition, Southcoast Bank would be merged into BNC’s only subsidiary state-chartered bank, Bank of North Carolina (“BNC Bank”), Thomasville, North Carolina.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 63224 (October 19, 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.

BNC, with consolidated assets of approximately \$5.7 billion, is the 225th largest insured depository organization in the United States, controlling approximately \$4.2 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 BNC controls BNC Bank, which operates in North Carolina, South Carolina, and Virginia. BNC is the 17th largest insured depository organization in South Carolina, controlling approximately \$542 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁵

Southcoast, with consolidated assets of approximately \$503 million, is the 1,481st largest insured depository organization in the United States, controlling approximately \$366 million in deposits, which represent less than 1 percent of nationwide deposits. Southcoast controls Southcoast Bank, which operates only in South Carolina. Southcoast is the 25th largest insured depository organization in South Carolina, controlling \$366 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, BNC would become the 219th largest depository organization in the United States, with consolidated assets of approximately \$6.2 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. BNC would control total deposits of approximately \$4.5 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In South Carolina, BNC would become the 11th largest depository organization, controlling deposits of approximately \$908 million, which repre-

¹ 12 U.S.C. § 1842.

² The merger of Southcoast Bank into BNC Bank is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”). 12 U.S.C. §1828(c). The FDIC approved the bank merger on April 29, 2016.

³ 12 CFR 262.3(b).

⁴ Nationwide deposit-ranking data are as of June 30, 2015, and asset data are as of December 31, 2015, unless otherwise noted. The deposits for BNC have been adjusted to account for its acquisition of Valley Financial Corporation, which was consummated on July 1, 2015.

⁵ State deposit data are as of June 30, 2015, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

sent approximately 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, BNC's home state is North Carolina, and Southcoast's home state is South Carolina.⁹ BNC is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA") rating.¹⁰ South Carolina has a five-year minimum age requirement,¹¹ and Southcoast Bank has been in existence for more than five years.

On consummation of the proposed transaction, BNC 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 Southcoast's home state of South Carolina, the only state in which BNC and Southcoast have overlapping banking operations. 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

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 *et seq.* There are no state community reinvestment laws applicable to this case.

¹¹ *See* S.C. Code Ann. § 34-25-50(c) (imposing a five-year age requirement for interstate acquisitions of South Carolina banks).

the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹²

BNC and Southcoast have subsidiary depository institutions that compete directly in the Charleston, South Carolina banking market (the “Charleston banking market”).¹³ 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 BNC would control;¹⁴ 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”);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 Charleston banking market. On consummation of the proposal, the Charleston 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.¹⁶

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 Charleston banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

¹² 12 U.S.C. § 1842(c)(1).

¹³ The Charleston banking market includes the Charleston Rannally Metro Area (“RMA”); the non-RMA portions of the counties of Charleston and Berkeley, South Carolina; and the southeastern portion of Colleton County, South Carolina, located east of the South Edisto River on Edisto Island.

¹⁴ Deposit and market share data are as of June 30, 2015, 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 BNC operates the 12th largest depository institution in the Charleston banking market, controlling approximately \$250 million in deposits, which represent approximately 2.3 percent of market deposits. Southcoast operates the 8th largest depository organization in the same market, controlling deposits of approximately \$366 million, which represent 3.3 percent of market deposits. On consummation of the proposed transaction, BNC would become the 7th largest depository institution in the market, controlling deposits of approximately \$616 million, which represent approximately 5.6 percent of market deposits. The HHI for the Charleston banking market would increase by 15 points to 1224, and 32 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, as well as public comments on the proposal. 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.

BNC and BNC 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.¹⁷ The asset quality, earnings, and liquidity of BNC Bank and Southcoast Bank are consistent with approval, and BNC 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.

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 BNC, Southcoast, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by BNC; the Board's supervisory experiences with BNC and Southcoast 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.

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

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

¹⁷ As part of the proposed transaction, each share of Southcoast common stock would be converted into a right to receive BNC common stock based on a certain exchange ratio.

Based on all the facts of record, including BNC'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 BNC and Southcoast 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.¹⁸ 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,¹⁹ 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.²⁰

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 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 applicant institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

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 BNC Bank and Southcoast Bank, the fair lending compliance records of both banks, supervisory views of the FDIC, confidential supervisory information, information provided by BNC, and the public comments received on the proposal.

Public Comments Regarding the Proposal

In this case, the Board received comments from a commenter who objects to the proposal on the basis of alleged disparities in the number of conventional home purchase loans made to African Americans and Hispanics, as compared to whites, by BNC Bank in the Charleston-North Charleston-Summerville, South Carolina ("Charleston") Metropolitan Statistical Area ("MSA"), and the number of refinance loans made to African Americans, as compared to whites, by BNC Bank in the Charleston MSA, as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")²¹ for 2014. The commenter also objected to the proposal on the basis of alleged disparities in the number of conventional

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

¹⁹ 12 U.S.C. § 2901(b).

²⁰ 12 U.S.C. § 2903.

²¹ 12 U.S.C. § 2801 *et seq.*

home purchase loans and refinance loans made to African Americans, as compared to whites, by Southcoast Bank in the Charleston MSA, as reflected in HMDA data for 2014. With respect to the Greenville Mauldin-Easley, South Carolina (“Greenville”) MSA, the commenter alleged that there were disparities in the number of conventional home purchase loans and refinance loans made to African Americans and Hispanics, as compared to whites, by BNC Bank, as reflected in HMDA data reported for 2013.

Businesses of the Involved Institutions and Response to Comments

BNC Bank is a state-chartered, commercial bank, headquartered in Thomasville, North Carolina. It offers a full range of banking and financial services that include deposit accounts; commercial, real estate, and consumer loan products; mortgage brokerage services; and a full line of commercial and consumer insurance and investment products and services. The bank’s main loan focus is small and medium-sized businesses.

Southcoast Bank is a commercial bank, headquartered in Mount Pleasant, South Carolina. It offers a full array of consumer and commercial deposit products, as well as commercial, real estate, and consumer loan products. The bank’s primary focus is residential lending followed by commercial lending.

BNC asserts that BNC Bank’s lending record to minorities in the Charleston MSA, as reflected in HMDA data, is attributable to its recent entry in the MSA in mid-2012. BNC further asserts that although the bank did not originate many mortgage applications to minorities in the Charleston MSA, the bank’s approval rates for minorities were very favorable. BNC represents that for conventional home purchase applications, minority applicants were approved more often than white applicants and that since its entry into the Charleston MSA, BNC Bank has made efforts to increase its lending to African Americans and Hispanics, as reflected in HMDA data for 2014. BNC expects that the acquisition of Southcoast and Southcoast Bank will significantly expand BNC Bank’s Charleston branch network and provide the bank with greater ability to serve the communities within the Charleston MSA. BNC also maintains that Southcoast Bank’s approval percentages for applications received from minority applicants are comparable to or better than its approval percentage for white applicants in the Charleston MSA.

BNC contends that BNC Bank’s lending record to minorities in the Greenville MSA, as reflected in HMDA data for 2013, is also related to the bank’s recent entry in the market in late 2011. BNC asserts that the bank is making progress in providing greater banking services to those in the community by expanding its banking network in the Greenville MSA through branch acquisitions and employing additional mortgage loan originators. BNC further asserts that, although the bank did not originate many mortgage applications for minorities, including African Americans and Hispanics, in the Greenville MSA, its approval rates for minorities were very favorable. BNC represents that in 2014, all home purchase and refinance applications for minority applicants were approved. BNC further represents that BNC Bank is committed to continually improving its performance in the Greenville and Charleston MSAs and to meeting the needs of all members of the communities. BNC notes that the commenter filed similar comments with the FDIC on an application for an unrelated acquisition, which was approved on the condition that BNC Bank develop and submit a supplement to its existing compliance plan that would strengthen the bank’s fair lending compliance program. BNC asserts that the supplement to BNC Bank’s compliance plan, which has been approved by the FDIC and implemented by the bank, adequately addresses the concerns raised by the commenter on this proposal.

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 public 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.²² In this case, the Board considered the supervisory views of and information provided by the FDIC.

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.²³ 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 (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) 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; (3) the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans made to low-, moderate-, middle-, and upper-income individuals;²⁴ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) 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.²⁵

²² See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642 at 11665 (2010).

²³ 12 U.S.C. § 2906.

²⁴ Examiners also consider the number and amount of small business and small farm loans made 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).

²⁵ Other data relevant to credit decisions could include credit history problems, 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.

Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of BNC Bank

BNC Bank was assigned an overall “Satisfactory” rating by the FDIC at its most recent CRA performance evaluation (“BNC Bank Evaluation”), as of April 28, 2014.²⁶ BNC Bank received a “High Satisfactory” rating for both the Lending Test and the Service Test, and a “Low Satisfactory” rating for the Investment Test.²⁷ The Board has consulted with the FDIC regarding the BNC Bank Evaluation.

Examiners found that the bank’s overall lending activity reflected good responsiveness to the assessment areas’ credit needs. Examiners noted that the bank originated a significant majority of home mortgage loans and small business loans within its combined assessment areas and that the geographic distribution of the loans reflected good penetration throughout the assessment areas. Examiners also noted that the bank originated a relatively high level of community development loans in its assessment areas and made good use of flexible lending practices in order to serve the assessment areas’ credit needs. BNC Bank is qualified as a U.S. Small Business Administration (“SBA”) lender, and examiners highlighted that the bank was one of the most active SBA lenders in North Carolina over the evaluation period and that it ranked among the top ten of all lenders, with the banks ranked ahead of BNC Bank having larger asset sizes and national or regional presences. The bank also offered flexible mortgage loan products through the Federal Housing Administration, the SBA, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the North Carolina Housing Finance Agency.

Examiners found that BNC Bank had an adequate level of qualified community development investments and grants and that it exhibited adequate responsiveness to the credit needs of the assessment areas. Examiners noted that the bank’s level of qualified equity investments and charitable donations had significantly improved from the last examination. Examiners highlighted that nearly all of the bank’s qualified CRA grants and donations were made directly to community development-related organizations located within the bank’s assessment areas. The remainder of the bank’s CRA grants and donations were made to qualified individuals and community development-related organizations in the broader regional area that included the bank’s assessment areas. Examiners noted that the grants and donations provided much needed financial assistance to organizations with the primary purpose of economic development, community revitalization, affordable housing, financial education, scholarships for low- and moderate-income students, and basic human services to low- and moderate-income individuals.

²⁶ The BNC Bank Evaluation was conducted using the CRA Large Bank Examination Procedures and covered the time period from June 27, 2011, to April 28, 2014. For the Lending Test, the evaluation included a review of loans reportable under HMDA and CRA data collection requirements for 2012 and 2013, focusing on home purchase and home refinance loans only. For the Investment and Service Tests, the evaluation also covered the period from June 27, 2011, to April 28, 2014. The Investment Test also included investments prior to June 27, 2011, that were still outstanding as of April 28, 2014.

²⁷ During the BNC Bank Evaluation, examiners reviewed eight assessment areas of the bank in North Carolina and four assessment areas of the bank in South Carolina. Examiners placed greater weight on the bank’s performance in North Carolina in assigning the overall CRA rating, because 35 of the bank’s 45 branches were located in North Carolina, and over 86 percent of the bank’s lending occurred within the state. Three of the bank’s eight assessment areas in North Carolina received full-scope reviews. Examiners assigned the most weight to the Charlotte-Gastonia-Rock Hill MSA assessment area in North Carolina and to the Myrtle Beach-North Myrtle Beach-Conway MSA assessment area in South Carolina, based on the significant volume of lending, deposits, and number of branches in those areas, to arrive at the individual state ratings. Examiners also considered the timing of BNC Bank’s entry into the Charleston MSA in June 2012, the Burlington, NC MSA in 2013, and the Durham-Chapel Hill, NC MSA in September 2012, along with other extenuating factors in performing limited-scope reviews of these assessment areas.

Examiners noted that the bank's overall "High Satisfactory" rating under the Service Test was based primarily on the community development services, but examiners also considered the bank's retail account services. Examiners highlighted that BNC Bank's management, directorate, and other personnel provided a relatively high level of community development services in the bank's assessment areas. Examiners also noted that the bank offered a full array of financial services throughout its assessment areas to ensure that the needs of the communities were met through several delivery methods and that the bank's delivery systems were reasonably accessible to essentially all portions of the institution's assessment areas. In addition, examiners noted that the quantity, quality, and accessibility of service-delivery systems to all segments of its assessment areas supported a "High Satisfactory" rating.

BNC Bank's Efforts Since the BNC Bank Evaluation

BNC asserts that, since the BNC Bank Evaluation, BNC Bank has initiated a number of efforts to enhance its support of all the communities in which the bank operates. For example, BNC represents that BNC Bank has created a new deposit account targeted to individuals working to establish or reestablish a banking relationship with the institution. BNC believes that this product will be particularly beneficial or attractive to younger individuals and to the unbanked or underbanked population in the communities the bank serves.

BNC represents that BNC Bank is developing initiatives and programs focused on lending, investment, and service activities in its communities, with emphasis on developing programs for lower- to moderate- income residents. BNC further represents that the bank has formed a Fair Banking Team responsible for compliance with fair lending, CRA, HMDA, and Unfair, Deceptive, Abusive Acts and Practices laws. Additionally, the bank has formed a CRA Committee, which consists of a number of senior officers of the bank, including the director of mortgage banking, chief credit officer, and the bank's CRA officer. BNC also represents that the bank has created a new director position that will be directly responsible for helping to increase interaction with the communities the bank serves.

CRA Performance of Southcoast Bank

Southcoast Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation ("Southcoast Bank Evaluation"), as of January 3, 2014.²⁸ Southcoast Bank received a "Satisfactory" rating for both the Lending Test²⁹ and the Community Development Test.

Examiners noted that Southcoast Bank's average net loan-to-deposit ratio reflected an excellent responsiveness to area credit needs, considering the institution's size, financial

²⁸ The Southcoast Bank Evaluation was conducted by the FDIC using the Intermediate Small Bank CRA Examination Procedures, which include the Lending and Community Development Tests. Under the Lending Test, examiners evaluated the bank's home mortgage loans from 2011 through September 30, 2013, and its small business loans between October 25, 2012, and October 24, 2013. As part of the Community Development Test, qualified community development loans, investments, and services that were originated, invested, or participated in, respectively, from September 8, 2010, to January 3, 2014, were reviewed. Examiners reviewed all of the Charleston MSA.

²⁹ 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 for 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).

condition, and assessment area credit needs. Examiners found that the bank's lending levels reflected that a substantial majority of its loans, in terms of number and dollar amount, were originated inside the assessment area. Examiners also found that the bank's geographic distribution of borrowers reflected an excellent dispersion for home mortgage loans and a reasonable penetration for small businesses, given the demographics of the assessment area.

Examiners noted that Southcoast Bank demonstrated an adequate responsiveness to the community development needs of the bank's assessment area through community development loans, investments, and services.

Views of FDIC

The Board has consulted with the FDIC, the primary supervisor of both BNC Bank and Southcoast Bank, in connection with the FDIC's review of the bank merger underlying this proposal. Although the FDIC did not directly receive any comments on the bank merger application, it was provided with the comments received by the Board that opposed the transaction on the basis of the lending records of Southcoast Bank and BNC Bank in the Charleston and Greenville MSAs. The FDIC considered the comments in connection with its review of the bank merger application.

In its review, the FDIC considered both institutions' records of compliance with respect to consumer protection laws and regulations; the institutions' performance under the CRA; the lending records of both institutions in the Charleston MSA; HMDA data for the institutions; and the lending record of BNC Bank both in the Greenville MSA and on an enterprise-wide basis.

The FDIC indicated that BNC Bank currently operates under a compliance plan that has been approved by BNC Bank's board of directors and includes provisions for managing its fair lending risk, and an FDIC-approved supplement to the plan that includes provisions that ensure that the bank will continue its efforts to implement strategies to further strengthen its fair lending compliance program. The FDIC also indicated that the supplement to the compliance plan includes specific provisions pertaining to the bank's enterprise-wide branching strategies and marketing plans that consider available aggregate data, demographics, and safe and sound lending considerations. The FDIC-approved supplement requires periodic reviews of the bank's lending distributions and marketing efforts in order to measure and assess the bank's progress under the compliance plan. According to the FDIC, the supplement to the compliance plan requires the bank to provide quarterly written reports to the bank's board of directors and the FDIC.

After a full review of the proposal for BNC Bank to merge with Southcoast Bank, the FDIC 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. In addition, the FDIC has indicated no-objection to the proposal before the Board. The Board expects BNC to ensure that BNC Bank complies with its compliance plan and the supplement approved by the FDIC.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of a proposal on the convenience and needs of the communities to be served. BNC represents that the proposal would provide customers of the combined organization with access to additional or expanded services, due to an expanded network of branch locations in the Charleston MSA. In addition, BNC expects that the merger would enable it to compete more effectively with other finan-

cial institutions in its market areas and to improve its ability to meet the needs of its customers and the communities in its market areas. BNC also represents that no significant reductions in products or services would be expected as a result of the proposal. Moreover, BNC has also indicated that BNC Bank staff is currently developing initiatives and programs focused on lending, investment, and service activities in its communities, with an emphasis on developing programs for LMI individuals and communities, and that these programs would be beneficial to BNC Bank customers and former Southcoast Bank customers upon consummation of the proposal.

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 FDIC, confidential supervisory information, information provided by BNC, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, 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."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

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, BNC would have approximately \$6.2 billion in consolidated assets and, by any of a number of alternative measures of firm size, BNC 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 that results in a firm with less than \$25 billion in total consolidated assets, will not pose significant risks to the

³⁰ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 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 2012-2 (February 14, 2012).

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.³³ 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 BNC 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 Richmond, acting pursuant to delegated authority.

By order of the Board of Governors, effective June 2, 2016.

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

Robert deV. Frierson
Secretary of the Board

³³ The commenter requested that the Board hold a public hearing 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. 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 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 written comments 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 comments do not present the commenter's 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 request for a public hearing on the proposal is denied.

Ohio Valley Banc Corp.
Gallipolis, Ohio

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2016-10 (June 28, 2016)

Ohio Valley Banc Corp. (“OVBC”), Gallipolis, Ohio, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Milton Bancorp, Inc. (“Milton Bancorp”), and thereby indirectly acquire its subsidiary bank, The Milton Banking Company (“Milton Bank”), both of Wellston, Ohio.

In addition, OVBC’s subsidiary state member bank, The Ohio Valley Bank Company (“Ohio Valley Bank”), also of Gallipolis, has requested the Board’s approval to merge with Milton Bank pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”), with Ohio Valley Bank as the surviving entity.³ Ohio Valley Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Milton Bank.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 26,231 (2016)).⁵ 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.

OVBC, with total consolidated assets of approximately \$795.6 million, is the 910th largest depository organization in the United States, controlling deposits of approximately \$663.3 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ OVBC controls Ohio Valley Bank, which operates in Ohio and West Virginia. Ohio Valley Bank is the 38th largest insured depository organization in Ohio, controlling deposits of approximately \$533.4 million, which represent less than 1 percent of the total deposits in insured depository institutions in that state.⁷

Milton Bancorp, with consolidated assets of approximately \$142.5 million, is the 3,768th largest depository organization in the United States. Milton Bancorp controls Milton Bank, a nonmember bank that operates only in Ohio. Milton Bank is the 112th largest insured depository organization in Ohio, controlling approximately \$120.6 million in deposits, which represent less than 1 percent of the total deposits held by insured depository institutions in Ohio.

On consummation of this proposal, OVBC would become the 760th largest depository organization in the United States, with consolidated assets of approximately

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. These locations are listed in Appendix A.

⁵ 12 CFR 262.3(b).

⁶ Nationwide deposit, asset, and ranking data are as of December 31, 2015. In this context, insured depository institutions include commercial banks, savings banks, savings associations, and non-deposit trust companies.

⁷ State deposit, market share, and ranking data are as of June 30, 2015.

\$938.1 million, which represent less than 1 percent of the total assets of insured depository institutions in the United States. OVBC would control deposits of approximately \$789.4 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Ohio, OVBC would become the 32nd largest depository institution, controlling deposits of approximately \$654.0 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 and the Bank Merger Act prohibit 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. 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

OVBC and Milton Bancorp have subsidiary depository institutions that compete directly in the Jackson, Ohio, banking market (the “Jackson 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 OVBC would control;¹⁰ 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”);¹¹ and other characteristics of the market.

Using the initial competitive screening data, in the Jackson market, OVBC is the sixth largest depository organization, controlling deposits of approximately \$44.3 million, which represent approximately 7.4 percent of market deposits. Milton Bancorp is the third largest depository organization in the market, controlling deposits of approximately \$92.7 million, which represent approximately 15.4 percent of market deposits. On consummation of the proposal, the combined entity would be the third largest depository organization in the Jackson market, controlling deposits of approximately \$137.1 million, which would represent approximately 22.8 percent of market deposits. The HHI in the market would increase by 227 points, from 2094 to 2321.

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

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

⁹ The Jackson market is defined as Jackson and Vinton counties in Ohio.

¹⁰ Deposit and market share data are as of June 30, 2015, 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, 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.

competition in the Jackson market.¹² Factors indicate that the increase in concentration in the Jackson market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, a community credit union exerts a competitive influence in the Jackson market. The 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.¹³ The Board finds that these circumstances warrant including the deposits of this credit union at a 50-percent weight in estimating market influence. This weighting takes into account the limited lending done by this credit union to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration of the proposed transaction in the Jackson 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 the credit union, the market concentration level in the Jackson market as measured by the HHI would increase by 207, from a level of 1932 to 2139, and the market share of OVBC resulting from the transaction would be 21.8 percent. After consummation of the proposal, six depository institutions would remain in the Jackson market, including two depository institutions with higher market share than OVBC. One depository institution would control 29.7 percent of deposits, while another would control over 24 percent of market deposits. The proposed transaction would create a competitor that, while still smaller than the two largest competitors in the market, is better situated to compete in the market with these larger competitors.¹⁴

The DOJ has also analyzed the effect of the transaction on competition in the relevant markets 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 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 Jackson 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 Bank Merger Act, and the FRA, 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 regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In

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 these features as a mitigating factor. See, e.g., *Chemical Financial Corporation*, FRB Order No. 2015-13 (April 20, 2015); *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); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

¹⁴ See, e.g., *Farmers Bank of Northern Missouri*, FRB Order No. 2015-32 (November 13, 2015).

this evaluation, the Board considers a variety of public and supervisory information regarding 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 effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently 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.

OVBC and Ohio Valley Bank 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 a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.¹⁵ The asset quality, earnings, and liquidity of OVBC and Milton Bancorp are consistent with approval, and OVBC 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.

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 OVBC, Milton Bancorp, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by OVBC; 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.

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

The Board also has considered OVBC's plans for implementing the proposal. OVBC has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. OVBC would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered to be acceptable from a supervisory perspective. In addition, OVBC's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and OVBC plans to integrate Milton Bancorp's existing management and personnel in a manner that augments OVBC's management.¹⁶

Based on all the facts of record, including OVBC's supervisory record, managerial and operational resources, and plans for operating the combined institution after consumma-

¹⁵ To effect the holding company merger, 20 percent of Milton Bancorp's common stock and all of Milton Bancorp's preferred shares will be converted into a right to receive cash. The remaining portion of Milton Bancorp's common stock will be converted into a right to receive OVBC common stock. OVBC expects to fund the cash portion of the exchange in part through financing from a third-party lender. OVBC has the financial resources to support this obligation.

¹⁶ On consummation, a director and officer of Milton Bancorp and Milton Bank will be retained as President of the Milton Bank Division of Ohio Valley Bank; and the Vice President, Chief Financial Officer, and Secretary of Milton Bank will become the Chief Operating Officer of the Milton Bank Division, Senior Vice President of Ohio Valley Bank, and Vice President of OVBC, respectively.

tion, 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 OVBC and Milton Bancorp in combatting money-laundering activities and complying with the Bank Secrecy Act, 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 considers the effects of the proposal on the convenience and needs of the communities to be served.¹⁷ 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act (“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,¹⁸ 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.¹⁹

In addition, the Board considers the banks’ overall compliance records 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 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 applicant institution’s business model, its marketing and outreach plans, the organization’s plans following consummation, and any other information the Board deems relevant.

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 Ohio Valley Bank and Milton Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Deposit Insurance Corporation (“FDIC”); confidential supervisory information; and information provided by OVBC.

Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution’s performance in light of examinations and other supervisory information and information and views provided by the appropriate federal supervisors.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

¹⁷ 12 U.S.C. § 1842(c)(2).

¹⁸ 12 U.S.C. § 2901(b).

¹⁹ 12 U.S.C. § 2903.

²⁰ See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11,642, 11,665 (2010).

²¹ 12 U.S.C. § 2906.

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 a 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 lending test specifically evaluates the institution's lending-related activities 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 available Home Mortgage Disclosure Act ("HMDA") data, automated loan reports, and other reports generated by the institution to assess the institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas, record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to written complaints about its performance. In addition to the lending test, intermediate small institutions such as Ohio Valley Bank are also subject to a community development test that evaluates the number and amount of the institution's community development loans and qualified investments, the extent to which the institution provides community development services, and the institution's responsiveness through such activities to community development lending, investment, and service needs.²²

CRA Performance of Ohio Valley Bank

Ohio Valley Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of Cleveland, as of April 28, 2014 ("Ohio Valley Bank Evaluation").²³ Ohio Valley Bank received "Satisfactory" ratings for both the lending test and the community development test.²⁴

Examiners determined that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. Examiners noted that, given the number and dollar amounts of HMDA, consumer, and small business loans originated, as well as the bank's strategic objectives, economic conditions, and competitive factors, Ohio Valley Bank demonstrated a good responsiveness to local credit needs. In addition, examiners noted that a majority of Ohio Valley Bank's loans and other lending-related activities were in its assessment areas. Examiners also found that Ohio Valley Bank's geographic distribution of loans reflected a reasonable dispersion throughout the assessment areas and a reasonable penetration among individuals of different income levels (including LMI individuals) and businesses of different revenue sizes.

Examiners found that the bank's community development performance demonstrated a reasonable level of responsiveness to the community development needs of its assessment areas, and the bank had a relatively high level of community development loans. Examiners noted that the bank's retail delivery systems were reasonably accessible to all geographies, including LMI geographies, individuals of different income levels, and businesses of

²² See 12 CFR 228.26.

²³ The Ohio Valley Bank Evaluation was conducted using Intermediate Small-Bank CRA Examination Procedures, consisting of the lending and community development tests described above. The Ohio Valley Bank Evaluation reviewed lending data from January 1, 2012, to December 31, 2013, and community development activities from September 13, 2010, to April 28, 2014.

²⁴ The Ohio Valley Bank Evaluation included full-scope reviews of the bank's activities in nonmetropolitan Ohio, nonmetropolitan West Virginia, and the Huntington-Ashland metropolitan statistical area ("MSA").

different revenue sizes. Examiners also noted that the bank provided a high level of community development services.

Ohio Valley Bank's Efforts Since the Ohio Valley Bank Evaluation

OVBC represents that, since the Ohio Valley Bank Evaluation, Ohio Valley Bank has made a number of community development loans, investments, and donations to support LMI individuals and small businesses within its assessment areas. OVBC represents that the bank has also engaged in various community service and technical assistance opportunities with organizations that support LMI individuals, community development, and small businesses, and has been actively involved in several programs focused on increasing the financial literacy and education of individuals within its assessment areas. In addition, OVBC represents that since the Ohio Valley Bank Evaluation, the bank has instituted a CRA Committee to assist its CRA Officer in ensuring that the bank continues to meet its responsibilities under the CRA in light of the bank's planned future growth.

CRA Performance of Milton Bank

Milton Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC, as of November 26, 2012 ("Milton Bank Evaluation").²⁵ Examiners found that the bank's average loan-to-deposit ratio was reasonable given its size, financial condition, and assessment area credit needs. Examiners noted that a majority of the institution's residential mortgage loans and small business loans were in its assessment areas, and its distribution of borrowers reflected reasonable penetration among individuals of different income levels (including LMI individuals) and businesses of different sizes. Examiners also found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout its assessment areas.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. OVBC represents that customers of Milton Bank will benefit by gaining access to the full range of products and services currently offered by Ohio Valley Bank. For example, customers of Milton Bank will gain access to new deposit products and services, such as business debit cards, health savings accounts, and vacation savings accounts. Customers of Milton Bank will also gain access to new loan products, including home equity lines of credit, an equipment leasing and loan program, and professional and physician loan programs. OVBC also represents that customers of Milton Bank will benefit from expanded banking hours and a wider variety of internet-based banking services. The combined institution will also offer expanded ATM and branch networks to customers of both banks.

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, information provided by OVBC, and other potential effects of the proposal on the

²⁵ The Milton Bank Evaluation was conducted using the Small Bank CRA Examination Procedures, consisting of the lending test described above. The Milton Bank Evaluation reviewed all loans reported on the bank's HMDA loan application registers and a sample of small business lending during 2010 and 2011. The Milton Bank Evaluation included reviews of the bank's activities in all of the non-MSA counties of Jackson, Vinton, and Fayette in Ohio and all of Madison and Pickaway counties in the Columbus, Ohio, MSA.

convenience and needs of the communities to be served. Based on that review, 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 the BHC Act and the Bank Merger 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.”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 opacity 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

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, OVBC would have approximately \$938.1 million in consolidated assets and, by any of a number of alternative measures of firm size, 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 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.

Establishment of Branches

Ohio Valley Bank has applied under section 9 of the FRA to establish and operate branches at the current locations of Milton Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.²⁹ Specifically,

²⁶ Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601, 1602 (2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

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 No. 2012-2 (Feb. 14, 2012).

²⁹ 12 U.S.C. § 322; 12 CFR 208.6.

the Board has considered Ohio Valley 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 BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by OVBC and Ohio Valley 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 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 by the Federal Reserve Bank of Cleveland acting pursuant to delegated authority.

By order of the Board of Governors, effective June 28, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix A

Branches to Be Acquired by The Ohio Valley Bank Company

1. 400 East Main Street, Jackson, Ohio 45640
2. 116 Jackson Street, Oak Hill, Ohio 45656
3. 25 North Main Street, New Holland, Ohio 43145
4. 123 South Ohio Avenue, Wellston, Ohio 45692
5. 255 Yankeetown Street, Mount Sterling, Ohio 43143

Bank of the Ozarks, Inc.
Little Rock, Arkansas

Order Approving the Merger of Bank Holding Companies and Election of Financial Holding Company Status

FRB Order No. 2016-11 (June 28, 2016)

Bank of the Ozarks, Inc. (“Ozarks”), Little Rock, Arkansas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Community & Southern Holdings, Inc. (“C&S Holdco”), and thereby indirectly acquire its subsidiary bank, Community & Southern Bank (“C&S Bank”), both of Atlanta, Georgia. Following the proposed merger, C&S Bank would be merged into Ozarks’ subsidiary bank, Bank of the Ozarks (“BOTO”), also of Little Rock.³ Ozarks also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board’s Regulation Y.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 74105 (November 27, 2015)).⁵ 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.

Ozarks, with consolidated assets of approximately \$9.9 billion, is the 152nd largest insured depository organization in the United States. Ozarks controls approximately \$8.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ Ozarks controls BOTO, which operates in Alabama, Arkansas, Florida, Georgia, North Carolina, New York, South Carolina, and Texas. BOTO is the 28th largest depository organization in Georgia, controlling deposits of approximately \$689 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁷ BOTO is the 58th largest depository institution in Florida, controlling deposits of approximately \$747 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

C&S Holdco, with consolidated assets of approximately \$4.2 billion, is the 265th largest insured depository organization in the United States. C&S Holdco controls approximately \$3.7 billion in deposits. C&S Holdco controls C&S Bank, which operates in Georgia and Florida. C&S Bank is the 8th largest insured depository institution in Georgia, controlling deposits of approximately \$3.1 billion, which represent approximately 1.4 percent of the total deposits of insured depository institutions in that state. C&S Bank is the 234th largest depository institution in Florida, controlling deposits of approximately \$10.5 million,

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ On May 12, 2016, the Federal Deposit Insurance Corporation (“FDIC”) approved the merger of C&S Bank into BOTO, pursuant to section 18(c) of the Federal Deposit Insurance Act.

⁴ 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82.

⁵ 12 CFR 262.3(b).

⁶ Asset and deposit data are as of June 30, 2015, unless otherwise noted.

⁷ In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁸

On consummation of this proposal, Ozarks would become the 121st largest depository organization in the United States, with consolidated assets of approximately \$14.1 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Ozarks would control consolidated deposits of approximately \$11.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Ozarks would become the 8th largest depository organization in Georgia, controlling deposits of approximately \$3.8 billion, which represent 1.8 percent of the total amount of deposits of insured depository institutions in that state. Ozarks would become the 57th largest depository organization in Florida, controlling deposits of approximately \$757 million, which represent less than 1 percent of the total amount of 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 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.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 application if the bank holding company controls or would upon consummation of the proposed transaction control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company would upon consummation control 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 Ozarks is Arkansas, and C&S Bank's home state is Georgia.¹² C&S Bank also is located in Florida. Ozarks is well capitalized and well managed under applicable law, and BOTO has a satisfactory Community Reinvestment Act ("CRA")¹³ rating. Georgia has a three-year minimum age requirement,¹⁴ and C&S Bank has been in existence for more than three-years. Florida has no minimum age requirement that applies to Ozarks' acquisition of C&S Holdco and C&S Bank.

⁸ The amount of C&S Bank's deposits in Florida is based on deposits held at the Jacksonville, Florida branch of CertusBank, N.A., as of June 30, 2015. C&S Bank entered the Florida market in October 2015 through its acquisition of this branch from CertusBank, N.A.

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) 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).

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 *et seq.*

¹⁴ *See* Ga. Code Ann. § 7-1-622(b).

On consummation of the proposed transaction, Ozarks 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 1.8 percent of the total amount of deposits of insured depository institutions in Georgia and less than 1 percent of the total amount of deposits of insured depository institutions in Florida, the only states in which Ozarks and C&S Holdco have overlapping banking operations. 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 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.¹⁵

Ozarks and C&S Holdco have subsidiary depository institutions that compete directly in the Athens Area, Georgia banking market (“Athens market”) and the Atlanta, Georgia banking market (“Atlanta market”).¹⁶ 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 share of total deposits in insured depository institutions in the markets (“market deposits”) that Ozarks would control;¹⁷ 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”);¹⁸ 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 Athens market and the Atlanta market. On consummation of the proposal, the Athens market would remain unconcentrated, and the Atlanta market would remain moderately concentrated, as meas-

¹⁵ 12 U.S.C. § 1842(c)(1).

¹⁶ The Athens market is defined as Barrow (excluding the towns of Auburn and Winder), Clarke, Jackson, Madison, Oconee, and Oglethorpe counties, all in Georgia. The Atlanta market is defined as Bartow, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton counties; Hall County (excluding the town of Clermont); the towns of Auburn and Winder in Barrow County; and Luthersville in Meriwether County, all in Georgia.

¹⁷ Deposit and market share data are as of June 30, 2015, 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).

¹⁸ 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.

ured by the HHI. The change in the HHI would be small, and numerous competitors would remain in the markets.¹⁹

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 Athens or Atlanta 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 section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. 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 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 their financial and managerial resources and the proposed business plan.

Ozarks and BOTO 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, with a subsequent merger of the subsidiary depository institutions.²⁰ The asset quality, earnings, and liquidity of BOTO and C&S Bank are consistent with approval, and Ozarks appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addi-

¹⁹ Ozarks operates the 22nd largest depository institution in the Athens market, controlling approximately \$20.7 million in deposits, which represent less than 1 percent of market deposits. C&S Holdco operates the ninth largest depository institution in the market, controlling deposits of approximately \$186.8 million, which represent 4.1 percent of market deposits. On consummation of the proposed transaction, Ozarks would become the ninth largest depository organization in the market, controlling deposits of approximately \$207.5 million, which represent 4.6 percent of market deposits. The HHI for the Athens market would increase by 4 points to 839, and 21 competitors would remain in the market. Ozarks operates the 30th largest depository institution in the Atlanta market, controlling approximately \$311.6 million in deposits, which represent less than 1 percent of market deposits. C&S Holdco operates the 12th largest depository institution in the same market, controlling deposits of approximately \$1.7 billion, which represent 1.2 percent of market deposits. On consummation of the proposed transaction, Ozarks would become the 12th largest depository organization in the market, controlling deposits of approximately \$2 billion, which represent 1.4 percent of market deposits. The HHI for the Atlanta market would increase by one point to 1573, and 86 competitors would remain in the market.

²⁰ As proposed, C&S Holdco would be merged into Ozarks, and shares of C&S Holdco would be converted into a right to receive shares of Ozarks common stock, based on an exchange ratio.

tion, the future prospects of the institutions under the proposal are considered consistent with approval.

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 Ozarks, C&S Holdco, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by Ozarks, the Board's supervisory experiences with Ozarks and C&S Holdco 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, as well as information provided by the commenter.

Ozarks, C&S Holdco, and their subsidiary depository institutions are each considered to be well managed. Ozarks' existing risk-management program and its directors and senior management are considered to be satisfactory. The directors and senior executive officers of Ozarks have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Ozarks' plans for implementing the proposal. Ozarks has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. Ozarks has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Ozarks would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Ozarks' management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Ozarks plans to integrate C&S Holdco's existing management and personnel in a manner that augments Ozarks' management.²¹

Based on all the facts of record, including Ozarks' 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 Ozarks and C&S 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.²² 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions 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

²¹ On consummation, the chief executive officer and founder of C&S Bank will become responsible for Ozarks' offices and operations in Georgia.

²² 12 U.S.C. § 1842(c)(2).

operate, consistent with their safe and sound operation,²³ 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.²⁴

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 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 acquiring institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

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 BOTO and C&S Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Ozarks, and the public comments received on the proposal.

Public Comments Regarding the Proposal

In this case, the Board received comments from a commenter who objects to the proposal on the basis of alleged disparities in the number of home purchase and refinance loans made by BOTO to African Americans as compared to whites in the Atlanta, Georgia Metropolitan Statistical Area ("MSA") and the Little Rock, Arkansas MSA, as reflected by data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA") for 2014.²⁵ The commenter also alleges that the proposal raises CRA and consumer compliance issues and cites a media report of a consumer class action lawsuit relating to the bank's overdraft fee practices. The FDIC considered the same comments in connection with its review of the underlying bank merger application and found the CRA record and convenience and needs factor consistent with approval of the proposal on May 12, 2016.²⁶

Businesses of the Involved Institutions and Response to Comments

BOTO provides a broad range of retail and commercial banking products and services including commercial, agricultural, home mortgage, and consumer loans, personal checking and savings accounts, money market deposit accounts, certificates of deposit, and debit cards. BOTO also offers trust and wealth management services. BOTO has 159 branches located throughout Alabama, Arkansas, Florida, Georgia, New York, North Carolina, South Carolina, and Texas.

C&S Bank offers traditional retail banking services including personal, auto, home, and commercial loans and personal and business savings and checking accounts. The bank was established in January 2010 and has expanded through the acquisition of several firms over the past few years. C&S Bank has 42 branches located in Georgia and Florida.

²³ 12 U.S.C. § 2901(b).

²⁴ 12 U.S.C. § 2903.

²⁵ 12 U.S.C. § 2801 *et seq.*

²⁶ See letter from Serena L. Owens, Assistant Regional Director of FDIC's Dallas Regional Office, to Bank of the Ozarks (May 12, 2016).

Ozarks asserts that BOTO has a strong record of compliance with the CRA and fair lending laws, as demonstrated by its rating of “Satisfactory” or better in each of its CRA performance evaluations since 1992.

Ozarks represents that the bank’s lending activity reported under HMDA in the Atlanta MSA is not representative of its overall lending activity because the Atlanta MSA represented only 2.8 percent of the bank’s HMDA applications and 2.2 percent of the bank’s HMDA originations in 2014. Ozarks represents that the proposal would expand the bank’s presence in the Atlanta MSA and would allow it to better serve LMI and minority customers in the area.

Ozarks asserts that the bank’s overall approval rate for HMDA-reportable applications from African Americans in 2014 was 15 percent higher than the approval rate for the aggregate of all HMDA lenders in the Little Rock MSA.²⁷ Ozarks also represents that BOTO has taken steps to increase HMDA applications and originations from LMI and minority applicants in the Little Rock MSA, including by hiring staff to better serve these applicants, creating new loan products designed for LMI borrowers, and engaging in marketing campaigns designed to reach majority-minority geographies.

Ozarks represents that the class action lawsuit cited by the commenter was voluntarily dismissed by the plaintiff in December 2012 and that BOTO has not applied the payment processing methodology that formed the basis for the plaintiffs’ complaint since July 2011.

Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution’s performance in light of examinations and other supervisory information, information provided by public commenters, and information and views provided by the appropriate federal supervisors.²⁸

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.²⁹ 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 (1) the number and

²⁷ 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.

²⁸ See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642, 11665 (March 11, 2010).

²⁹ 12 U.S.C. § 2906.

amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) 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; (3) 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;³⁰ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) 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.³¹ 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 of the facts of record, including reports of examination of the CRA performance of BOTO and C&S Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Ozarks, and the public comments received on the proposal.

CRA Performance of BOTO

BOTO was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of September 14, 2015 ("BOTO Evaluation").³² BOTO received overall ratings of "Low Satisfactory" for the Lending Test, "Outstanding" for the Investment Test, and "High Satisfactory" for the Service Test.³³ The Board has consulted with the FDIC regarding the BOTO Evaluation.

Examiners noted that the bank granted a high percentage of its loans in its assessment areas and the bank established an adequate record regarding its borrower profile loan distribution. Examiners also found that the bank achieved an adequate record regarding its geographic loan distribution and granted a relatively high level of community development loans. Examiners also noted that BOTO made use of innovative or flexible lending practices.

³⁰ 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.*, 12CFR228.22(b)(3).

³¹ 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.

³² The BOTO Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation included a review of the bank's home mortgage loans, small business loans, and small farm loans for the years 2013 and 2014 and for January through June of 2015. Additionally, examiners reviewed the bank's community development loans from March 2013 through June 2015 and all investment and service activities transacted since March 2013. Qualified investments were also considered if they were originated prior to the evaluation period and remained outstanding as of the date of the evaluation.

³³ The BOTO Evaluation included full-scope reviews of the following MSAs: Atlanta, Georgia MSA; Charlotte, North Carolina MSA; Dallas, Texas MSA; Hilton Head, South Carolina MSA; Little Rock, Arkansas MSA; Mobile, Alabama MSA; North Port, Florida MSA; and Texarkana, Texas and Arkansas MSA. Limited-scope reviews were performed in 19 additional assessment areas in Alabama, Arkansas, Florida, Georgia, North Carolina, and Texas.

Examiners found that BOTO made use of an excellent level of qualified investments. Examiners noted that BOTO established an excellent responsiveness to community development needs and made occasional use of innovative or complex instruments. Examiners stated that many of BOTO's qualified investments were of the type that would not otherwise have been made by the private sector. Examiners concluded that, relative to its capacity and the areas' opportunities, BOTO demonstrated an excellent record for the bank as a whole under the Investment Test.

Examiners noted that BOTO established an overall good record under the Service Test and provided a relatively high level of community development services. Examiners found that BOTO made its delivery systems reasonably accessible throughout its assessment areas. Examiners also noted that changes to BOTO's branch locations improved accessibility of the bank's delivery systems, particularly in LMI geographies and to LMI individuals.

CRA Performance of C&S Bank

C&S Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of May 30, 2014 ("C&S Bank Evaluation").³⁴ C&S Bank received overall ratings of "Low Satisfactory" for both the Lending Test and the Investment Test and a "High Satisfactory" rating for the Service Test.³⁵

Examiners found that C&S Bank demonstrated a good responsiveness to credit needs in its assessment areas. Examiners noted that a high percentage of the bank's loans were made in the bank's assessment areas, and the geographic distribution of loans reflected good penetration throughout the assessment areas. Examiners also found that lending to borrowers reflected a good distribution among businesses of different sizes and retail customers of different incomes. Examiners noted, however, that the bank originated a limited number of community development loans and made limited use of flexible lending practices to address the credit needs of LMI individuals or geographies.

Examiners found that C&S Bank had an adequate level of qualified investments, particularly those that are not routinely provided by private investors. Examiners noted that C&S Bank exhibited an adequate responsiveness to credit and community economic development needs. Examiners also found, however, that the bank did not use innovative or complex investments to support community development initiatives.

Examiners found C&S Bank's delivery systems to be accessible to essentially all portions of the bank's assessment areas. Examiners noted that the bank's record of opening and closing branches did not adversely affect the accessibility of its delivery systems and that the bank provided an adequate level of community development services that benefited organizations throughout its assessment areas.

BOTO's Plans for the Combined Bank

Ozarks represents that it has undertaken efforts to identify the needs of communities served by C&S Bank through consultations with C&S Bank and the FDIC's Community Affairs Department for the Atlanta Region. Ozarks states that these consultations have identified eight nonprofit organizations for BOTO to partner with to enhance its ability to effectively

³⁴ The C&S Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test and the Service Test was from January 1, 2012, through May 30, 2014. The evaluation period for the Investment Test was from January 28, 2011, through May 30, 2014.

³⁵ The C&S Bank Evaluation included a full-scope review of the Atlanta-Sandy Springs-Marietta, Georgia MSA and the Georgia Non-Metropolitan Statewide Area. A limited-scope review was conducted in the Athens-Clarke County, Georgia MSA and the Dalton, Georgia MSA.

serve local LMI communities. Ozarks further represents that it plans to place a dedicated CRA loan officer in the Atlanta MSA to help promote products for LMI borrowers. Ozarks also states that BOTO is currently working with an external advertising agency to develop marketing campaigns to promote new mortgage and home improvement loan products that are specifically available to LMI borrowers.

Views of the FDIC

The Board has consulted with the FDIC, the primary federal supervisor of BOTO, regarding the FDIC's review of the proposed merger of BOTO and C&S Bank. The FDIC conducted a review of the same comments that were submitted to the Board, taking into consideration the HMDA data cited by the commenter; BOTO's CRA, consumer compliance, and fair lending records; and BOTO's outreach to African American and LMI borrowers. The FDIC also recently conducted a consumer compliance examination and a CRA evaluation of BOTO. The Board reviewed the examination reports and consulted with the FDIC regarding BOTO'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. BOTO intends to implement those policies and procedures at the combined organization following consummation of the transaction.

The FDIC also considered the proposal in light of the CRA action plan adopted by C&S Bank in connection with the FDIC's approval of C&S Bank's acquisition of certain branches of CertusBank, N.A. (the "C&S Action Plan").³⁶ After a full review of the proposal, including consideration of the public comments, the FDIC determined that the proposal met the standards of the Bank Merger Act and approved the proposal, subject to the condition that BOTO develop an action plan (the "BOTO Action Plan") within 60 days of consummation of the proposal that does the following: (1) ensures that the objectives and provisions in the C&S Action Plan are taken into account and appropriately reflected with respect to C&S Bank's CRA assessment areas; (2) includes provisions pertaining to branching and office strategies, residential lending distribution, marketing plans, and interaction with community organizations, taking into consideration available aggregate and peer data, demographics, and safe and sound lending considerations; (3) includes a provision to evaluate the bank's CRA assessment areas and make adjustments as necessary in accordance with the requirements of 12 CFR 345.41; and (4) includes provisions whereby BOTO will continue to monitor its level of applications and originations from high minority census tracts or areas and from minorities against peer performance. If gaps are identified in BOTO's performance compared to its peers, the FDIC's approval conditions provide that management should consider additional steps to increase applications and/or originations and thoroughly document the steps it takes to reduce the gaps.

The Board expects BOTO to address the objectives of the BOTO Action Plan fully and promptly. The Board will evaluate BOTO's efforts in this regard as it reviews any future expansionary proposals by Ozarks.³⁷

³⁶ In connection with C&S Holdco's 2014 acquisition of Verity Capital Group, Inc., C&S Holdco committed to the Board to develop and adopt a statement of goals and objectives to continue meeting the credit needs of the communities that the combined organization would serve. To fulfill the commitment, C&S Holdco adopted a statement of goals and objectives (the "Statement") on April 30, 2014, that provided a general framework for evaluating the institution's CRA performance and the credit needs of the communities it serves. C&S Bank then adopted the C&S Action Plan pursuant to a condition that the FDIC imposed in connection with C&S Bank's acquisition of certain branches of CertusBank, N.A. The C&S Action Plan sets forth specific actions that C&S Bank will take in order to enhance its achievement of the goals and objectives outlined in the Statement. The FDIC reviewed and approved the C&S Action Plan on January 26, 2016.

³⁷ The Federal Reserve Bank of St. Louis, acting under delegated authority, approved a proposal by Ozarks to acquire C1 Financial, Inc., St. Petersburg, Florida, on June 28, 2016, subject to this same provision.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Ozarks represents that it would apply BOTO's lending, investment, and service programs to the operations and activities of C&S Bank and the communities it serves. Ozarks represents that the proposal would provide customers of the combined organization access to additional or expanded services that are not currently offered to C&S Bank customers, including services relating to trust and wealth management, estate planning, employee benefits, and lease financing. Ozarks also represents that the proposal would allow BOTO to make its special purpose loan products for LMI borrowers available to the entire Atlanta MSA, including home mortgage loans and home improvement loans that are specifically tailored to meet the credit needs of borrowers in LMI areas.

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 FDIC, confidential supervisory information, information provided by Ozarks, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, 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 risks to the stability of the United States banking or financial system."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 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.³⁹ 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.⁴⁰

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Ozarks would have approximately

³⁸ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

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 Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

\$14.1 billion in consolidated assets and, by any of a number of alternative measures of firm size, Ozarks 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.

Financial Holding Company Election

As noted above, Ozarks has elected to become a financial holding company in connection with the proposal. Ozarks has certified that it and BOTO are well capitalized and well managed and has provided all the information required under the Board's Regulation Y.⁴¹ Based on all the facts of record, the Board determines that Ozarks' election will become effective upon consummation of the proposal if, on that date, Ozarks is well capitalized and well managed and all depository institutions it controls are well capitalized, well managed, and have CRA ratings of at least "Satisfactory."

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.⁴² 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 Ozarks 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 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 the Federal Reserve Bank of St. Louis acting under delegated authority.

⁴¹ See Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(l)(1); 12CFR 225.82(f).

⁴² The commenter requested that the Board hold public hearings or meetings 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. 12U.S.C. § 1842(b); 12CFR225.16(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, commenters have had ample opportunity to submit comments on the proposal and, in fact, the commenter submitted written comments that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact material to the Board's decision and that would be clarified by a public meeting. In addition, the request does not demonstrate why the written comments do not present the commenter's views adequately or why a hearing or 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

By order of the Board of Governors, effective June 28, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Orders Issued Under Section 4 of the Bank Holding Company Act

Sumitomo Mitsui Trust Holdings, Inc. and Sumitomo Mitsui Trust Bank, Limited
Tokyo, Japan

Order Approving Notice to Engage in Nonbanking Activities
FRB Order No. 2016-07 (June 10, 2016)

Sumitomo Mitsui Trust Holdings, Inc., and its wholly owned subsidiary, Sumitomo Mitsui Trust Bank, Limited (“SMTB”), both of Tokyo, Japan (collectively “SuMi Trust”), have requested the Board’s approval under section 4(c)(8) of the Bank Holding Company Act of 1956 (“BHC Act”)¹ and section 225.24 of the Board’s Regulation Y² to acquire 50 percent of the voting shares of Marubeni Rail Transport, Inc. (“MRTI”), a Delaware corporation, and thereby acquire its wholly owned subsidiary, Midwest Railcar Corporation (“MRC”), an Illinois corporation, engaged in railcar leasing and related activities in North America.³ As a result of the proposed acquisition, SuMi Trust would engage in certain nonbanking activities.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 7341 (February 11, 2016)). The time for submitting comments has expired, and the Board has considered the notice and all comments received in light of the factors set forth in section 4 of the BHC Act.

SuMi Trust, with consolidated assets of approximately \$518 billion, is the sixth largest banking organization in Japan. Through its subsidiaries, SuMi Trust primarily engages in trust, banking, and other financial service businesses in Japan and conducts commercial banking, asset management, and custodial operations in the United States, the United Kingdom, and Singapore. In the United States, SMTB maintains an uninsured state-licensed branch in New York, New York, and SMTB is the sole owner of SuMi Trust USA, a state nonmember bank in New Jersey that is insured by the Federal Deposit Insurance Corporation. SuMi Trust and SMTB also own Nikko Asset Management Americas, Inc., New York, New York, a nonbank asset management company.

The Board has determined by regulation that each of the proposed activities is closely related to banking for purposes of section 4(c)(8) of the BHC Act.⁵ SuMi Trust has committed to conduct the proposed activities in accordance with the limitations set forth in Regulation Y and the Board’s orders.

In reviewing the proposal, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the proposal “can reasonably be expected to produce benefits to the public ... that outweigh possible adverse effects, such as undue concentration of resources,

¹ 12 U.S.C. §§ 1843(c)(8) and 1843(j).

² 12 CFR 225.24.

³ SuMi Trust is subject to the BHC Act by virtue of its ownership of a U.S. banking subsidiary, Sumitomo Mitsui Trust Bank (U.S.A.) Limited (“SuMi Trust USA”), Hoboken, New Jersey.

⁴ These nonbanking activities include railcar leasing and the provision of certain railcar fleet management services pursuant to section 225.28(b)(3) (leasing personal property and acting as agent, broker, or adviser in leasing personal property) and section 225.21(a)(2) (engaging in incidental activities that are necessary to carrying on permissible nonbanking activities), both of the Board’s Regulation Y (12CFR part 225).

⁵ 12 CFR 225.28(b)(3).

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 considers the financial and managerial resources of the companies involved and the effect of the proposal on those resources.⁷ In assessing the financial and managerial resources of the companies involved, the Board has considered, among other items, information provided by SuMi Trust, a public comment on the proposal, confidential reports of examination, other confidential supervisory information, and publicly reported financial and other information.

In evaluating the financial considerations of this proposal, the Board has considered a number of factors, including capital adequacy and the nature of the transaction. SuMi Trust has capital ratios in excess of the minimum levels that would be required by the Basel Capital Accord and that are considered equivalent to the capital that would be required of a U.S. banking organization. The transaction will be structured as a purchase of common stock funded by cash on hand and will not have a significant impact on SuMi Trust’s financial condition.

In addition, the Board has considered the managerial resources of SuMi Trust, the supervisory experiences of the relevant supervisory agencies with SuMi Trust, and SuMi Trust’s record of compliance with applicable U.S. banking laws. The Board has also considered public comment on the proposal and reviewed reports of examination from the appropriate federal and state supervisors of the U.S. operations of SuMi Trust assessing its managerial resources.⁸ Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources of the organizations involved are consistent with approval.

Section 4(j)(2)(A) of the BHC Act also requires the Board to consider whether the proposal is likely to pose a significant risk to the stability of the United States banking or financial system. The proposed acquisition is limited in size and substitute providers of the proposed activities are readily available. The investment proposed by SuMi Trust in MRC is relatively small compared to SuMi Trust’s total consolidated assets, and MRC is small relative to other market participants. The Board believes that the proposal would not pose a significant risk to the United States banking or financial system.

The Board also has considered the competitive effects of the proposal in light of all the facts of record. The market for the proposed leasing activities is unconcentrated and highly competitive. The investment will not eliminate any market participants or otherwise diminish the presence of competitors in the market. Based on all the facts of record, the Board concludes that consummation of the proposal would have a *de minimis* effect on competition for the relevant nonbanking activities.

⁶ 12 U.S.C. § 1843(j)(2)(A).

⁷ 12 CFR 225.26.

⁸ A commenter expressed concerns about the compliance record of the company that proposes to sell shares of MRTI to SuMi Trust and to be SuMi Trust’s co-venturer in MRTI. This company, Marubeni Corporation, Tokyo, Japan, had been charged with violations of the Foreign Corrupt Practices Act (“FCPA”) for misconduct that occurred in the late 1990s and 2000s. The Board has considered these comments in light of all the facts of record, including that SuMi Trust is investing in MRTI, not Marubeni Corporation; neither MRTI nor MRC were involved in Marubeni Corporation’s FCPA violations; and MRC’s activities take place exclusively in the United States and Canada, where the rail industry is highly regulated. SuMi Trust is also expected to implement any policies and procedures necessary as part of its overall risk management framework to effectively oversee MRC and designate specific employees to ensure ongoing compliance by MRC with all applicable laws and regulations.

The Board expects that SuMi Trust's performance of the activities would result in benefits to the public by enabling SuMi Trust to provide expanded personal property leasing and other related services to its customers and the public. The investment by SuMi Trust in MRTI may also strengthen and diversify the railcar leasing industry in North America through MRTI's partnership with a global financial institution. The Board concludes that the proposed activities, conducted in accordance with the Board's Regulation Y and Board precedent,⁹ is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or a significant risk to the stability of the United States banking or financial system, that would outweigh the public benefits of the proposal discussed above. Accordingly, based on all the facts of record, the Board has determined that the balance of the public benefits factor that it must consider under section 4(j) of the BHC Act is consistent with approval of this proposal.

Based on the foregoing and all the facts of record, the Board has determined that the notice 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. The Board's approval is specifically conditioned on compliance by SuMi Trust with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),¹⁰ and to the Board's authority to require such modification or termination of the activities of SuMi Trust and 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 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 the Federal Reserve Bank of New York, acting under delegated authority.

By order of the Board of Governors, effective June 10, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

⁹ The commenter expressed concerns about ensuring that SuMi Trust's leasing activities, conducted through MRC, would conform to the requirements of the Board's Regulation Y. Among other commitments, SuMi Trust has committed that it will ensure that MRC conducts its railcar leasing and related activities in accordance with section 4 of the BHC Act and part 225 of the Board's Regulation Y, including that such leases be on a nonoperating basis.

¹⁰ 12 CFR 225.7 and 225.25(c).

Orders Issued Under Federal Reserve Act

Origin Bank
Choudrant, Louisiana

Order Approving Establishment of Branches
FRB Order No. 2016-05 (May 4, 2016)

Origin Bank, Choudrant, Louisiana, a state member bank subsidiary of Origin Bancorp, Inc. (“Origin Bancorp”), Ruston, Louisiana, has requested the Board’s approval under section 9 of the Federal Reserve Act (“FRA”)¹ and the Board’s Regulation H² to establish a branch at 2049 West Gray Street, Houston, Texas, and to establish a mobile branch to serve Harris County, Texas (the “mobile branch”).³ The proposed mobile branch would be a branch under federal law because it would take deposits from Origin Bank’s customers, pay checks, and make small consumer loans.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board’s Rules of Procedure.⁵ The time for submitting comments has expired, and the Board has received one comment on the proposal.

Origin Bancorp is the 56th largest depository organization in Texas with 17 branches throughout Texas, controlling approximately \$1.1 billion in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in that state.⁶ Origin Bank’s main office is in Choudrant, Louisiana, and it operates 44 branches throughout Louisiana, Mississippi, and Texas.

Under section 208.6 of the Board’s Regulation H, which implements section 9 of the FRA, 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

¹ 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. Origin Bank currently operates branches in Texas and is permitted under section 9 of the FRA and Texas state law to establish additional branches in Texas. *See* 12 U.S.C. § 36(c)(2); Tex. Fin. Code Ann. § 203.006 (permitting an out-of-state bank that has established or acquired a branch in Texas to establish or acquire additional branches in Texas to the same extent that a Texas state-chartered bank could under state or federal law).

² 12 CFR part 208.

³ The mobile branch would provide banking services to one or more retirement communities and senior care facilities in Harris County, Texas, and Origin Bank would not operate the mobile branch in any other county in Texas. Origin Bank is permitted to operate a mobile branch in Texas under both Texas and Louisiana state law. *See* Tex. Dep’t of Banking, Opinion No. 95-15 (Mar. 13, 1995) (authorizing a Texas state-chartered bank to establish and operate a mobile branch within an identifiable service or marketing area); Tex. Fin. Code Ann. § 203.002 (permitting an out-of-state bank to establish and maintain a branch in Texas subject to applicable state law); La. Stat. Ann. § 6:537.1 (permitting a Louisiana state bank to establish a branch in any other state to the same extent as, and to have the right and power to exercise and enjoy all rights, powers, privileges, and immunities accorded to, any state-chartered bank, national bank, foreign bank, or other similar institution in the host state).

⁴ The Board’s Regulation H defines a branch as “any branch bank, branch office, branch agency, additional office, or any branch place of business that receives deposits, pays checks, or lends money.” 12 CFR 208.2(c)(1). Regulation H specifically provides that a branch may include a mobile facility.

⁵ 12 CFR 262.3(b).

⁶ Data are as of June 30, 2015. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

Reinvestment Act (“CRA”);⁷ and (5) whether the bank’s investment in bank premises in establishing the branch satisfies certain criteria.⁸ The Board has considered the applications in light of these factors and the public comment received on the proposal.

Financial, Managerial, and Other Supervisory Considerations

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

In considering Origin 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 Origin Bank and the bank’s record of compliance with applicable banking laws, including anti-money-laundering laws, and the bank security procedures that would apply to the mobile branch.¹⁰ Origin Bank is considered to be well managed. Based on this review and all the facts of record, the Board concludes that the character of Origin Bank’s management, as well as Origin Bank’s effectiveness in combatting money-laundering activities and its branch security procedures, are consistent with approval of the proposal.

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.¹¹ In this evaluation, the Board places particular emphasis on the record of the relevant depository institution 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,¹² 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.¹³

In addition, the Board considers the bank’s 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 assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the appli-

⁷ 12 U.S.C. § 2901 *et seq.*

⁸ 12 CFR 208.6(b).

⁹ 12 CFR 208.21(a).

¹⁰ *See* 12 CFR 208.61(c).

¹¹ 12 CFR 208.6(b)(3).

¹² 12 U.S.C. § 2901(b).

¹³ 12 U.S.C. § 2903.

cant, 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 after consummation, and any other information the Board deems relevant.

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 Origin Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Origin Bank, and the public comment received on the proposal. One commenter objects to the proposal, alleging that Origin Bank has engaged in discriminatory practices in Houston and Dallas, both in Texas. In particular, the commenter alleges that Origin Bank disfavors certain African American neighborhoods in Houston and Dallas and has limited its lending, marketing activities, community development activities, and branching in those neighborhoods.

Business of the Involved Institution and Response to Comment

Origin Bank is a full service bank that offers a wide range of financial services throughout Louisiana, Mississippi, and Texas. Origin Bank is a relatively recent entrant in the Houston–Sugar Land–Baytown Metropolitan Statistical Area (“Houston MSA”) banking market. Origin Bank first entered the market in 2013 through the establishment of two branches, followed by an additional branch establishment in 2014 and the acquisition of four branches in 2015. Although Origin Bank's lending activities in the Houston MSA primarily consist of commercial lending, as the bank expanded its footprint in the market, its lending portfolio also has included increasing amounts of residential real estate loans, consumer loans, and small business and small farm loans. Origin Bank entered the Dallas banking market in 2008 and operates seven branches in that banking market.

Origin Bank denies the commenter's allegations, arguing that its record of home mortgage and small business lending in the Houston MSA reflects a growing distribution of lending in minority and LMI census tracts and demonstrates the bank's effort as a recent entrant into the market to increasingly serve these communities. More generally, Origin Bank asserts that the bank's products and services are reviewed in accordance with the bank's policies and procedures with respect to all fair lending laws and regulations. The bank further asserts that its lending practices are based on criteria that ensure safe and sound lending and equal access to credit by creditworthy applicants, and that the bank has comprehensive policies and procedures in place to accomplish these goals. These policies and procedures include annual fair lending training for all bank employees and periodic analyses of the geographic distribution of all loans to ensure that no minority and LMI areas are excluded from the bank's lending activity and to delineate the bank's assessment areas. Origin Bank also represents that it conducts an ongoing fair lending monitoring process that includes adherence to rate sheets, an annual review of advertising to ensure there are no exclusions of minority or LMI areas, and an annual independent third-party compliance audit.

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 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 and information and views provided by the appropriate federal supervisors.¹⁴

¹⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642, 11665 (March 11, 2010).

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.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 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 1975,¹⁶ 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 (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) 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 these loans in low-, moderate-, middle-, and upper-income geographies; (3) 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;¹⁷ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of Origin Bank

Origin 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 September 16, 2013 ("Origin Bank Evaluation").¹⁸ Origin Bank received "High Satisfactory" ratings for each of the Lending Test, the Investment Test, and the Service Test.¹⁹

Examiners noted that Origin Bank originated a high percentage of loans within its assessment areas and showed good responsiveness to credit needs throughout its assessment areas. Examiners also noted that Origin Bank's geographic distribution of loans reflected

¹⁵ 12 U.S.C. § 2906.

¹⁶ 12 U.S.C. § 2801 *et seq.*

¹⁷ 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).

¹⁸ The Origin Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2012, through December 31, 2012. The evaluation period for the Investment Test and the Service Test was from January 18, 2012, through August 31, 2013.

¹⁹ The Origin Bank Evaluation included a full-scope review of four assessment areas: the Monroe, Louisiana, Metropolitan Statistical Area ("MSA"); the Lincoln Parish, Louisiana, assessment area; a portion of the Dallas–Plano–Irving, Texas, Metropolitan Division ("Dallas assessment area"); and a portion of the Jackson, Mississippi, MSA. A limited-scope review was performed of the Morehouse Parish, Louisiana, assessment area; the Shreveport–Bossier, Louisiana, MSA; a portion of the Fort Worth–Arlington, Texas, Metropolitan Division (Tarrant County); and the Lafayette County, Mississippi, assessment area. The Origin Bank Evaluation did not include a review of the Houston MSA because Origin Bank did not enter into that market until after the evaluation period.

good penetration throughout the assessment areas. Further, examiners found that the bank had a good distribution of borrowers of different income levels and business customers of different sizes. Examiners also noted that Origin Bank made an adequate level of community development loans inside its assessment areas. The bank also exhibited a good record of serving the credit needs of low-income individuals and areas and small businesses. For instance, Origin Bank's community development loans provided funding for organizations that provide community services to LMI individuals, school districts, and affordable housing projects.

In the Dallas assessment area, an area of concern to the commenter, examiners found that Origin Bank exhibited adequate lending performance. Examiners determined that the bank's lending activity reflected adequate responsiveness to assessment area credit needs and that the bank's geographic distribution of loans reflected adequate penetration throughout the assessment area. The bank's distribution of borrowers was judged to reflect adequate penetration among borrowers of different income levels and businesses of different revenue sizes. Origin Bank also was found to have made an adequate level of community development loans in the assessment area.

Examiners found that Origin Bank had provided a good level of qualified community development investments and grants and was in a leadership position in these investments. Examiners also noted that the bank demonstrated good responsiveness to credit and community development needs in the areas in which it operates. Examiners also found that Origin Bank's investments met identified needs of its assessment areas.

In the Dallas assessment area, Origin Bank's performance on the Investment Test was found by examiners to be adequate. Origin Bank exhibited adequate responsiveness to credit and community development needs through its investment activities in the assessment area, which included grants for organizations serving diverse community development needs.

Examiners highlighted that Origin Bank provided a high level of community development services throughout its assessment areas. Examiners noted that many of the bank's branches are located in or close to LMI geographies or middle-income distressed or underserved geographies. Further, examiners noted that Origin Bank's services did not vary in a way that inconvenienced the bank's assessment areas, particularly LMI geographies and LMI individuals. Examiners also found that the bank's delivery systems were accessible throughout the bank's assessment areas and to individuals of different income levels. Examiners also noted that the bank's record of opening and closing branches did not adversely affect the accessibility of its delivery systems, particularly to LMI geographies and LMI individuals.

In the Dallas assessment area, examiners found that Origin Bank's performance on the Service Test was adequate. The bank's retail and community development services were judged to be accessible to the bank's assessment area and individuals of different income levels. In addition, the bank provided numerous community development services that were responsive to the community and credit needs of the assessment area.

Origin Bank's Activities since the 2013 CRA Evaluation

Origin Bank represents that since the Origin Bank Evaluation in 2013, it has continued to provide a variety of products and services that are designed to meet the needs of LMI individuals and geographies in its assessment areas, including the Houston MSA and the Dallas assessment area. For example, the bank offers products and services tailored to LMI individuals and geographies, such as a flexible-term down-payment program for first-time

home buyers and a low-cost checking account with no minimum deposit and no monthly minimum balance requirement. Origin Bank also has partnered with the Texas State Affordable Housing Corporation to offer affordable mortgage products with down-payment assistance to LMI consumers. In addition, Origin Bank represents that its employees have volunteered at organizations that serve minority and LMI residents of Houston, Texas. Origin Bank also represents that it has made significant community development loans, investments, and donations throughout its entire assessment areas, including the Houston MSA and the Dallas assessment area.

Since 2013, Origin Bank also has made improvements to its compliance program, including its policies and procedures related to fair lending. Origin Bank has enhanced its fair lending policies and procedures, including with respect to the delineation of the bank's assessment areas and its lending, branching, marketing, advertising, and outreach activities. Specifically, the bank's fair lending policy requires a review of its assessment areas at least annually to evaluate any significant changes in assessment area demographics and the impact on any of the banking products and services offered by the bank. Additionally, prior to entering or pursuing a new market, Origin Bank's fair lending policy requires the bank to review demographic data to ascertain the bank's fair lending risks associated with the expansion.

Origin Bank also has strengthened its internal controls related to mortgage lending. Specifically, the bank has implemented software to monitor mortgage loan applications and has developed procedures to better ensure that the applications are processed in accordance with the bank's fair lending policies. Origin Bank also has required additional training for its employees on applicable fair lending laws and regulations.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Origin Bank represents that the branches would allow it to better serve the residents of Harris County and to strengthen its existing business relationships in the county and the surrounding communities. In addition, the mobile branch would offer banking services to the elderly and home-bound individuals at retirement centers in Harris County who cannot easily access a physical branch facility.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of Origin Bank under the CRA, the bank's records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Origin Bank, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. The Board's approval is specifically conditioned on Origin Bank's compliance with all the commitments made to the Board in connection with the proposal as well as all conditions imposed in this order. The conditions and commitments 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.

Approval of these applications is also subject to the establishment of the proposed branches 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 4, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Compass Bank Birmingham, Alabama

Order Approving the Establishment of a Branch FRB Order No. 2016-08 (June 17, 2016)

Compass Bank, Birmingham, Alabama, a state member bank subsidiary of Banco Bilbao Vizcaya Argentaria, S.A., Bilbao, Spain, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")¹ and the Board's Regulation H² to establish a branch at 5900 Quebec Street, Fort Worth, Texas.

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 comment on the proposal.

Compass Bank is the fifth largest depository institution in Texas, controlling approximately \$35.7 billion in deposits, which represent 4.9 percent of the total amount of deposits of insured depository institutions in that state.⁴ Compass Bank's main office is in Birmingham, Alabama. Compass Bank operates a total of 676 offices in Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas.

Under section 208.6 of the Board's Regulation H,⁵ which implements section 9 of the FRA, 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.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Compass Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Compass Bank, and the comment received. Compass Bank is well capitalized

¹ 12 U.S.C. § 321. Under section 9 of the FRA, a state member bank may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, a state member bank may establish branches at any point in a state in which the bank has its main office or a branch. See 12 U.S.C. § 36(c)(2). Compass Bank has branches in Texas and is permitted to establish additional branches under Texas state law. See Tex. Fin. Code Ann. § 203.006 (permitting an out-of-state bank that has established or acquired a branch in Texas to establish or acquire additional branches in Texas to the same extent that a Texas state-chartered bank could do under state or federal law).

² 12 CFR part 208.

³ 12 CFR 262.3(b).

⁴ Deposit data are as of June 30, 2015. 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 208.21(a).

and would remain so on consummation of the proposal. After considering all the facts of record, the Board concludes that the financial history and condition, capital adequacy, and future earnings prospects of Compass Bank are consistent with approval of the proposal. The Board also has reviewed Compass Bank's proposed investment in the branch and concludes that its investment is consistent with regulatory limitations on investment in bank premises.⁸

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

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.⁹ In this evaluation, the Board places particular emphasis on the record of the relevant depository institution 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 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.¹¹

In addition, the Board considers the bank's overall compliance record and the result 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 assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. In addition, the Board may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

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 Compass Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Compass Bank, and the public comment received on the proposal. A commenter objects to the proposal, alleging that Compass Bank has engaged in discriminatory practices in Houston and Dallas, both in Texas. In particular, the commenter alleges that Compass Bank disfavors certain African American neighborhoods in Houston and Dallas and has limited its lending, marketing activities, community devel-

⁸ 12 CFR 208.21(a).

⁹ 12 CFR 208.6(b)(3).

¹⁰ 12 U.S.C. § 2901(b).

¹¹ 12 U.S.C. § 2903.

opment activities, and branching in those neighborhoods. The commenter alleges that Compass Bank engages in “redlining” and “reverse redlining” in these areas.¹² The commenter also alleges that the branch is not permissible under supervisory guidance regarding branching by state member banks.¹³

Compass Bank denies the commenter’s allegations, stating that it has implemented safeguards to prevent illegal discrimination. For instance, Compass Bank has adopted a Fair and Responsible Banking Program, under which the bank conducts fair lending risk assessments and fair lending monitoring, trains staff, and provides regular reports to management and board committees that govern the bank’s fair lending program. Compass Bank represents that, in 2015, the bank established a separate mortgage redlining risk assessment process, which includes a review of branch distribution, branch staffing, assessment area delineations, and application and origination monitoring within majority-minority census tracts for all assessment areas. The bank also established routine mortgage redlining monitoring. In addition, Compass Bank contends that the proposed branch, which would be located in a moderate-income census tract, would permit the bank to serve new and existing customers in LMI communities.

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 the commenter 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 and information and views provided by the appropriate federal supervisors.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 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 (“HMDA”),¹⁶ 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

¹² Redlining is the practice of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which a credit seeker resides or will reside or in which a property to be mortgaged is located. Reverse redlining is the practice of targeting certain borrowers or areas with less advantageous products or services based on prohibited characteristics. Office of the Comptroller of the Currency et al., *Interagency Fair Lending Examination Procedures* (August 2009), available at <https://www.ffiec.gov/pdf/fairlend.pdf>.

¹³

See SR Letter 13-7. The Board has taken into account the supervisory record of Compass Bank in considering the proposal.

¹⁴ *See* Interagency Questions and Answers Regarding Community Reinvestment, 75FR 11642, 11665 (March 11, 2010).

¹⁵ 12 U.S.C. § 2906.

¹⁶ 12 U.S.C. § 2801 *et seq.*

activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) 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; (3) 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;¹⁷ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of Compass Bank

Compass Bank was assigned an overall "Satisfactory" rating¹⁸ at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta ("Reserve Bank"), as of December 7, 2015 ("Compass Bank Evaluation").¹⁹ Compass Bank received a "High Satisfactory" rating for both the Lending Test and the Investment Test, and a "Low Satisfactory" rating for the Service Test.²⁰

Examiners found that Compass Bank's overall lending activity in its assessment areas was good in Texas and in five other states.²¹ According to examiners, the bank's geographic distribution of loans through the assessment areas was good. Examiners also found that the bank had a good distribution of loans among borrowers of different income levels and businesses of different sizes. Examiners noted that the bank made an adequate level of

¹⁷ 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.*, 12CFR228.22(b)(3).

¹⁸ The commenter contends that Compass Bank's record of performance under the CRA warrants denial of the proposal because Compass Bank received an overall "Needs to Improve" rating at its CRA performance evaluation dated October 21, 2013. In assessing the proposal, the Board considered Compass Bank's most recent CRA performance evaluation because it represents the most up-to-date evaluation of the bank's overall record of lending in its communities.

¹⁹ The Compass Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA-reportable and CRA small business lending from January 1, 2014, through December 31, 2014, except for community development loans, which were evaluated from April 1, 2013, through March 31, 2015. The evaluation period for the Investment Test and the Service Test was from April 1, 2013, through March 31, 2015.

²⁰ The Compass Bank Evaluation included a full-scope review of the bank's assessment areas within the following areas: the Birmingham–Hoover, Alabama, Metropolitan Statistical Area ("MSA"); the Mobile, Alabama, MSA; the Phoenix–Mesa–Glendale, Arizona, MSA; the Riverside–San Bernardino–Ontario, California, MSA; the San Diego–Carlsbad–San Marcos, California, MSA; the Stockton, California, MSA; the Denver–Aurora–Broomfield, Colorado, MSA; the Jacksonville, Florida, MSA; the Albuquerque, New Mexico, MSA; the Dallas–Fort Worth–Arlington, Texas, MSA ("Dallas assessment area"); the Houston–Sugar Land–Baytown, Texas, MSA ("Houston assessment area"); the San Antonio–New Braunfels, Texas, MSA, and the assessment area comprising Val Verde and Maverick counties, both in Texas. A limited-scope review was conducted in 65 other assessment areas in Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas.

The commenter alleged that Compass Bank's definitions of the Houston and Dallas assessment areas arbitrarily exclude African American neighborhoods in the Houston and Dallas areas. The Board's regulations prohibit the delineation of a CRA assessment area that reflects illegal discrimination. 12 CFR 228.41(e)(2). Assessment areas generally should include entire political subdivisions. Interagency Questions and Answers Regarding Community Reinvestment, 75FR 11642, 11666 (March 11, 2010). The Houston assessment area comprises the entirety of Austin, Brazoria, Fort Bend, Galveston, Harris, and Montgomery counties, all in Texas. The Dallas assessment area comprises the entirety of Collin, Denton, Dallas, Ellis, Hood, Johnson, Kaufman, Parker, and Tarrant counties, all in Texas. Reserve Bank examiners found that the bank's assessment areas were appropriate and offered opportunities to lend in majority-minority geographies.

²¹ Compass Bank showed good lending performance in Alabama, Arizona, Colorado, Florida, New Mexico, and Texas. Compass Bank showed adequate lending performance in California.

community development loans during the review period. Compass Bank's community development loans were made for a variety of purposes, including providing community services targeted to LMI individuals, promoting economic development by financing small businesses, supporting affordable housing, and revitalizing or stabilizing targeted LMI census tracts.

In the Houston assessment area, an area where the commenter focused, examiners determined that Compass Bank exhibited good lending performance. The bank's geographic distribution of loans was judged to reflect good penetration throughout the assessment area. Examiners found that the bank's distribution of borrowers reflected good penetration among borrowers of different income levels and businesses of different revenue sizes. Compass Bank was found to have made a relatively high level of community development loans in the assessment area.

In the Dallas assessment area, another area of concern to the commenter, Compass Bank showed good lending performance. Examiners found that the bank's geographic distribution of loans reflected good penetration throughout the assessment area. The bank's distribution of borrowers was found by examiners to reflect excellent penetration among borrowers of different income levels and businesses of different revenue sizes. Compass Bank was found to have made an adequate level of community development loans in the assessment area.

Examiners found that Compass Bank's overall investment performance was good in Texas and Alabama and adequate in the other states in which it operates.²² A majority of Compass Bank's investments supported affordable housing. Compass Bank purchased securities backed by government-guaranteed mortgages to qualified LMI borrowers, made investments in Low Income Housing Tax Credit projects,²³ and made investments in community development financial institutions that finance affordable housing for LMI borrowers and promote economic development via small business loan funds and microfinancing. Examiners found that the majority of the bank's qualified contributions provided support for organizations engaged in community services for LMI individuals or communities, including financial counseling, youth and family programs, home repairs, health services, and job training.

In the Houston and Dallas assessment areas, examiners found that Compass Bank made a significant level of qualified investments and was in a leadership position for some of its investments. Examiners found that Compass Bank's contributions were responsive to identified community development needs in these assessment areas and included investments in projects that supported affordable housing, financial education and literacy, and small business development.

Compass Bank demonstrated good Service Test performance in Alabama and showed adequate performance in the other states in which it operates, including Texas. Examiners noted that Compass Bank's retail delivery systems were reasonably accessible to the geographies and individuals of different income levels. Examiners found that the bank's banking services and business hours did not vary in a way that inconvenienced any portion of the bank's assessment areas, particularly LMI geographies and individuals. Examiners also noted that Compass Bank offered no- or low-cost deposit accounts and various alternative delivery systems. However, examiners found that Compass Bank's closing of branches adversely affected the accessibility of banking services in some assessment areas.

²² Compass Bank's performance in Texas had the greatest impact on its performance under the Investment Test due to the relatively high concentration of branches, deposits, and lending.

²³ See 26 U.S.C. § 42.

During the review period, the bank closed 39 branches, and 10 of these branches were located in LMI census tracts.²⁴

Examiners indicated that the bank provided an adequate level of community development services throughout the bank's assessment areas. Examiners noted that the bank's employees were involved in organizations and activities that promote or facilitate affordable housing for LMI individuals; provide community services for LMI individuals, such as financial literacy education; and promote economic development and revitalization of LMI areas.

In the Houston and Dallas assessment areas, Compass Bank's performance on the Service Test was found to be adequate. In the Dallas assessment area, examiners determined that the bank's delivery systems were reasonably accessible to the bank's geographies and individuals of different income levels; however, in the Houston assessment area, the bank's delivery systems were inaccessible to portions of the bank's geographies. In the Houston and Dallas assessment areas, examiners found that Compass Bank provided relatively high and adequate levels, respectively, of community development services. The bank's community development services were judged to be responsive to identified community development needs in these assessment areas.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. As noted above, the proposal would increase the availability of banking services in a moderate-income census tract. Compass Bank has represented that opening the proposed branch will increase the number of branches in LMI census tracts in this assessment area and will improve its ability to serve new and existing customers in LMI communities.

More generally, Compass Bank also developed a plan to provide \$11 billion in products and services for LMI communities over the next five years. Under this plan, the bank intends to increase investments in affordable housing, small businesses, community services, and financial education.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of Compass Bank under the CRA, the bank's records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Compass Bank, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is 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. The Board's approval is specifically conditioned on Compass Bank's compliance with all the commitments made to the Board in connection with the proposal as well as all conditions imposed in this order. The conditions and commitments relied on by the Board are deemed to be conditions imposed in writing in

²⁴ Compass Bank represents that it completes a full CRA and fair lending impact analysis prior to closing or consolidating any branches in accordance with its branch closing policy.

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.

By order of the Board of Governors, effective June 17, 2016.

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 International Banking Act

Banque SYZ SA
Geneva, Switzerland

Order Approving the Establishment of a Representative Office
FRB Order No. 2016-09 (June 23, 2016)

Banque SYZ SA (“Banque SYZ”), a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in Miami, Florida, following an internal reorganization that involved Banque SYZ’s merger with its subsidiary, Banque SYZ Suisse SA (“SYZ Suisse”), both of Geneva, Switzerland.² The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office 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 Miami, Florida (*Miami Herald*, December 7, 2015). The time for submitting comments has expired, and the Board has considered all comments received.

Financière SYZ SA (“Financière SYZ”), Geneva, Switzerland, is the parent of Banque SYZ. An overwhelming majority of Financière SYZ’s shares is owned by an individual. Two companies own 5.5 and 5.7 percent of the company’s shares, each. No other shareholder owns 5 percent or more of Financière SYZ’s shares.

Banque SYZ has total assets of approximately \$3.2 billion.³ Banque SYZ engages in private banking activities, including asset management for private and corporate Swiss and foreign clientele, and secured loan transactions. Outside Switzerland, Banque SYZ has a representative office in Dubai, United Arab Emirates. Banque SYZ has no operations in the United States.⁴

The proposed representative office would act as a liaison between Banque SYZ and its customers. The proposed representative office would also engage in other representational activities, including soliciting banking business for Banque SYZ.⁵

On December 10, 2015, Banque SYZ received approval, pursuant to section 211.24(a)(6) of the Board’s Regulation K, to proceed with the merger of Banque SYZ and SYZ Suisse prior to Board action on Banque SYZ’s application to establish a representative office in

¹ 12 U.S.C. § 3107(a).

² Banque SYZ acquired Royal Bank of Canada (Suisse) SA (“RBC Suisse”), Geneva, Switzerland, on August 28, 2015. Until that date, RBC Suisse maintained a representative office in Miami, Florida. Following the acquisition, Banque SYZ renamed RBC Suisse as Banque SYZ Suisse SA.

³ Asset data are as of December 31, 2015.

⁴ Financière SYZ owns SYZ Advisors, Ltd., an investment advisor that does not have an office in the United States but is registered with the U.S. Securities and Exchange Commission and has clients located in the United States.

⁵ A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank’s head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

the United States through retention of the SYZ Suisse representative office.⁶ The merger of Banque SYZ and SYZ Suisse was completed on December 11, 2015.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.⁷ The Board also considers additional standards set forth in the IBA and Regulation K.

In the case of an application to establish a representative office, the Board has by rule determined that the supervision standard may be met if the Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.⁸ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities. This application has been considered under the lesser standard.

As noted above, Banque SYZ engages directly in the business of banking outside the United States. Banque SYZ 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 Board has considered that Banque SYZ is supervised by the Swiss Financial Market Supervisory Authority (“FINMA”). The Board has previously considered the supervisory regime in Switzerland for financial institutions in connection with applications involving other Swiss banks.⁹ Banque SYZ is supervised by FINMA on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Banque SYZ is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

The Board has also considered the following additional standards set forth in the IBA and Regulation K: (1) whether the bank’s home country supervisor has consented to the

⁶ See Letter dated December 10, 2015, to Bowman Brown, Shutts & Bowen LLP. Consistent with 12 CFR 211.24(a)(6), Banque SYZ provided commitments to the Board not to engage in any new lines of business or expand its U.S. activities until the disposition of the application and to abide by the Board’s decision on Banque SYZ’s application to establish a representative office, including, if necessary, a decision to require the termination of the activities of the representative office.

⁷ 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision 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 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 essential, and other elements may inform the Board’s determination.

⁸ See 12 CFR 211.24(d)(2). In adopting the regulations governing applications to establish representative offices, the Board noted that “[a] lesser standard applies because representative offices do not conduct a banking business, such as taking deposits or making loans, and therefore present less risk to U.S. customers than do branches or agencies.” 66 *Fed. Reg.* 54365 (October 26, 2001).

⁹ See, e.g., *UBS AG/Union Bank of Switzerland*, 84 *Federal Reserve Bulletin* 684 (June 8, 1998); *Credit Suisse*, 85 *Federal Reserve Bulletin* 68 (November 23, 1998); *UBS AG*, 86 *Federal Reserve Bulletin* 69 (November 24, 1999).

establishment of the office; (2) 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; (3) the financial and managerial resources of the bank; and (4) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board.¹⁰ FINMA has no objection to the proposed representative office.

Switzerland is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with these recommendations, Switzerland has enacted laws and regulations to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Switzerland, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Banque SYZ has policies and procedures to comply with these laws and regulations, and its operations are monitored by governmental entities responsible for anti-money-laundering compliance.

Banque SYZ appears to have the experience and capacity to support the proposed representative office. In addition, Banque SYZ has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration Banque SYZ's record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of the proposed representative office.

Banque SYZ 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 to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, Banque SYZ 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 Banque SYZ has provided adequate assurances of access to any necessary information that the Board may request.

The Board also has considered whether Banque SYZ's proposal would present a risk to the stability of the United States. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of Banque SYZ in its home country; the scope of Banque SYZ's activities, including the types 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 Banque SYZ in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by Banque SYZ, Banque SYZ's application to establish the proposed representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹¹

¹⁰ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

¹¹ 12 CFR 265.7(d)(12).

Should any restrictions on access to information on the operations or activities of Banque SYZ and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Banque SYZ or its affiliates with applicable federal statutes, the Board may require termination of any of Banque SYZ's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Banque SYZ with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹² For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective June 23, 2016

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

¹² The Board's authority to approve the establishment of a representative office parallels the continuing authority of the State of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Florida and its agent, the Florida Office of Financial Regulation, to license the proposed representative office of Banque SYZ in accordance with any terms and conditions that the Florida Office of Financial Regulation might impose. The Florida Office of Financial Regulation approved Banque SYZ's application to establish the representative office on February 25, 2016.

Legal Developments: Third Quarter, 2016

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

KeyCorp
 Cleveland, Ohio

*Order Approving the Merger of Bank Holding Companies and the Acquisition of a Bank
 FRB Order No. 2016-12 (July 12, 2016)*

KeyCorp, Cleveland, Ohio, 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 First Niagara Financial Group, Inc. (“First Niagara”), and thereby indirectly acquire its subsidiary bank, First Niagara Bank, National Association (“First Niagara Bank”), both of Buffalo, New York. Following the proposed acquisition, First Niagara Bank would be merged into KeyCorp’s subsidiary bank, KeyBank National Association (“KeyBank”), Cleveland, Ohio.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 75863 (December 4, 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.

KeyCorp, with consolidated assets of approximately \$98.6 billion, is the 32nd largest depository organization in the United States.⁴ KeyCorp controls approximately \$72.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ KeyCorp controls KeyBank, which operates in Alaska, Colorado, Florida, Idaho, Indiana, Maine, Michigan, New York, Ohio, Oregon, Utah, Vermont, and Washington. KeyBank is the 15th largest insured depository institution in New York, controlling deposits of approximately \$15.0 billion, which represent approximately 1.1 percent of the total deposits of insured depository institutions in that state.

First Niagara, with consolidated assets of approximately \$40.1 billion, is the 45th largest depository organization in the United States. First Niagara controls approximately \$29.0 billion in consolidated deposits, which represent less than 1 percent of the total

¹ 12 U.S.C. § 1842.

² The merger of First Niagara Bank into KeyBank 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 data are as of March 31, 2016, and deposit data are as of June 30, 2015, unless otherwise noted.

⁵ In this context, insured depository institutions include commercial banks, credit unions, savings banks, and savings associations.

amount of deposits of insured depository institutions in the United States. First Niagara controls First Niagara Bank, which operates in Connecticut, Massachusetts, New York, and Pennsylvania. First Niagara Bank is the 14th largest insured depository institution in New York, controlling deposits of approximately \$18.8 billion, which represent approximately 1.4 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, KeyCorp would become the 26th largest depository organization in the United States, with consolidated assets of approximately \$138.7 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. KeyCorp would control total deposits of approximately \$101.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ KeyCorp would become the ninth largest depository organization in New York, controlling deposits of approximately \$33.8 billion, which represent approximately 2.5 percent of the total deposits of insured depository institutions in that state.

Public Comments on the Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Board's Rules of Procedure.⁷ The Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until January 31, 2016, a total period of 62 days, to submit written comments. The time for submitting comments has expired, and the Board received comments concerning the proposal from 439 individuals and organizations.

The Board received comments from 388 commenters supporting the proposal. Most of these commenters are charitable and community organizations that describe favorable experiences with KeyCorp and KeyBank and commended the company and its management for its support of various community development programs, initiatives, projects, and partnerships. Supporting commenters also asserted that KeyBank has (i) worked to expand credit in distressed areas, (ii) provided low- and moderate-income ("LMI") households with access to financial services and programs in financial literacy, and (iii) developed innovative projects to benefit low-income and minority communities.

The Board received comments from 51 commenters either opposing or expressing concerns about the proposal or requesting that the Board only approve the proposal subject to certain conditions. Many commenters alleged that the proposal would have significant anticompetitive effects in certain upstate New York banking markets, particularly in the Buffalo-Niagara Falls, New York banking market ("Buffalo market"). Many commenters also alleged that branch closures and consolidations contemplated by KeyCorp in connection with the transaction would result in significant job losses and a reduction in the availability of banking services and products in upstate New York, particularly in LMI communities. Several commenters alleged that the products and services offered by KeyBank are inferior to those offered by First Niagara Bank, and some criticized KeyBank's lending record to minorities in certain Metropolitan Statistical Areas ("MSAs"), based on lending data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"). Some commenters questioned the merger consideration to be paid to First Niagara shareholders, and some criticized the payments that certain First Niagara executives would receive upon consummation of the proposal. Two commenters also

⁶ The pro forma deposits of the combined organization include the deposits that KeyCorp proposes to divest through its sale of 18 First Niagara Bank branches in Buffalo, New York, discussed in more detail below.

⁷ See 12 CFR 262.3(b).

alleged that the proposal would have a negative impact on the financial stability of the United 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.⁸ 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.⁹ In addition, the Board may not approve an interstate application if the bank holding company controls or would upon consummation of the proposed transaction control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company would upon consummation control 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.¹⁰

For purposes of the BHC Act, the home state of KeyCorp is Ohio and the home state of First Niagara is New York.¹¹ First Niagara also operates in Connecticut, Massachusetts, and Pennsylvania. KeyCorp is well capitalized and well managed under applicable law, and KeyBank has a satisfactory Community Reinvestment Act ("CRA")¹² rating. Massachusetts has a three-year minimum age requirement and New York and Connecticut have five-year requirements. First Niagara has been in existence for more than five years.¹³ Pennsylvania does not have a minimum age requirement that applies to KeyCorp's acquisition of First Niagara and First Niagara Bank.¹⁴

On consummation of the proposed transaction, KeyCorp would control less than 1 percent of the total amount of deposits in insured depository institutions in the United States. In addition, KeyCorp would control approximately 2.5 percent of the total amount of deposits of insured depository institutions in New York, the only state in which KeyCorp and First Niagara have overlapping banking operations. 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

⁸ 12 U.S.C. § 1842(d)(1)(A).

⁹ 12 U.S.C. § 1842(d)(1)(B).

¹⁰ 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, headquartered, or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

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 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.

¹² 12 U.S.C. § 2901 *et seq.*

¹³ *See* Mass. Gen. Laws ch. 167A, § 2; N.Y. Banking Law § 142-a(1); Conn. Gen. Stat. § 36a-411.

¹⁴ *See* 7 Pa. Stat. Ann. §§ 1601–1610.

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.¹⁵

KeyCorp and First Niagara have subsidiary depository institutions that compete directly in 12 banking markets in the state of New York: the Albany, Binghamton, Buffalo, Franklin, Ithaca, Jamestown, Metro New York City, Rochester, Saint Lawrence, Syracuse, Utica-Rome, and Watertown banking markets (“New York banking markets”).¹⁶

The Board received comments from 23 commenters objecting to the proposal on the grounds that it would have significant anticompetitive effects in certain upstate New York banking markets, particularly the Buffalo market. Commenters expressed concern that consummation of the proposal would, among other things, have an adverse impact on the rates and products offered in the upstate New York region. Some commenters asserted that the upstate New York region is already highly concentrated and that the proposal would reduce consumer access to banking competition in the region to an unacceptably low level.

The Board has considered the competitive effects of the proposal in each of the relevant markets. In particular, the Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) that would be controlled by KeyCorp;¹⁷ 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”);¹⁸ the comments received on the proposal; other characteristics of the markets; and, as discussed below, commitments made by KeyCorp to divest 18 First Niagara Bank branches in the Buffalo 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 for the Albany, Binghamton, Franklin, Ithaca, Jamestown, Metro New York City, Rochester, Saint Lawrence, Syracuse, Utica-Rome, and Watertown markets.¹⁹ On consummation of the proposal, the change in the HHI in the Metro New York City, Rochester, and Utica-Rome markets would be small, and the markets would remain unconcentrated. Although the change in the HHI in the Albany, Jamestown, and Syracuse markets would be above 200, each of these banking

¹⁵ 12 U.S.C. § 1842(c)(1).

¹⁶ Except for the Buffalo market, these banking markets are defined in the Appendix. Certain New York banking markets include areas of Connecticut, New Jersey, and Pennsylvania.

¹⁷ Deposit and market share data are as of June 30, 2015, 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 market share calculations on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹⁸ 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.

¹⁹ The competitive effects of the proposal in these markets are described in the Appendix.

markets would remain moderately concentrated. The Binghamton, Franklin, Ithaca, Saint Lawrence, and Watertown markets would remain highly concentrated but the changes in the HHI in these markets would be small. 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 in the Buffalo market²⁰ warrant a detailed review because the concentration level on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data. Using that screening data, KeyCorp is the third largest depository organization in the Buffalo market, controlling approximately \$3.6 billion in deposits, which represent approximately 8.7 percent of market deposits. First Niagara is the second largest depository organization in the Buffalo market, controlling approximately \$10.4 billion in deposits, which represent approximately 25.0 percent of market deposits. On consummation, KeyCorp would become the second largest depository organization in the Buffalo market, controlling approximately \$14.1 billion in deposits, which represent approximately 33.7 percent of market deposits. The HHI in this market would increase by 436 points, from 3167 to 3603.

To mitigate the potentially adverse competitive effects of the proposal in the Buffalo market, KeyCorp has committed to divest 18 of First Niagara Bank's 55 branches in the Buffalo market to a competitively suitable purchaser.²¹ In addition to the divestiture, the Board also 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 Buffalo market.²² The competitive effects are mitigated by several factors that indicate that the increase in concentration in the Buffalo market, as measured by the above HHI, 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 Buffalo market,²³ as measured in terms of the

²⁰ The Buffalo market is defined as Cattaraugus, Erie, and Niagara counties; Allen, Alma, Amity, Angelica, Belfast, Bolivar, Caneadea, Centerville, Clarksville, Cuba, Friendship, Genesee, Granger, Hume, New Hudson, Rushford, Scio, and Wirt towns, and Oil Springs reservation in Allegany County; Batavia city, Alabama, Alexander, Batavia, Darien, Oakfield, and Pembroke towns, and Tonawanda reservation in Genesee County; Ridgeway and Shelby towns in Orleans County; and Arcade, Attica, Bennington, Eagle, Java, Orangeville, Pike, Sheldon, and Wethersfield towns in Wyoming County, all in New York.

²¹ As a condition of consummating the proposal, KeyCorp has committed that it will execute, before consummation of the proposal, a sales agreement with a competitively suitable institution for the sale of 18 branches. KeyCorp also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, KeyCorp has committed that, if the proposed divestiture is not completed within the 180-day period, KeyCorp would transfer the unsold branches to an independent trustee, who would 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 purchasers must be deemed acceptable to the Board. *See, e.g., BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).*

²² 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 Corporation, 84 Federal Reserve Bulletin 129 (1998).*

²³ 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.*

ratios of those types of loans to total loans and assets.²⁴ The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, nine credit unions exert a competitive influence in the Buffalo 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 market.²⁵ 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.

Taking into account the divestiture of the 18 First Niagara Bank branches, and with the deposits of the thrift weighted at 100 percent and the nine credit unions at 50 percent, the Buffalo market appears to be highly concentrated before and after the transaction, but the HHI would increase by less than 200 points. Upon consummation of the merger, KeyCorp would control approximately 29.1 percent of market deposits, and the HHI would increase by 190 points to a level of 3272, a level that would be within the DOJ Bank Merger Guidelines. Including thrifts, 19 depository organizations would continue to operate in the Buffalo market, including one institution with a market share of almost 50 percent, and two other institutions with market shares above 8 percent.

The DOJ also has conducted a review of the potential competitive effects of the merger 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, including the Buffalo 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, 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 12 banking markets in which KeyCorp and First Niagara 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 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 regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organi-

²⁴ This thrift institution has a ratio of commercial and industrial loans to assets of slightly less than 5 percent, which has been increasing in recent years. This is comparable to 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.*

²⁵ 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 (2d 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); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

zations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. 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 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.

KeyCorp and KeyBank 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.²⁶ The asset quality, earnings, and liquidity of KeyBank and First Niagara Bank are consistent with approval, and KeyCorp 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.

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 KeyCorp, First Niagara, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by KeyCorp; the Board's supervisory experiences with KeyCorp and First Niagara 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.

KeyCorp, First Niagara, and their subsidiary depository institutions are each considered to be well managed. KeyCorp's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and its risk-management program appears consistent with approval of this expansionary proposal.²⁷

The Board also has considered KeyCorp's plans for implementing the proposal. KeyCorp has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address all aspects of the post-integration process for this proposal. KeyCorp would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, KeyCorp's and First Niagara's managements have the experience and resources to ensure that the combined organization operates in a safe and sound manner, and KeyCorp plans to integrate First Niagara's existing management and personnel in a manner that augments KeyCorp's management.²⁸

²⁶ To effect the holding company merger, each share of First Niagara common stock would be converted into a right to receive KeyCorp common stock and cash, based on an exchange ratio. KeyCorp has adequate resources to fund the cash portion of the transaction.

²⁷ Several commenters expressed concerns regarding the share price offered for First Niagara. Some commenters also expressed concerns that the transaction would mostly benefit First Niagara executives and criticized payments that certain First Niagara executives may receive upon consummation of the proposal. The Board notes that KeyCorp and First Niagara filed with the U.S. Securities and Exchange Commission information regarding the proposed transaction, including information concerning the compensation of certain First Niagara executives, and shareholders of both organizations approved the proposal.

²⁸ KeyCorp plans to increase the number of seats on its board of directors and, on consummation, First Niagara would select three of its current directors to join KeyCorp's board. In addition, KeyCorp anticipates inviting other current First Niagara directors to serve on one or more of KeyCorp's regional advisory boards.

Based on all the facts of record, including KeyCorp's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and comments received on the proposal, 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 KeyCorp and First Niagara 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.²⁹ 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.³⁰ 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 institution's business model, its marketing and outreach plans, the institution'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,³¹ 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, in evaluating bank expansionary proposals.³² 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 KeyBank and First Niagara Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC and the Consumer Financial Protection Bureau ("CFPB"), confidential supervisory information, information provided by KeyCorp, and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

As noted above, the Board received comments from 388 commenters supporting the proposal. A majority of these commenters are charitable and community organizations that pointed to the benefits that KeyCorp has provided to the communities that they serve. These commenters described numerous grants and donations made by KeyCorp to charitable organizations and educational providers in communities across the country and noted that KeyCorp has provided financial aid to LMI students and funded financial literacy programs. These commenters also described KeyCorp's participation in community-related activities, such as tax preparation services for indigent persons and participation in financial literacy programs.

²⁹ 12 U.S.C. § 1842(c)(2).

³⁰ 12 U.S.C. § 2901 *et seq.*

³¹ 12 U.S.C. § 2901(b).

³² 12 U.S.C. § 2903.

Twenty-eight commenters argued that the proposal would negatively affect the convenience and needs of the communities served by KeyCorp and First Niagara. These commenters expressed concerns that the branch closures, consolidations, and divestitures planned by KeyCorp in connection with the proposal would adversely impact the Buffalo market and the upstate New York region generally, because portions of the region are already underserved from a banking perspective. These commenters further asserted that certain portions of the local population, including LMI individuals, persons living in LMI neighborhoods, and disabled persons, depend upon their physical access to bank branches and ATMs, and that the planned branch closures would have the effect of limiting that access. Several commenters claimed that First Niagara Bank customers would experience service disruptions during the merger integration process. In addition, many commenters expressed concern that the proposal would result in significant job losses in upstate New York.

Commenters also made various assertions related to KeyCorp's lending, investment, and service activities. Several commenters requested that KeyCorp commit to a comprehensive plan outlining specific strategies and goals for enhancing the communities it serves, including demonstrating a significant public benefit. Some commenters requested that the Board's approval of the transaction be conditioned on KeyCorp developing a comprehensive community benefits plan that better serves the communities affected by the merger. Some commenters proposed potential lending, investment, or service initiatives that KeyBank could pursue in the communities it serves, particularly in upstate New York, or argued that KeyBank's proposed initial commitment to charitable donations is inadequate relative to the proposed expansion of the organization's overall footprint.

Commenters also alleged that KeyBank and First Niagara Bank are not meeting the credit needs of certain communities that the banks serve, and criticized the banks' lending records to minority borrowers in certain markets, based on 2013 HMDA data. Commenters expressed concerns about a potential increase in discriminatory lending in the markets that will be served by the combined organization following the proposed transaction.

Businesses of the Involved Institutions and Response to Comments

KeyCorp, through KeyBank and its nonbanking subsidiaries, provides a wide range of retail and commercial banking, commercial leasing, investment management, consumer finance, and investment banking products and services to individual, corporate, and institutional clients. KeyCorp provides a range of financial products and services, including deposit, lending, cash management, investment products, equipment finance, retail securities brokerage, insurance, and institutional asset management services. First Niagara, through First Niagara Bank and its nonbanking subsidiaries, provides retail and business banking services, including residential and commercial real estate loans, commercial business loans and leases, consumer loans, wealth management products, deposit products, and capital markets services. First Niagara Bank provides customers retail and commercial deposit products, residential and commercial real estate loans, commercial business loans and leases, consumer loans, and wealth management products. In New York, the only state in which the banks have overlapping operations, KeyBank and First Niagara Bank operate 239 and 195 branches, respectively.

KeyCorp asserts that it is strongly committed to serving its communities, particularly LMI communities, demonstrated by the fact that KeyBank has received eight consecutive overall "Outstanding" CRA ratings. KeyCorp argues that, since KeyBank's most recent CRA evaluation, it has provided a substantial number of community development loans supporting activities aimed at benefitting LMI individuals and communities, and has made significant community development investments. KeyCorp further contends that its commitment to its communities is demonstrated by its development of a suite of innova-

tive, low-cost products and services designed to benefit LMI individuals. KeyCorp asserts that it expects to improve upon First Niagara's existing programs under the CRA in the communities served by First Niagara, and will continue providing a high level of services to the LMI communities it already serves.

KeyCorp argues that its legacy of community investment and civic participation demonstrates that it will take seriously the concerns expressed by commenters regarding community banking and investments. In response to these commenters, KeyCorp held community outreach meetings and worked closely with various community organizations to develop a National Community Benefits Plan ("Plan"). The Plan calls for KeyBank to invest \$16.5 billion in its communities over a five-year period, starting in 2017. KeyCorp asserts that up to 35 percent of the total commitment would be targeted for the areas where KeyBank and First Niagara Bank currently overlap in New York. The Plan establishes goals for loans, investments, and products specifically aimed at benefitting LMI individuals and communities, including home mortgages, small business loans, community development loans, investments, and philanthropic contributions. In addition, the Plan establishes targets for branching in LMI communities across the bank's geographic footprint and, separately, the state of New York. The bank will open an additional branch in an LMI community in East Buffalo and keep open four other branches in LMI neighborhoods that the bank initially planned to close. KeyCorp further asserts that the bank will enhance its diversity and inclusion policies, expand its community engagement and marketing efforts, and establish an advisory council made up of various community organizations that will meet periodically to assess KeyBank's progress under the Plan and to be informed of the bank's future initiatives. KeyCorp asserts that the Plan addresses, and should substantially resolve, the concerns expressed by commenters.

KeyCorp asserts that the proposed branch closures would optimize the combined organization's branch network due to the significant overlap between KeyBank's and First Niagara Bank's branch networks in upstate New York. KeyCorp further asserts that in many cases, the closures are effectively branch consolidations and that the availability of banking services in those communities will not be reduced, because another KeyBank branch will be in close proximity. Moreover, KeyCorp represents that the branch closures would be completed in accordance with the OCC's branch closing notice regulations, which provide the public an opportunity to comment, and KeyBank's branch closing policy.³³ KeyCorp asserts that it is committed to maintaining branch access in LMI communities, and for branch closings in LMI areas, KeyCorp would seek to ensure that another branch would remain in close proximity of the closed branch.

Lastly, KeyCorp contends that it has taken substantial steps to ensure that consummation of the proposal would not result in any disruption of banking services, including the closing of accounts, for customers of First Niagara Bank. KeyCorp has assembled an integration team with significant experience in customer and systems integration, which is working with its counterparts at First Niagara to ensure that the transition from First Niagara to KeyCorp is as seamless as possible for customers

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 Fed. Reg. 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.

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 public 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.³⁴ In this case, the Board considered the supervisory views of and information provided by the OCC.

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.³⁵ 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 a variety of factors, including (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending, 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; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amount of loans to low-, moderate-, middle-, and upper-income individuals;³⁶ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

As noted above, some commenters alleged that, based on 2013 HMDA data, KeyBank and First Niagara Bank have failed to adequately serve all of their communities, including the Buffalo market, and that KeyBank has not shown a desire to expand services in that market.

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

³⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 75 Fed. Reg. 11,642, 11,665 (March 11, 2010).

³⁵ 12 U.S.C. § 2906.

³⁶ 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).

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.³⁷ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of KeyBank

KeyBank was assigned an overall rating of “Outstanding” at its most recent CRA performance evaluation by the OCC, as of October 1, 2011 (“KeyBank Evaluation”).³⁸ KeyBank received “Outstanding” ratings for the Lending Test and the Service Test and a “High Satisfactory” rating for the Investment Test. Although KeyBank's overall rating was based on a blend of its state and multistate metropolitan area ratings, examiners gave the greatest weight to the Cleveland-Elyria-Mentor, Ohio MSA; the Albany-Schenectady-Troy, New York MSA; and the Seattle-Bellevue, Washington MSA (“primary rating areas”), because those three primary rating areas represented the bank's most significant markets in terms of deposit concentrations. The Board has consulted with the OCC regarding the KeyBank Evaluation and KeyBank's policies and procedures relating to the CRA.

Examiners concluded that KeyBank's lending performance was excellent overall. KeyBank's borrower distribution was good in all three primary rating areas, and geographic distribution was good in two primary rating areas and adequate in one. Examiners noted that the bank's HMDA loan distribution by borrower was excellent in one primary rating area and good in the other two, and its HMDA geographic distribution was good in two primary rating areas. Geographic distribution of small loans to businesses was excellent in two primary rating areas, and good in the third. Examiners found KeyBank's community development lending to be significantly positive, which elevated the bank's lending performance to excellent in two primary rating areas. The elevated ratings were based on the significance of community development lending volume, innovativeness, complexity, and level of responsiveness by the bank to community needs.

Examiners found that KeyBank had a good volume of qualified community development investments and grants overall. The bank's excellent performance in limited-scope assessment areas had a positive impact on overall performance in one primary rating area. The bank showed good responsiveness to community needs for affordable housing primarily through the purchase of Low Income Housing Tax Credits (“LIHTC”), which were the foundation of the bank's investment strategy. Examiners found the bank responded favorably to community needs for revitalization and stabilization of LMI neighborhoods, although to a lesser degree. Examiners noted that the bank made significant use of complex investments through LIHTCs that routinely involved collaborative efforts among numerous funding sources, including government entities, private equity funds, financial institutions, and other private investors. The investments were responsive to affordable housing and revitalization and stabilization needs throughout the bank's assessment areas.

³⁷ Other data relevant to credit decisions could include credit history problems, 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.

³⁸ The KeyBank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners used 2010 Mortgage and Small Business Peer Data to evaluate the bank's lending market share. For deposit information, examiners used the most recent Federal Deposit Insurance Corporation Deposit Market Share Reports, as of June 30, 2011. The KeyBank Evaluation reviewed HMDA and small business/farm loan originations from January 1, 2008, through June 30, 2011. The evaluation period for investment, retail, and community development activities (loans and services) was July 1, 2008, through September 30, 2011. The KeyBank Evaluation included full-scope reviews of one assessment area in each state where KeyBank had a branch (typically, the MSA or metropolitan division that contained the largest percentage of the bank's deposits within the state), as well as each multistate MSA where the bank had branches in more than one state.

Examiners concluded that KeyBank's service performance was excellent overall. Examiners noted that the bank's delivery systems were readily accessible to all portions of the bank's assessment areas, and that branch distribution was excellent in the three primary rating areas. Access to banking facilities and services was enhanced in the primary rating areas by offices located in middle-income geographies located in close proximity to moderate-income geographies. Examiners found that KeyBank's record of opening and closing branch offices had improved the accessibility of delivery systems in LMI geographies and that, within the primary rating areas, branch hours did not vary in a way that inconvenienced LMI geographies. The bank was found to offer similar products and services throughout its branch network, and some of the products were tailored for LMI geographies and individuals. Examiners stated that in one primary rating area, consumer advocates considered the bank's alternate payday lending product to be a model for other banks. Examiners found that the bank offered a relatively high level of community development services in its primary rating areas.

KeyBank's CRA Efforts Since the 2011 Evaluation

KeyCorp represents that, since the KeyBank Evaluation, the bank has made community development loans across its entire geographic footprint to support activities including affordable housing, economic development, community services for LMI persons or communities, and revitalization and stabilization of LMI areas. KeyBank has developed community lending products and services aimed at extending banking services to individuals who may be new or unfamiliar with banking, or who have had challenges managing a banking relationship in the past. The products include low-fee check cashing services, deposit accounts, low-fee revolving lines of credit, credit rehabilitation loans, and affordable home financing. KeyBank is one of only three insured depository institutions approved by the U.S. Department of Housing and Urban Development as a Multifamily Accelerated Processing Lender, enabling the bank to make expedited lending decisions on multifamily mortgage applications. The bank provides free in-person financial literacy education for all members of its communities on topics such as budgeting, managing money, and building and maintaining good credit, which are taught by KeyCorp employee volunteers. The bank also offers online financial literacy courses in English and Spanish, and provides free tax preparation for local residents during its annual "Super Refund Saturday" event.

Since the KeyBank Evaluation, the bank also has provided HMDA-reportable loans, small business or small farm loans, and community development loans in the Buffalo market. The bank provided community development loans supporting the construction of affordable housing units and redevelopment of commercial, industrial, and mixed-use buildings. In addition, KeyBank provided construction loans in connection with an affordable multifamily residential development aimed at providing housing options and amenities for families with incomes ranging 40 to 80 percent below the area's median income, and for the development of additional infrastructure needed to provide access to a community redevelopment site. KeyBank also made community development investments in the Buffalo market, including through LIHTC investments and New Market Tax Credit investments. In addition, KeyBank Foundation, KeyCorp's nonprofit charitable foundation, made donations to various philanthropic causes across the upstate New York region.

CRA Performance of First Niagara Bank

First Niagara Bank was assigned an overall "Satisfactory" rating at its CRA performance evaluation by the Office of Thrift Supervision ("OTS"), as of March 12, 2007 (the "First

Niagara Bank Evaluation”).³⁹ The bank received “High Satisfactory” ratings for the Lending Test and the Service Test, and received an “Outstanding” rating for the Investment Test.⁴⁰ The OCC is now the primary supervisor of First Niagara Bank and has been conducting its own evaluation of the bank’s CRA performance.

Overall, examiners found that the vast majority of the bank’s lending was originated within its assessment areas; however, levels of lending varied by specific assessment area. Examiners noted that the bank’s geographic distribution of its residential lending was adequate overall, but varied by assessment area. Examiners noted that the bank’s distribution of home loans based on borrower income was reasonable overall, but varied from excellent to poor depending on the specific assessment area. Examiners also noted that loan volume in LMI geographies was adequate overall, but was poor in several assessment areas. Examiners highlighted that in several assessment areas, the bank had an excellent volume of multifamily lending, particularly in LMI census tracts. Examiners also found that the bank displayed a consistently excellent level of small business lending throughout its assessment areas. Examiners emphasized that the bank had a good record of community development lending and used flexible, innovative, and alternative lending programs to help make credit available to LMI borrowers within its assessment areas and that the bank had used Federal Home Loan Bank programs extensively. Examiners further noted that the bank’s delivery systems were accessible to all portions of its assessment areas, and the bank provided a satisfactory level of community development services to its many communities.

First Niagara Bank was scheduled by the OCC for a CRA evaluation in 2012. Although that evaluation is largely complete, the results have not been released. The Board has consulted with the OCC regarding the First Niagara Bank Evaluation and this subsequent CRA evaluation. The Board notes that KeyCorp would be applying its CRA program, policies, procedures, and initiatives at the combined organization and that KeyBank has received eight consecutive “Outstanding” ratings for CRA.

Views of the OCC and CFPB

The Board has consulted with the OCC, the primary supervisor of both KeyBank and First Niagara Bank, in connection with this proposal and the OCC’s review of the bank merger underlying this proposal. The OCC separately received comments on the bank merger application, and was provided with the comments received by the Board both in support of and against the proposal. The OCC is considering all of the comments in connection with its review of the bank merger application.

In its review of the proposal, the Board consulted the OCC regarding both institutions’ CRA, consumer compliance, and fair lending records. The Board also consulted with the OCC regarding KeyBank’s policies and procedures relating to fair lending and other consumer protection laws and regulations, and KeyBank’s ability to integrate First Niagara Bank and resolve any concerns in a timely manner. In addition to consulting with the OCC, the Board also consulted with the CFPB regarding First Niagara Bank’s record of compli-

³⁹ The First Niagara Bank Evaluation was conducted using OTS Large Institution Examination Procedures, and the examiners evaluated the following factors: performance in granting residential, small business, and community development loans; the level of retail banking and community development services provided; and the level of qualified investments made within the assessment area. The review period was 2004-2006. The lending test focused on loans reportable in accordance with HMDA, small business loans, and community development loans. Examiners also considered information provided by community leaders in the bank’s assessment areas.

⁴⁰ For the First Niagara Bank Evaluation, examiners conducted reviews of the following entire MSAs: Buffalo-Niagara Falls; Albany-Schenectady-Troy; Glen Falls; and Ithaca, all in New York. The examiners conducted reviews of certain counties in the following MSAs: Rochester, Syracuse, Utica-Rome, and Poughkeepsie-Newburgh-Middletown. Examiners also conducted reviews of the following counties in non-MSAs: Greene, Columbia, Seneca, Courtland, Cayuga, Fulton, Montgomery, and Genesee, all in New York.

ance with consumer protection laws and regulations and policies and procedures relating to fair lending and other consumer protection laws and regulations, as well as about the lending records of both KeyBank and First Niagara Bank.

The OCC has indicated that it has no outstanding supervisory concerns regarding KeyBank's policies and procedures, and that it is continuing to evaluate the application pending before it. KeyBank has committed to implement its policies and procedures at the combined organization, and the Board expects that they will be commensurate with the increased size and complexity of the combined organization. Based on the Board's consultations with the OCC and the information discussed above, KeyCorp appears capable of effectively implementing its policies, procedures, and programs across the combined organization to effectively serve all communities within the firm's geographic footprint, and of addressing any consumer compliance concerns or issues that may arise at the combined organization. The Board also expects KeyCorp to engage in activities to help meet community credit needs at a level commensurate with the expanded size and scope of the combined organization, consistent with safe and sound lending practices. In addition, KeyCorp should ensure that KeyBank complies with any commitments or conditions that the OCC may request or impose in connection with its action on the bank merger proposal.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. KeyCorp represents that the proposal would provide customers of the combined organization access to additional or expanded products and services that are not currently offered to First Niagara Bank customers, including deposit, online banking, mobile banking and alternative loan products, several of which are designed specifically for LMI customers. KeyCorp states that customers of the combined organization would also have access to First Niagara Bank's insurance and indirect auto lending products that are not currently offered to KeyBank customers. KeyCorp represents that the proposal would not result in significant reductions in products or services currently offered by the institutions, and notes that KeyBank would waive various account fees for a period of time to give First Niagara Bank customers an opportunity to learn more about KeyBank's products.

KeyCorp represents that customers would benefit from the combined organization's enhanced lending capabilities. KeyCorp highlights KeyBank's commitment under the Plan to substantially increase its residential mortgage lending, small business and farm lending, and community development lending and investments. KeyCorp also represents that KeyBank would further enhance its community engagement efforts by (1) creating a product innovation fund to develop new products for urban and rural LMI communities, (2) conducting forums with community partners to educate consumers and small businesses regarding the bank's product offerings, and (3) adding a corporate responsibility officer in each of the organization's major markets.

KeyCorp further represents that as a result of the proposal, customers of the combined organization would have access to a substantially larger branch and ATM network. KeyCorp also states that the combined organization will explore offering, at First Niagara Bank's branches located in LMI communities, its array of "KeyBank Plus" services, which include hassle-free checking accounts, small-dollar loan products, reasonably priced check

cashing services, a first-time homebuyer product, an unsecured revolving credit line, first-time savings accounts, and financial education programs.⁴¹

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, 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 KeyCorp, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, 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 risks to the stability of the United States banking or financial system."⁴²

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.⁴³ 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.⁴⁴

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system, including the public comments.⁴⁵ Both the acquirer and target are predominantly engaged in retail commercial banking activities.⁴⁶ The pro forma

⁴¹ Some commenters also expressed concerns about potential job losses in upstate New York that would result from the proposal. KeyCorp represents that it has taken steps to minimize job losses in affected markets, including designating First Niagara's existing loan servicing unit, located in Buffalo, to serve as KeyCorp's underwriting, fulfillment, and portfolio management platforms, and instituting an enterprise-wide hiring freeze for certain non-client facing positions in order to maximize the number of retention opportunities available to First Niagara employees. This concern, however, is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973); see also, e.g., *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445 (1996); and *Community Bank System, Inc.*, FRB Order No. 2015-34 (November 18, 2015).

⁴² Dodd-Frank Act §604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

⁴³ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁴⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

⁴⁵ Two commenters generally raised financial stability concerns, asserting that the proposal is further evidence that the federal banking agencies are not giving financial stability considerations enough weight.

⁴⁶ As noted above, KeyCorp primarily accepts retail deposits and engages in retail and commercial banking, commercial leasing, investment management, consumer finance, and investment banking products and services.

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.

Requests for Public Hearings or Meetings and Extension of Comment Period

Some commenters requested that the Board hold public hearings or public meetings on the application. 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.⁴⁷ 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 formal or informal hearing or other proceeding on an application,⁴⁸ 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 submit comments on the proposal. As noted above, the Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until January 31, 2016, a total period of 62 days, to submit written comments. 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 public hearing or meeting. In addition, the requests do not demonstrate why written comments do not present the commenters' views adequately or why a hearing or meeting 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 or meeting is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

In addition, one commenter requested a further extension of the comment period of the proposal. The Board has already provided for an extended comment period of 62 days. During this time, a number of commenters, including the requester, submitted detailed comments in writing regarding 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.⁴⁹ The commenter's request for additional time does not identify circumstances that would warrant a further extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend further the public comment period.

First Niagara accepts retail deposits and engages in mortgage lending, consumer lending, and business loans. In each of its activities, KeyCorp has, and as a result of the proposal would continue to have, a small share on a nationwide basis, and numerous competitors would remain.

⁴⁷ 12 U.S.C. § 1842(b)(1); 12 CFR 225.16(e).

⁴⁸ 12 CFR 225.16(e).

⁴⁹ 12 CFR 262.25(b)(2); 12 CFR 225.16(c)(2).

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal 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. Approval of this proposal is specifically conditioned on compliance by KeyCorp with all the conditions set forth 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 Cleveland, acting under delegated authority.

By order of the Board of Governors, effective July 12, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

KeyCorp/First Niagara Banking Markets in New York Consistent with Board Precedent and DOJ Bank Merger Guidelines						
Bank	Rank	Amounts of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Albany, New York – includes Albany, Fulton, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington counties; Austerlitz, Canaan, Chatham, Claverack, Ghent, Hillsdale, Kinderhook, New Lebanon, Stockport, and Stuyvesant towns in Columbia County; and Ashland, Athens, Cairo, Coxsackie, Durham, Greenville, Jewett, New Baltimore, Prattsville, and Windham towns in Greene County.						
KeyCorp Pre-Consummation	1	\$5.5B	23.43			
First Niagara	3	\$2.7B	11.45			
KeyCorp Post-Consummation	1	\$8.3B	34.87	1620	536	24
Binghamton, New York-Pennsylvania – includes Broome, Chenango, Otsego, and Tioga counties, all in New York; and Friendsville, Great Bend, Hallstead, Lanesboro, Little Meadows, New Millford, Oakland, Susquehanna Depot, and Thompson boroughs, and Apolaccon, Choconut, Forest Lake, Franklin, Great Bend, Harmony, Jackson, Liberty, Middletown, New Milford, Oakland, Silver Lake, and Thompson townships in Susquehanna County, Pennsylvania.						
KeyCorp Pre-Consummation	11	\$137.3M	2.22			
First Niagara	5	\$339.9M	5.51			
KeyCorp Post-Consummation	4	\$447.2M	7.73	1861	24	11
Franklin, New York – includes Franklin County; and Crown Point, Keene, Minerva, Newcomb, North Elba, North Hudson, St. Armand, Schroon, and Ticonderoga towns in Essex County.						
KeyCorp Pre-Consummation	7	\$45.5M	5.05			
First Niagara	4	\$71.1M	7.89			
KeyCorp Post-Consummation	3	\$116.6M	12.94	2573	80	6
Ithaca, New York – includes Tompkins County; Cortland city, Cortlandville, Harford, Lapeer, and Virgil towns in Cortland County; and Catherine, Cayuta, and Hector towns in Schuyler County.						
KeyCorp Pre-Consummation	11	\$21.2M	0.90			
First Niagara	2	\$224.8M	9.57			
KeyCorp Post-Consummation	2	\$246.0M	10.47	3057	18	11

(continued on next page)

Appendix—continued

KeyCorp/First Niagara Banking Markets in New York Consistent with Board Precedent and DOJ Bank Merger Guidelines—continued						
Bank	Rank	Amounts of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Jamestown, New York-Pennsylvania – includes Chautauqua County, New York; and Clarendon borough, Warren city, and Conewango, Elk, Farmington, Glade, Mead, and Pine Grove townships in Warren County, Pennsylvania.						
KeyCorp Pre-Consummation	5	\$147.9M	8.54			
First Niagara	4	\$258.6M	14.93			
KeyCorp Post-Consummation	1	\$406.5M	23.46	1694	254	12
Metro New York City, New York-New Jersey-Connecticut-Pennsylvania – includes Fairfield County; Bethlehem, Bridgewater, Canaan, Cornwall, Goshen, Kent, Litchfield, Morris, New Milford, North Canaan, Plymouth, Roxbury, Salisbury, Sharon, Thomaston, Warren, Washington, Watertown, and Woodbury towns in Litchfield County; Ansonia, Beacon Falls, Bethany, Cheshire, Derby, Hamden, Meriden, Middlebury, Milford, Naugatuck, North Haven, Orange, Oxford, Prospect, Seymour, Southbury, Wallingford, Waterbury, Wolcott, and Woodbridge in New Haven County, all in Connecticut; Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster and Westchester counties; Hudson city, Ancram, Clermont, Copake, Gallatin, Germantown, Greenport, Livingston, and Taghkanic towns in Columbia County; Catskill, Halcott, Hunter, and Lexington towns in Greene County, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties; Pemberton and Wrightstown boroughs, Bass River, New Hanover, North Hanover, Pemberton, Shamong, Southampton, Tabernacle, Washington, and Woodland townships in Burlington County; Hightstown, Hopewell, Pennington, Princeton boroughs, East Windsor, Ewing, Hopewell, Lawrence, Princeton, Robbinsville, and West Windsor townships in Mercer County; Washington borough, Belvidere and Hackettstown towns, Allamuchy, Blairstown, Franklin, Frelinghuysen, Greenwich, Hardwick, Harmony, Hope, Independence, Knowlton, Liberty, Lopatcong, Mansfield, Oxford, Washington, and White townships in Warren County, all in New Jersey; Pike County; Delaware Water Gap, East Stroudsburg, Mount Pocono, and Stroudsburg boroughs, Barrett, Coolbaugh, Middle Smithfield, Paradise, Pocono, Price, Smithfield, and Stroud townships in Monroe County; and Hawley borough, Berlin, Damascus, Dreher, Lebanon, Manchester, Oregon, Palmyra, Paupack, Salem, and Sterling townships in Wayne County, all in Pennsylvania.						
KeyCorp Pre-Consummation	42	\$2.4B	0.19			
First Niagara	36	\$3.0B	0.15			
KeyCorp Post-Consummation	27	\$5.4B	0.34	1300	0	241
Rochester, New York – includes Chemung, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates counties; Alfred, Almond, Andover, Birdsall, Burns, Grove, Independence, Ward, Wellsville, West Almond, and Willing towns in Allegany County; Bergen, Bethany, Byron, Elba, Le Roy, Pavilion, and Stafford towns in Genesee County; Albion, Barre, Carlton, Clarendon, Gaines, Kendall, Murray, and Yates towns in Orleans County; Dix, Montour, Orange, Reading, and Tyrone towns in Schuylers County; and Castile, Covington, Gainesville, Genesee Falls, Middlebury, Perry, and Warsaw towns in Wyoming County.						
KeyCorp Pre-Consummation	8	\$1.0B	5.25			
First Niagara	6	\$1.4B	7.06			
KeyCorp Post-Consummation	2	\$2.4B	12.31	1079	74	26
Saint Lawrence, New York – includes Saint Lawrence County.						
KeyCorp Pre-Consummation	3	\$103.4M	11.04			
First Niagara	5	\$63.0M	6.73			
KeyCorp Post-Consummation	2	\$166.4M	17.77	2734	149	8
Syracuse, New York – includes Cayuga, Onondaga and Oswego counties; Cincinnatus, Cuyler, Freetown, Homer, Marathon, Preble, Scott, Solon, Taylor, Truxton, and Willet towns in Cortland County; and Cazenovia, DeRuyter, Fenner, Georgetown, Lenox, Lincoln, Nelson, Smithfield, and Sullivan towns in Madison County.						
KeyCorp Pre-Consummation	3	\$1.4B	11.9			
First Niagara	4	\$1.1B	9.13			
KeyCorp Post-Consummation	2	\$2.6B	21.03	1395	218	23
Utica-Rome, New York – includes Herkimer and Oneida counties; and Oneida city, Brookfield, Eaton, Hamilton, Lebanon, Madison, and Stockbridge towns in Madison County.						
KeyCorp Pre-Consummation	9	\$63.8M	1.41			
First Niagara	7	\$425.9M	9.45			
KeyCorp Post-Consummation	7	\$489.7M	10.86	1349	27	10
Watertown, New York – includes Jefferson and Lewis counties.						
KeyCorp Pre-Consummation	3	\$236.4M	17.31			
First Niagara	7	\$31.6M	2.31			
KeyCorp Post-Consummation	2	\$268.0M	19.62	2636	80	10

Data and rankings are as of June 30, 2015. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts.

Huntington Bancshares Incorporated Columbus, Ohio

Order Approving the Merger of Bank Holding Companies FRB Order No. 2016-13 (July 29, 2016)

Huntington Bancshares Incorporated (“Huntington”), Columbus, Ohio, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with FirstMerit Corporation (“FirstMerit”) and thereby indirectly acquire FirstMerit Bank, N.A. (“FirstMerit Bank”), both of Akron, Ohio.³ Following the proposed acquisition, FirstMerit Bank would be merged into Huntington’s subsidiary bank, The Huntington National Bank (“Huntington Bank”), also of Columbus.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 14445 (March 17, 2016)).⁵ The Board extended the initial period for public comment to accommodate public interest in this proposal, providing interested persons until May 16, 2016, a total of more than 65 days, to submit written comments (81 *Federal Register* 25405 (April 28, 2016)). 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.

Huntington, with consolidated assets of approximately \$71.1 billion, is the 40th largest insured depository organization in the United States, controlling approximately \$53.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ Huntington controls Huntington Bank, which operates in Florida, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia. Huntington Bank is the third largest insured depository institution in Ohio, controlling deposits of approximately \$35.6 billion, which represent 11.9 percent of the total deposits of insured depository institutions in that state.⁷ Huntington Bank is the sixth largest insured depository institution in Michigan, controlling deposits of approximately \$9.5 billion, which represent approximately 5 percent of the total deposits of insured depository institutions in that state. Huntington Bank is the 19th largest insured depository institution in Pennsylvania, controlling deposits of approximately \$3.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

FirstMerit, with consolidated assets of approximately \$25.5 billion, is the 66th largest insured depository organization in the United States, controlling approximately \$19.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. FirstMerit controls FirstMerit Bank, which operates in Illinois, Michigan, Ohio, Pennsylvania, and Wisconsin. FirstMerit Bank is the seventh largest insured depository institution in Ohio,

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The applicant would effect the acquisition by merging West Subsidiary Corporation, a wholly owned subsidiary of Huntington, with and into FirstMerit, with FirstMerit as the survivor. FirstMerit would then merge with and into Huntington, with Huntington as the survivor.

⁴ The merger of FirstMerit Bank into Huntington 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.

⁵ 12 CFR 262.3(b).

⁶ Asset and deposit data are as of June 30, 2015, unless otherwise noted.

⁷ In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

controlling deposits of approximately \$10.9 billion, which represent 3.6 percent of the total deposits of insured depository institutions in that state. FirstMerit Bank is the ninth largest insured depository institution in Michigan, controlling deposits of approximately \$5.1 billion, which represent 2.7 percent of the total deposits of insured depository institutions in that state. In addition, FirstMerit Bank is the 127th largest insured depository institution in Pennsylvania, controlling deposits of approximately \$227 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Huntington would become the 34th largest insured depository organization in the United States, with consolidated assets of approximately \$96.6 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Huntington would control consolidated deposits of approximately \$73.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the United States. Huntington would become the largest insured depository organization in Ohio, controlling deposits of approximately \$46.5 billion, which represent 15.5 percent of the total amount of deposits of insured depository institutions in that state. Huntington would remain the sixth largest insured depository organization in Michigan, controlling deposits of approximately \$14.6 billion, which represent 7.7 percent of the total amount of deposits of insured depository institutions in that state. In addition, Huntington would remain the 19th largest insured depository organization in Pennsylvania, controlling deposits of approximately \$3.4 billion, which represent less than 1 percent of the total amount of 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 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.⁸ 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.⁹ In addition, the Board may not approve an interstate application if the bank holding company controls or would upon consummation of the proposed transaction control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, the bank holding company would upon consummation control 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.¹⁰

For purposes of the BHC Act, the home state of both Huntington and FirstMerit Bank is Ohio.¹¹ FirstMerit Bank also operates in Illinois, Michigan, Pennsylvania, and Wisconsin.

⁸ 12 U.S.C. § 1842(d)(1)(A).

⁹ 12 U.S.C. § 1842(d)(1)(B).

¹⁰ 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).

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 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.

Huntington is well capitalized and well managed under applicable law and has a satisfactory rating under the Community Reinvestment Act of 1977 (“CRA”).¹² Illinois and Wisconsin have five-year age requirements that do not apply to Huntington’s acquisition of FirstMerit.¹³ Michigan, Ohio, and Pennsylvania do not have minimum age requirements.¹⁴

On consummation of the proposed transaction, Huntington would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Ohio imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.¹⁵ The combined organization would control approximately 15.5 percent the total amount of deposits of insured depository institutions in Ohio. 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 or tend to create a monopoly in any banking 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 communities to be served.¹⁶

Huntington and FirstMerit have subsidiary banks that compete directly in 27 banking markets in Michigan, Ohio, and Pennsylvania. The Board has considered the competitive effects of the proposal in the banking markets in which Huntington Bank and FirstMerit Bank compete. 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”) that Huntington would control;¹⁷ 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”);¹⁸ other characteristics of the markets; and, as discussed below, commitments made by Huntington

¹² 12 U.S.C. § 2901 *et seq.*

¹³ Illinois and Wisconsin law both impose minimum age requirements only on the acquisition of a bank organized under the laws of Illinois or Wisconsin or that maintains its main office in Illinois or Wisconsin. 205 Ill. Comp. Stat. 5/21.2(a); Wis. Stat. §221.0901(8). These age requirements are not applicable to the proposed transaction because FirstMeritBank’s main office is located in Ohio.

¹⁴ See Mich. Comp. Laws § 487.13702; Ohio Rev. Code Ann. § 1115.05; 7 Pa. Stat. Ann. § 1604.

¹⁵ Ohio Rev. Code Ann. §1115.05(B)(1)(a). Neither Michigan nor Pennsylvania imposes a limit on the total amount of in-state deposits that a single banking organization may control.

¹⁶ 12 U.S.C. § 1842(c)(1).

¹⁷ Deposit and market share data are as of June 30, 2015, and unless otherwise noted are based on calculations in which the deposits of thrift institutions are included at 50percent. 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 market share calculations on a 50-percent weighted basis. See, e.g., *FirstHawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹⁸ 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.

to divest branches in the Akron, Ashtabula County, and Canton banking markets, all in Ohio.

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 22 banking markets. On consummation, one banking market would become highly concentrated; eight banking markets would remain highly concentrated; 11 banking markets would remain moderately concentrated; and two banking markets would remain unconcentrated, as measured by the HHI. The change in the HHI in these markets generally would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in most of these banking markets.¹⁹

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Akron, Ashland County, Ashtabula County, and Canton banking markets, all in Ohio, and the Cadillac, Michigan, banking market warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines or would result in the market deposit share of Huntington equaling or exceeding 35 percent when using initial competitive screening data.

Markets Without Divestitures

Cadillac, Michigan, Banking Market. Huntington Bank is the seventh largest depository institution in the Cadillac banking market, controlling approximately \$8.8 million in deposits, which represent 1.4 percent of market deposits.²⁰ FirstMerit Bank is the largest depository institution in the market, controlling approximately \$223.2 million in deposits, which represent 36.0 percent of market deposits. On consummation, Huntington Bank would be the largest depository institution in the Cadillac banking market, controlling approximately \$231.9 million in deposits, which would represent approximately 37.4 percent of market deposits. The HHI in this market would increase 102 points, from 2604 to 2706.

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 Cadillac banking market.²¹ In particular, three credit unions exert a competitive influence in the Cadillac 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

¹⁹ These banking markets and the competitive effects of the proposal in these markets are described in the appendix.

²⁰ The Cadillac banking market is defined as Missaukee and Wexford counties, and Osceola County except Richmond, Hersey, Evart, and Orient townships, all in Michigan.

²¹ 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 Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

²² The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *UnitedBankshares, Inc.*, (June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2d Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services*

limited lending done by credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration in the Cadillac banking market is less significant than would appear from the initial competitive screening data, which focused on commercial-bank and thrift competitors. After consummation, and adjusting to reflect competition from credit unions in the market, the market concentration level in the Cadillac banking market as measured by the HHI would increase by 87 points, from 2259 to 2346, and the market share of Huntington would increase to 34.7 percent. In addition to the three credit unions, five other insured depository institutions would remain in the market, including one insured depository institution with a market share of more than 25 percent.

Ashland County, Ohio, Banking Market. Huntington Bank is the second largest depository institution in the Ashland County banking market, controlling approximately \$103.3 million in deposits, which represent 17.1 percent of market deposits.²³ FirstMerit Bank is the fourth largest depository institution in the market, controlling approximately \$80.5 million in deposits, which represent 13.4 percent of market deposits. On consummation, Huntington Bank would be the largest depository institution in the Ashland County banking market, controlling approximately \$183.8 million in deposits, which would represent approximately 30.5 percent of market deposits. The HHI in this market would increase 458 points, from 1422 to 1880.

The competitive effects in this market are mitigated by several factors that indicate that the increase in concentration in the Ashland County banking market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. Two thrift institutions in the market have a commercial and industrial loan portfolio similar to those of commercial banks in the Ashland County banking market, as measured in terms of the ratios of those types of loans to total loans and assets.²⁴ The Board has concluded that deposits controlled by these institutions should be weighted at 100 percent in the market-share calculations.

In addition, three credit unions exert a competitive influence in the Ashland County 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.

With the deposits of both thrifts weighted at 100 percent and the three credit unions at 50 percent, the Ashland County banking market appears to be only moderately concen-

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); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

²³ The Ashland County banking market is defined as Ashland County, Ohio.

²⁴ 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. The Board previously has indicated, however, 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*.

trated, both before and after the transaction. Upon consummation of the merger, Huntington would control 27.3 percent of market deposits, the HHI would increase by 367 points, from 1190 to 1557, and six other insured depository institutions would remain in the market, including four insured depository institutions with market shares of approximately 10 percent or more.

Markets with Divestitures

Akron, Ohio, Banking Market. Huntington Bank is the fifth largest depository institution in the Akron banking market, controlling approximately \$775.8 million in deposits, which represent 6.7 percent of market deposits.²⁵ FirstMerit Bank is the largest depository institution in the market, controlling approximately \$3.9 billion in deposits, which represent 33.7 percent of market deposits. On consummation, Huntington Bank would be the largest depository institution in the Akron banking market, controlling approximately \$4.7 billion in deposits, which would represent approximately 40.4 percent of market deposits. The HHI in this market would increase 450 points, from 1691 to 2141.

To mitigate the potentially adverse competitive effects of the proposal in the Akron banking market, Huntington has committed to divest one branch, accounting for a total of approximately \$63.8 million in deposits, to a competitively suitable institution.²⁶ Other factors also mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Akron banking market. Six thrift institutions in the market have a commercial and industrial loan portfolio similar to those of commercial banks in the Akron banking market, as measured in terms of the ratios of those types of loans to total loans and assets. The Board has concluded that deposits controlled by these institutions should be weighted at 100 percent in the market-share calculations.

In addition, seven credit unions exert a competitive influence in the Akron 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.

Huntington also argues that the inclusion of certain deposits that are held at FirstMerit's main office, which is located in the Akron market, distorts the measures of the competitive effect of the proposal on the Akron market because those deposits have no relation to the

²⁵ The Akron banking market is defined as Summit County (minus Sagamore Hills, Northfield Center, Twinsburg, Richfield, and Boston townships, the villages adjoining these townships, and the cities of Twinsburg, Macedonia, and Hudson); Franklin, Ravenna, Charlestown, Paris, Brimfield, Rootstown, Edinburg, Palmyra, Suffield, Randolph, Atwater, and Deerfield townships, and the city of Kent in Portage County; Guilford, Wadsworth, and Sharon townships, and the city of Wadsworth in Medina County; Lawrence and Lake townships in Stark County; and Milton and Chippewa townships, and the villages adjoining these townships, in Wayne County, all in Ohio.

²⁶ As a condition of consummation of the proposed merger, Huntington has committed that it will execute, before consummation of the proposed merger, a sales agreement with a competitively suitable banking organization. Huntington has provided a similar commitment to the DOJ. Huntington also has committed to complete the divestiture within 180 days after consummation of the proposed transaction. In addition, Huntington has committed that if the proposed divestiture is not completed within the 180-day period, Huntington would transfer the unsold branches to an independent trustee, who would 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, e.g., BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

Akron market or cannot be used for lending or for any other purpose.²⁷ In conducting its competitive analysis in previous cases, the Board generally has not adjusted its market share calculations to exclude out-of-market deposits because all deposits are typically available to support lending and other banking activities at any location and the deposits maintained in a specific market represent a firm's ability to compete in that market. The Board, however, has adjusted market deposits held by a party to the proposal to exclude specific types of out-of-market deposits in rare situations when evidence supports a finding that the out-of-market deposits are subject to legal or other restrictions that constrain an organization's ability to use those deposits to support its general banking activities and that there are data available to make comparable adjustments to the market shares for other participants.²⁸

FirstMerit has some out-of-market deposits that are centrally booked at its main office that are subject to legal or other restrictions that constrain the organization's ability to lend on such deposits. These deposits have been generated from various government and municipal entities located outside of the Akron market, involve escrow accounts for mortgages made outside of the Akron market, and include trust account deposits that are swept into FirstMerit's deposit accounts overnight before being swept back into customer accounts located outside of the Akron market. For the deposits in each of these categories, FirstMerit is limited by law, contract, or otherwise in its ability to use these specific types of out-of-market deposits to support its general banking activities.²⁹

To account for the possibility that other market competitors might maintain similar deposits in the Akron market, the Board excluded from the two largest branches of competitors in the Akron market the same percentage of deposits that were excluded from FirstMerit's main office deposits in Akron. After making these adjustments, accounting for the branch divestiture, and weighting the deposits of the thrifts at 100 percent and the credit unions at 50 percent, Huntington would control approximately 38.0 percent of market deposits, and the HHI would increase by 382 points to a level of 1930.

The Board also has examined other aspects of the structure of the Akron market that mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Akron banking market. After consummation of the proposal, Huntington would face competition from 27 other depository institutions in the Akron market, including two large, national depository institutions that each would control more than 12 percent of market deposits and two other large, regional competitors that each would control more than 6 percent of deposits. The presence of these viable competitors suggests that Huntington would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Huntington in the Akron market.

Moreover, recent entry and expansionary activity suggests that the market is attractive to potential competitors. One depository institution has entered the Akron market *de novo* since 2015, two competitors have entered the market through acquisition since 2012, and another existing competitor opened a new branch in 2015.

²⁷ Huntington seeks to exclude \$982 million of FirstMerit's main office deposits, consisting of wholesale/brokered certificates of deposit, a master Money Market Account, collateralized public deposits, trust account deposits that are swept into FirstMerit's accounts overnight and are swept back into customers' investment accounts by day, and out-of-market mortgage escrow deposits.

²⁸ See *First Security Corp.*, 86 *Federal Reserve Bulletin* 122, 125–27 (2000).

²⁹ Ohio law requires depository institutions that accept Ohio government deposits to collateralize such deposits with eligible securities at an aggregate market value equal to at least 105 percent of the total amount of the public depositor's uninsured public deposits. Ohio Rev. Code Ann. § 135.18.

Canton, Ohio, Banking Market. Huntington Bank is the largest depository institution in the Canton banking market, controlling approximately \$1.6 billion in deposits, which represent 27.1 percent of market deposits.³⁰ FirstMerit Bank is the second largest depository institution in the market, controlling approximately \$1.4 billion in deposits, which represent 23.2 percent of market deposits. On consummation, Huntington Bank would remain the largest depository institution in the Canton banking market, controlling approximately \$3.0 billion in deposits, which would represent approximately 50.3 percent of market deposits. The HHI in this market would increase 1258 points, from 1660 to 2918.

To mitigate the potentially adverse competitive effects of the proposal in the Canton banking market, Huntington has committed to divest to a competitively suitable institution 10 branches, accounting for a total of at least \$613 million in deposits. Other factors also mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Canton banking market. Two thrift institutions in the market have a commercial and industrial loan portfolio similar to those of commercial banks in the Canton banking market, as measured in terms of the ratios of those types of loans to total loans and assets. The Board has concluded that deposits controlled by these institutions should be weighted at 100 percent in the market-share calculations.

In addition, 11 credit unions exert a competitive influence in the Canton 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.

The Board also has considered Huntington's argument that inclusion of certain public deposits that are held at a large Huntington Bank branch in Canton would distort the measures of the competitive effect of the proposal on the Canton market. For the same reasons provided in the Akron market, the government deposits from entities and municipalities located outside of the Canton market held by Huntington have been excluded from the analysis because these deposits are subject to a legal restriction that constrains Huntington's ability to support its general banking activities. Because the largest branch of Huntington's and FirstMerit's competitors in the market is significantly smaller than Huntington's branch where these government deposits are held, no deposits were excluded from these competitors' branches in assessing their market share.³¹ After excluding these out-of-market government deposits, accounting for the branch divestitures, and weighting the deposits of the thrifts at 100 percent and the credit unions at 50 percent, Huntington would control approximately 36.4 percent of market deposits and the HHI would increase by 351 points to a level of 1790.

The Board also has examined other aspects of the structure of the Canton market that mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Canton banking market. After consummation of the proposal, Huntington would face competition from 17 other depository institutions, including two large, national depository institutions that each would control approximately 10 percent of market deposits. The presence of these viable competitors suggests that Huntington would have limited ability to unilaterally offer less attractive

³⁰ The Canton banking market is defined as Carroll County; Marlboro, Lexington, Jackson, Plain, Nimishillen, Washington, Tuscarawas, Perry, Canton, Osnaburg, Paris, Sugar Creek, Bethlehem, Pike, and Sandy townships in Stark County; and Smith township in Mahoning County, all in Ohio.

³¹ See *First Security Corp.*, 86 *Federal Reserve Bulletin* 122, 125-27 (2000).

terms to consumers and that the competitors are able to exert competitive pressure on Huntington in the Canton market.

Moreover, recent entry and expansionary activity suggests that the market is attractive to potential competitors. Two depository institutions have entered the Canton market *de novo* since 2011, and two other existing competitors have opened new branches since 2011.

Ashtabula County, Ohio, Banking Market. Huntington Bank is the third largest depository institution in the Ashtabula County banking market, controlling approximately \$168.4 million in deposits, which represent 17.6 percent of market deposits.³² FirstMerit Bank is the fourth largest depository institution in the market, controlling approximately \$165.1 million in deposits, which represent 17.3 percent of market deposits. On consummation, Huntington Bank would be the largest depository institution in the Ashtabula County banking market, controlling approximately \$333.5 million in deposits, which would represent approximately 34.9 percent of market deposits. The HHI in this market would increase 608 points, from 1878 to 2486.

To mitigate the potentially adverse competitive effects of the proposal in the Ashtabula County banking market, Huntington has committed to divest two branches, accounting for a total of approximately \$60.7 million in deposits, to a competitively suitable institution. One thrift institution in the market has a commercial and industrial loan portfolio similar to those of commercial banks in the Ashtabula County banking market, as measured in terms of the ratios of those types of loans to total loans and assets. The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, four credit unions exert a competitive influence in the Ashtabula County 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 two branch divestitures and weighting the deposits of the thrift at 100 percent and the four credit unions at 50 percent, Huntington would control approximately 25.6 percent of market deposits, the HHI would increase by 198 points to a level of 1741, and six other insured depository institutions would remain, including one insured depository institution with a market share of more than 25 percent.

Conclusion Regarding Competitive Effects

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal with the proposed divestitures of branches in the Akron, Ashtabula County, and Canton banking markets, as discussed above, would not likely have a significantly adverse effect on competition in those markets or in any other 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, including the proposed divestitures, and for the reasons explained above, 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 Huntington and FirstMerit compete directly or in any other

³² The Ashtabula County banking market is defined as Ashtabula County, Ohio.

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 the future prospects of the institutions involved. In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding 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 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 their financial and managerial resources and the proposed business plan.

Huntington and Huntington 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.³³ The asset quality, earnings, and liquidity of both Huntington Bank and FirstMerit Bank are consistent with approval, and Huntington 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.

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 Huntington, FirstMerit, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Huntington, 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.

Huntington, FirstMerit, and their subsidiary depository institutions are each considered to be well managed. Huntington's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and its risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Huntington's plans for implementing the proposal. Huntington has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address all aspects of the post-integration process for this proposal. Huntington would implement its risk-management policies, procedures, and controls at the

³³ At the time of the merger, each share of FirstMerit common stock would be converted into a right to receive cash and Huntington common stock based on an exchange ratio. In addition, each share of certain noncumulative perpetual preferred FirstMerit stock would be converted into a right to receive substantially similar newly issued noncumulative perpetual preferred Huntington stock. Huntington has the financial resources to fund the transaction.

combined organization, and these are considered acceptable from a supervisory perspective. In addition, Huntington's and FirstMerit's management have the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Huntington plans to integrate FirstMerit's existing management and personnel in a manner that augments Huntington's management.³⁴

Based on all the facts of record, including Huntington'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 Huntington and FirstMerit 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.³⁵ 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions 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,³⁶ 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.³⁷

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 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 after consummation, and any other information the Board deems relevant.

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 Huntington Bank and FirstMerit Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC and the Consumer Financial Protection Bureau ("CFPB"), confidential supervisory information, information provided by Huntington, and the public comments received on the proposal.

³⁴ Huntington will increase the size of its board by four directors, who will be appointed from FirstMerit's board. In addition, Huntington will invite the members of the board of directors of FirstMerit to serve for three years as members of Huntington's Greater Akron-Canton Region Advisory Board.

³⁵ 12 U.S.C. § 1842(c)(2).

³⁶ 12 U.S.C. § 2901(b).

³⁷ 12 U.S.C. § 2903.

Summary of Public Comments on Convenience and Needs

The Board received comments from one commenter who objected to the proposal, alleging that Huntington made a disproportionately low number of home purchase loans, home improvement loans, and refinance loans to African American and Hispanic borrowers in the Akron and Cleveland, Ohio, areas and that FirstMerit made a disproportionately low number of home purchase loans, home improvement loans, and refinance loans to African American and Hispanic borrowers in the Akron, Ohio, area, as reflected in data reported under the Home Mortgage Disclosure Act of 1975 (“HMDA”)³⁸ for 2014. The commenter also criticized the rate at which Huntington and FirstMerit denied applications by African Americans and Hispanics, compared to that for non-Hispanic whites, for home purchase loans, home improvement loans, and refinance loans in the Akron and Cleveland areas, as reported under HMDA for 2014. In addition, the commenter also expressed concerns about the closure or consolidation of branches, primarily in the Akron, Canton, and Cleveland areas, alleging that the consolidations and closures would not have a countervailing public benefit and would have a disproportionate effect on LMI neighborhoods. A second commenter objected to the proposal, alleging that the combined organization would not offer as many products and services as FirstMerit currently offers, including credit monitoring and a rewards program, and that the proposal would result in job losses in the communities that the combined organization would serve. The commenter also questioned Huntington’s commitment to serve the needs of Columbus, Ohio.

Business of the Involved Institutions and Response to Comments

Huntington and Huntington Bank offer a broad range of financial products and services to individual customers and businesses. Through its branch network in Florida, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia, Huntington Bank offers a variety of banking products and services to its customers, including retail consumer and commercial banking, consumer and commercial mortgage lending, treasury management, asset management, and trust and investment services.

FirstMerit and FirstMerit Bank also offer a wide range of financial products and services to individual customers and businesses, including consumer and commercial banking services, consumer and commercial mortgages and mortgage loan servicing, commercial lease financing, wealth management and financial consulting services, treasury management services, and insurance brokerage and agency services.

Huntington denies the commenters’ allegations, arguing that its record of home mortgage lending does not disproportionately or discriminatorily affect African Americans or Hispanics. Huntington represents that its denial rates for African Americans and Hispanics in Akron and Cleveland reflect decisions based on collateral, credit history, incomplete credit applications, and debt-to-income ratios. Huntington also represents that it is firmly committed to all fair lending laws and regulations and actively engages in monitoring, testing, and maintaining internal controls to ensure compliance with fair lending laws and regulations. In addition, Huntington asserts that it offers many affordable mortgage loan programs and community development activities to increase affordable housing opportunities for LMI individuals and communities.

With respect to branch closures, Huntington represents that any closures will comply with the company’s comprehensive internal branch opening, closing, relocation, and consolidation policy, which sets forth its obligations to comply with applicable laws and regula-

³⁸ 12 U.S.C. § 2801 *et seq.*

tions related to branch closures and consolidations. Huntington further represents that several branches that would be closed or consolidated are located near other branches in LMI census tracts to which customers' accounts would be transferred, and these closures or consolidations will not negatively affect the customer experience.

Huntington denies the commenter's allegations regarding FirstMerit's lending practices, arguing that FirstMerit does not engage in any discriminatory home mortgage lending practices. Huntington contends that FirstMerit's denial rates for African Americans and Hispanics in Akron reflect decisions based on collateral, credit history, and debt-to-income ratios. Huntington also represents that FirstMerit strives to serve all segments of its communities, including through home mortgage loan products designed to increase affordable housing opportunities for LMI individuals and communities.

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 public 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.³⁹ In this case, the Board considered the supervisory views of and information provided by the OCC.

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.⁴⁰ 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 HMDA, 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 a variety of factors, including (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the company's lending, 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; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and

³⁹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 Fed. Reg. 48506, 48548 (July 25, 2016).

⁴⁰ 12 U.S.C. § 2906.

amount of loans to low-, moderate-, middle-, and upper-income individuals;⁴¹ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) 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.⁴² Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Huntington Bank

Huntington Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of January 1, 2012 ("Huntington Bank Evaluation").⁴³ Huntington Bank received an "Outstanding" rating for the Lending Test and "High Satisfactory" ratings for the Investment Test and the Service Test. The Board has consulted with the OCC regarding the Huntington Bank Evaluation.

Examiners found that Huntington Bank's overall lending levels reflected excellent responsiveness to community credit needs. According to examiners, the bank's geographic distribution of loans was good, including loans to LMI neighborhoods. Examiners also found that the bank's distribution of borrowers was good, including loans to LMI borrowers and businesses of different sizes. Examiners noted that Huntington Bank's distribution of home mortgage loans and small business loans was good or excellent in a significant number of states and multistate MSAs. Examiners also found that Huntington Bank exhibited a very strong record of community development lending that otherwise elevated good lending performance to excellent lending performance. Huntington Bank's community development loans were made for a variety of purposes, with a particular focus on affordable housing, which reflected excellent responsiveness to local community needs.

Examiners found that Huntington Bank had a good level of qualified investment activity. Examiners noted that the investment activity of the bank and its subsidiary, Huntington Community Development Corporation, in low-income housing tax credit funds was especially responsive to the affordable housing needs of local communities. The bank extended

⁴¹ 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).

⁴² 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.

⁴³ The Huntington Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage lending data, other CRA data (small loans to businesses and farms), community development loans, qualified investments, branching activities, and community development services from January 1, 2007, through December 31, 2011. The Huntington Bank Evaluation covered Huntington Bank's 38 assessment areas located in six states and four multistate metropolitan statistical areas ("MSAs"): Florida; Indiana; Michigan; Ohio; Pennsylvania; West Virginia; the Cincinnati–Middleton, Ohio–Kentucky–Indiana, MSA; the Steubenville–Weirton, Ohio–West Virginia, MSA; the Wheeling, West Virginia–Ohio, MSA; and the Youngstown–Warren–Boardman, Ohio–Pennsylvania, MSA. The Huntington Bank Evaluation included a full-scope review of 13 of these assessment areas, including all four multistate MSAs. A limited-scope review was conducted in the remaining 25 assessment areas. The Huntington Bank Evaluation was released in March 2016.

qualified grants to local community organizations to support local community development initiatives, including affordable housing, financial education, and economic development throughout its assessment areas.

Examiners also noted that Huntington Bank's delivery systems provided good accessibility of products and services to areas and individuals of different income levels, including LMI communities and individuals. Examiners further noted that Huntington Bank's branches often offered extended hours, including on weekends. Examiners also found that the bank's community development service activity was good. Examiners indicated that Huntington Bank's officers and employees used their financial expertise to address a wide range of community needs, including by offering credit counseling, first-time home-buyer seminars, home foreclosure prevention workshops, and other financial education programs to LMI individuals.

Huntington Bank's Efforts Since the 2012 CRA Evaluation

Huntington Bank represents that it has continued its overall CRA performance in all of its assessment areas since the Huntington Bank Evaluation. Huntington Bank, through the Detroit Home Mortgage Fund initiative, has committed funds to help increase home ownership, property values, and reinvestment in Detroit by providing first and second mortgage loans to borrowers to purchase and renovate properties in Detroit. Huntington Bank also represents that it has made community development loans to support affordable housing in its communities, including commitments to provide investments and loans in Michigan and Ohio.

In addition, Huntington Bank represents that it provided a high volume of small business loans throughout its assessment areas and participated in state-sponsored programs designed to help small businesses and small farms that otherwise had difficulty obtaining loans to secure funding. Huntington Bank's management and employees have continued to dedicate volunteer hours to community service projects, including with community organizations that provide affordable housing, employment services, small business opportunities, financial education for children and LMI families, and home-buyer counseling.

CRA Performance of FirstMerit Bank

FirstMerit Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of June 17, 2013 ("FirstMerit Bank Evaluation").⁴⁴ FirstMerit Bank received "High Satisfactory" ratings for the Lending Test and Service Test and a "Low Satisfactory" rating for the Investment Test.⁴⁵

Examiners noted that FirstMerit Bank's overall lending activity and distribution of loans by borrower income was good. Examiners also found that the bank's geographic distribu-

⁴⁴ The FirstMerit Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2008, to December 31, 2012, except for Illinois, which the bank entered in 2010 and for which the evaluation period was from January 1, 2010, through December 31, 2012. The evaluation period for the Investment Test and the Service Test was from November 17, 2008, through June 17, 2013, for Ohio and Pennsylvania and January 1, 2010, through June 17, 2013, for Illinois.

⁴⁵ The FirstMerit Bank Evaluation included a full-scope assessment review of the bank's assessment areas in the following geographies: the Akron, Ohio, MSA ("AkronMSA"); the Cleveland-Elyria, Ohio, MSA ("Cleveland MSA"); the Chicago-Naperville-Elgin, Illinois-Indiana-Wisconsin, MSA; and Lawrence County, Pennsylvania. A limited-scope review was performed in the Ashtabula County, Ohio, assessment area; the Canton-Massillon, Ohio, MSA; the Columbus, Ohio, MSA; the Mansfield, Ohio, MSA; the Sandusky, Ohio, assessment area; the Toledo, Ohio, assessment area; the Ashland County, Crawford County, Huron County, Seneca County, Holmes County, Knox County, and Wayne County, Ohio, assessment areas; and the Lake County, Illinois, assessment area.

tion of loans both overall and in Ohio was adequate throughout the bank's assessment areas. Examiners noted that FirstMerit Bank made an excellent level of community development loans in the Cleveland MSA and a good level of community development loans in the Akron MSA, both of which positively impacted the bank's Lending Test rating.

Examiners observed that the bank's overall level of community development investments was adequate. The bank's investments supported affordable housing projects and community development financial institutions. The bank's qualified grants and donations were used to support community development organizations that focused on affordable housing for LMI individuals, vocational training for low-income students, and first-time home-buyer and other financial literacy training.

Examiners found that the bank's delivery systems were readily accessible to all geographies and individuals of different income levels. Examiners also noted that the bank's branch distribution in the Akron MSA was excellent and that the percentage of branches in LMI census tracts exceeded the percentage of the population living in those geographies.

Branch Closures

As noted above, one commenter expressed concern that Huntington's planned branch consolidations and closures would have a negative effect on LMI communities. 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.⁴⁶ Specifically, examiners noted in the Huntington Bank Evaluation that Huntington's branch openings and closures did not adversely affect the accessibility of products and services to LMI individuals or in LMI geographies, and the closures were the result of reductions in branch activity. The Board also 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.⁴⁷ In addition, for the three proposed branch closures in LMI census tracts, the receiving branches to which customers' accounts would be transferred are all within half a mile from the proposed closing branch and will remain in LMI census tracts. Specifically, for the two proposed branches to be closed in low-income tracts, the communities will be served by existing FirstMerit Bank branches located less than 600 yards from the closing branches. Further, the moderate-income tract branch is primarily a commercial lending facility without retail walk-in traffic.

Views of the OCC

In its review of the proposal, the Board consulted the OCC regarding both institutions' CRA, consumer compliance, and fair lending records. The OCC is the primary supervisor of both Huntington Bank and FirstMerit Bank and is required to review the bank merger underlying this proposal, applying the same convenience and needs factor as must be applied by the Board. The Board also consulted with the OCC regarding Huntington Bank's and FirstMerit Bank's records of compliance with fair lending laws and regulations and the banks' policies and procedures relating to fair lending and other consumer protec-

⁴⁶ 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.

⁴⁷ See 12 U.S.C. § 1831r-1, as implemented by the Joint Policy Statement Regarding Branch Closings, 64 Fed. Reg. 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.

tion laws and regulations; as well as the lending records of both institutions. The OCC was provided with the comments received by the Board. The OCC is considering all of the comments, those received by the Board and those received jointly by the OCC and the Board, in connection with its review of the bank merger application.

The Board has taken these consultations with the OCC and the information discussed above into account in evaluating this proposal, including in considering whether Huntington has the experience and resources to ensure that the combined organization effectively implements policies and programs that allow the combined organization to effectively serve the credit needs of all the communities within the firm's assessment areas. The Board expects Huntington to ensure that Huntington Bank complies with any commitments or conditions that the OCC may request or impose in connection with its action on the bank merger proposal.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Huntington represents that as a result of the proposal, existing customers of FirstMerit would have access to a complement of products and services that is comparable to or more expansive than those currently available at FirstMerit, including corporate trust and retirement plan services, securities brokerage and investment advisory services, insurance products and insurance-related consultative services, and billing and invoice services. Moreover, Huntington asserts that customers of both institutions would benefit from a more expansive branch and ATM network, particularly Huntington Bank's branches located in grocery chains that offer longer hours and are usually open seven days a week.⁴⁸

In addition, following its submission of the application, Huntington adopted a Community Plan ("Plan"), under which Huntington has committed to invest \$16.1 billion in the communities that it serves, including LMI communities, over a five-year period, beginning in 2017. Huntington asserted that the Plan will provide an increase in lending to small businesses, bring jobs back to neighborhoods throughout Huntington and FirstMerit's combined footprint,⁴⁹ and provide more affordable housing opportunities. Under the Plan, Huntington has set targets for LMI communities and small businesses, including a plan to provide \$5.7 billion in mortgage lending in LMI communities and to LMI borrowers and \$6.6 billion for small businesses, including those in LMI communities. Huntington also intends to fund \$3.7 billion in community development lending and investments and an additional \$25 million in philanthropic investments. Huntington described plans to enhance its diversity and inclusion policies, expand its community engagement and

⁴⁸ As noted above, one commenter expressed concern that Huntington Bank would not offer the same credit monitoring service that FirstMerit offered. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available, an insured depository institution is not required to provide any specific types of products or services. See *M&T Bank Corporation*, FRB Order No. 2015-27 at 15 n.37 (September 30, 2015).

⁴⁹ One commenter alleged that the proposal would result in job losses in the communities that the combined organization would serve. This concern is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973); see, e.g., *Community Bank System, Inc.*, FRB Order No. 2015-34 (November 18, 2015); *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445 (1996). Huntington has represented that it will establish an operations/call center within Akron and use reasonable best efforts to maintain employment levels in Akron that are consistent with FirstMerit's existing employment levels within two years of the merger's closing date.

marketing efforts, and add a total of 10 branches in LMI and majority-minority census tracts in Detroit, Cleveland, Chicago, Toledo, and one additional city to be determined.⁵⁰

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the 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 CFPB, confidential supervisory information, information provided by Huntington, public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval. The Board expects Huntington to implement policies, programs, and activities that are commensurate with the increased size and complexity of the institution.

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."⁵¹

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.⁵² 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.⁵³

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.⁵⁴ The pro forma organization would have

⁵⁰ Two community organizations asserted that the proposal should not be approved unless the Plan is included as a condition of the approval. 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., *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *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.

⁵¹ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

⁵² Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁵³ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁵⁴ Huntington primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, automobile financing, equipment leasing, community development investment, investment advisory and management services, fiduciary administration, trust services and operations, discount

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 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.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.⁵⁵ 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 Huntington 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 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 the Federal Reserve Bank of Cleveland, acting under delegated authority.

securities brokerage services, treasury management, capital market services (including corporate risk management and institutional sales, trading and underwriting — including municipal bond underwriting and private placement activities), as well as reinsuring credit life and disability insurance and selling other insurance and financial products and services as agent. FirstMerit offers primarily retail and commercial deposit and loan products, commercial lease financing and related services, insurance brokerage, financial consulting, trust operations, and fiduciary services. In each of its activities, Huntington has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

⁵⁵ A commenter requested that the Board hold public hearings or meetings 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. 12U.S.C. § 1842(b); 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. As noted above, the Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until May 16, 2016, a total period of 66 days, to submit written comments. 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 request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

In addition, a commenter requested a further extension of the comment period for the proposal. As noted above, the Board already provided for an extended comment period of 66 days. During this time, the commenters, including the requestor, submitted detailed comments in writing regarding the proposal. 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 request for additional time to comment does 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 comment period.

By order of the Board of Governors, effective July 29, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Huntington/FirstMerit Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines						
Bank	Rank	Amounts of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Elkhart/Niles/South Bend, Indiana – Elkhart, St. Joseph, Kosciusko, LaGrange, and Marshall Counties; Davis, Oregon, Washington, and North Bend (including the entire city of Bass Lake) townships in Starke County, all in Indiana; Cass County; Buchanan, Niles and Bertrand townships in Berrien County; and the southern half of St. Joseph County, (Constantine, Florence, Sherman, Burr Oak, Mottville, White Pigeon, Sturgis, and Fawn River Townships), all in Michigan.						
Huntington Pre-Consummation	18	\$60.2M	0.6			
FirstMerit	17	\$69.2M	0.7			
Huntington Post-Consummation	13	\$129.4M	1.3	1290	1	31
Alpena, Michigan – Alpena and Presque Isle Counties; Mitchell, Caledonia, Alcona, and Haynes townships of Alcona County; and Montmorency, Hillman, Avery, Loud, and Rust townships of Montmorency County, all in Michigan.						
Huntington Pre-Consummation	7	\$1.1M	0.3			
FirstMerit	2	\$95.3M	22.7			
Huntington Post-Consummation	2	\$96.4M	23.0	1894	13	6
Bay City-Saginaw, Michigan – Arenac County (except Mason, Turner, and Whitney townships); Bay and Saginaw Counties; and Tuscola County (except Elmwood, and Elkland townships), all in Michigan.						
Huntington Pre-Consummation	7	\$134.1M	3.8			
FirstMerit	1	\$766.6M	21.7			
Huntington Post-Consummation	1	\$900.7M	25.5	1409	165	18
Calhoun County, Michigan – Calhoun County, Michigan.						
Huntington Pre-Consummation	13	\$4.6M	0.5			
FirstMerit	8	\$24.6M	2.6			
Huntington Post-Consummation	7	\$29.2M	3.1	1889	2	12
Detroit, Michigan – Oakland, Macomb, Wayne, Lapeer, Genesee, Washtenaw, St. Clair, Livingston, Lenawee, and Shiawassee Counties; Monroe County (except Whiteford, Bedford, and Erie townships); and Sanilac County (except Greenleaf, Austin, Argyle, Moore, Minden, Wheatland, Delaware, and Forester townships); all in Michigan.						
Huntington Pre-Consummation	6	\$5.7B	4.5			
FirstMerit	11	\$2.5B	2.0			
Huntington Post-Consummation	5	\$8.2B	6.5	1468	18	55
Gaylord, Michigan – Oscoda and Otsego Counties; and Vienna, Briley, and Albert townships of Montmorency County, all in Michigan.						
Huntington Pre-Consummation	8	\$8.6M	1.8			
FirstMerit	3	\$79.3M	16.0			
Huntington Post-Consummation	3	\$87.9M	17.8	2046	56	7
Gladwin-Midland, Michigan – Gladwin and Midland Counties, both in Michigan.						
Huntington Pre-Consummation	8	\$21.2M	1.5			
FirstMerit	7	\$23.5M	1.7			
Huntington Post-Consummation	5	\$44.6M	3.2	4809	5	7
Grand Rapids, Michigan – Allegan, Barry, Ionia, and Kent Mecosta, Montcalm, Muskegon, Newaygo, Oceana, and Ottawa Counties; Newkirk, Dover, Ellsworth, Cherry Valley, Pinona, Yates, and Chase townships of Lake County; Richmond, Ewart, Hersey, and Orient townships of Osceola County; all in Michigan.						
Huntington Pre-Consummation	2	\$2.7B	11.6			
FirstMerit	30	\$46.1M	0.2			
Huntington Post-Consummation	2	\$2.7B	11.8	935	4	33

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Appendix—continued

Huntington/FirstMerit Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—continued						
Bank	Rank	Amounts of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Jackson, Michigan – Jackson County, Michigan.						
Huntington Pre-Consummation	11	\$12.3M	0.9			
FirstMerit	2	\$297.9M	22.0			
Huntington Post-Consummation	2	\$310.2M	22.9	1861	40	12
Kalamazoo-Battle Creek, Michigan – Kalamazoo and Van Buren Counties; Flowerfield, Park, Mendo, Leonidas, Fabius, Lockport, Nottawa and Colon townships of St. Joseph County, all in Michigan.						
Huntington Pre-Consummation	11	\$98.6M	2.6			
FirstMerit	17	\$25.1M	0.6			
Huntington Post-Consummation	10	\$123.7M	3.2	1309	3	18
Lansing, Michigan – Clinton, Eaton, and Ingham Counties, all in Michigan.						
Huntington Pre-Consummation	18	\$37.2M	0.7			
FirstMerit	6	\$475.1M	8.6			
Huntington Post-Consummation	5	\$512.3M	9.3	897	12	21
Petoskey, Michigan – Banks, Central Lake, Echo, Jordan and Warner townships of Antrim County; and Charlevoix, Cheboygan, and Emmet Counties, all in Michigan.						
Huntington Pre-Consummation	8	\$119.1M	7.9			
FirstMerit	9	\$71.4M	4.7			
Huntington Post-Consummation	4	\$190.5M	12.6	1255	75	10
Roscommon, Michigan – Crawford and Roscommon Counties, both in Michigan.						
Huntington Pre-Consummation	6	\$19.5M	4.6			
FirstMerit	3	\$43.0M	10.1			
Huntington Post-Consummation	3	\$62.5M	14.7	3014	94	5
Sault Sainte Marie, Michigan – Luce, Chippewa, and Mackinac Counties, all in Michigan.						
Huntington Pre-Consummation	5	\$43.5M	6.7			
FirstMerit	6	\$16.4M	2.5			
Huntington Post-Consummation	4	\$59.9M	9.2	2464	34	6
Traverse City, Michigan – Antrim County (except Banks, Central Lake, Echo, Jordan, and Warner townships); Benzie, Grand Traverse, Kalkaska, Leelanau, and Arcadia Counties; Pleasanton, Springdale, Cleon, Maple Grove, and Marilla townships of Manistee County; all in Michigan.						
Huntington Pre-Consummation	3	\$453.6M	15.1			
FirstMerit	11	\$59.1M	2.0			
Huntington Post-Consummation	3	\$512.7M	17.1	1395	59	13
Cleveland, Ohio – Cuyahoga, Lake, Lorain, and Geauga Counties; Sagamore Hills, Northfield Center, Twinsburg, Richfield, and Boston townships, the villages surrounding these townships, and the cities of Macedonia, Twinsburg and Hudson in Summit County; Homer, Harrisville, Westfield, Spencer, Chatham, Lafayette, Montville, Litchfield, York, Medina, Granger, Liverpool, Brunswick Hills and Hinckley townships, and the cities of Medina and Brunswick in Medina County; Mantua, Hiram, Nelson, Shalersville, Freedom, and Windham townships, and the cities of Aurora and Streetsboro in Portage County; and the city of Vermilion (not whole township) in Erie County, all in Ohio.						
Huntington Pre-Consummation	4	\$5.1B	8.4			
FirstMerit	6	\$3.9B	6.5			
Huntington Post-Consummation	2	\$9.0B	14.9	1518	110	35
Columbus, Ohio – Franklin, Delaware, Fairfield, Hocking, Licking, Madison, Morrow, Pickaway and Union Counties; and Perry County, (minus Harrison township), all in Ohio.						
Huntington Pre-Consummation	1	\$17.4B	31.4			
FirstMerit	10	\$657.2M	1.2			
Huntington Post-Consummation	1	\$18.1B	32.6	1830	75	54
Dover-New Philadelphia, Ohio – Tuscarawas and Harrison Counties; and Salt Creek, Paint, Berlin, Walnut Creek and Clark townships in Holmes County, all in Ohio.						

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Appendix—continued

Huntington/FirstMerit Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—continued						
Bank	Rank	Amounts of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Huntington Pre-Consummation	1	\$378.6M	20.0			
FirstMerit	16	\$3.9M	.2			
Huntington Post-Consummation	1	\$382.5M	20.2	1190	9	17
Toledo, Ohio – Lucas, Fulton and Ottawa Counties; and Wood County (minus Fostoria city), all in Ohio.						
Huntington Pre-Consummation	1	\$2.5B	24.3			
FirstMerit	13	\$91.8M	0.9			
Huntington Post-Consummation	1	\$2.6B	25.2	1469	43	24
Richland County, Ohio – Richland County, Ohio.						
Huntington Pre-Consummation	9	\$38.4M	2.2			
FirstMerit	5	\$134.2M	7.7			
Huntington Post-Consummation	5	\$172.6M	9.9	1759	34	13
Wayne-West Holmes, Ohio – Congress, Canaan, Chester, Wayne, Green, Baughman, Plain, Wooster, East Union, Sugar Creek, Clinton, Franklin, Salt Creek and Paint townships, and the city of Wooster in Wayne County; and Washington, Ripley, Prairie, Knox, Monroe, Hardy, Richland, Killbuck and Mechanic townships in Holmes County, all in Ohio.						
Huntington Pre-Consummation	12	\$27.7M	1.4			
FirstMerit	3	\$312.6M	15.6			
Huntington Post-Consummation	2	\$340.3M	17.0	1405	43	13
Pittsburgh, Pennsylvania – Allegheny, Armstrong, Beaver, Butler, Greene, Lawrence, Washington and Westmoreland Counties; and Fayette County (minus Point Marion borough and Springhill township), all in Pennsylvania.						
Huntington Pre-Consummation	5	\$3.0B	2.6			
FirstMerit	27	\$227.0M	0.2			
Huntington Post-Consummation	5	\$3.2B	2.8	2847	1	49
Data are as of June 30, 2015. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted in each market includes thrift institutions.						

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. 2016-14 (August 8, 2016)

Chemical Financial Corporation (“Chemical”), Midland, Michigan, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Talmer Bancorp, Inc. (“Talmer”), and thereby indirectly acquire Talmer Bank and Trust (“Talmer Bank”), both of Troy, 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 Talmer Bank, with Chemical Bank as the surviving entity.³ Chemical Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Talmer Bank.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 20383 (April 7, 2016)).⁵ 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 consolidated assets of approximately \$9.3 billion, is the 126th largest insured depository organization in the United States.⁶ Chemical Bank controls approximately \$7.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Chemical controls Chemical Bank and operates only in Michigan. Chemical Bank is the eighth largest insured depository institution in Michigan, with deposits representing 3.8 percent of the total deposits of insured depository institutions in that state.

Talmer, with consolidated assets of approximately \$6.7 billion, is the 169th largest insured depository organization in the United States. Talmer currently controls approximately \$5.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Talmer controls Talmer Bank, which operates in Illinois, Indiana, Michigan, Nevada, and Ohio. Talmer Bank is the 11th largest insured depository institution in Michigan, controlling deposits of approximately \$3.5 billion, which represent 1.9 percent of the total deposits of insured depository institutions in that state.

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. These locations are listed in Appendix A.

⁵ 12 CFR 262.3(b).

⁶ National asset data, market share, and ranking data are as of March 31, 2016, unless otherwise noted. State asset data, market share, and ranking data are as of June 30, 2015, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

On consummation of this proposal, Chemical would become the 87th 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. Chemical would control consolidated deposits of approximately \$12.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Michigan, Chemical Bank would become the sixth largest depository organization, controlling deposits of approximately \$10.9 billion, which represent 5.7 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 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.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 application if the bank holding company controls or would upon consummation of the proposed transaction control more than 10 percent of the total deposits of insured depository institutions in the United States⁹ or, in certain circumstances, the bank holding company would upon consummation control 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.¹⁰

For purposes of the BHC Act, the home state of both Chemical and Talmer is Michigan. Talmer also is located in Illinois, Indiana, Nevada, and Ohio.¹¹ Chemical is well capitalized and well managed, and Chemical Bank has an outstanding Community Reinvestment Act of 1977 ("CRA")¹² rating. There are no minimum age requirements under the laws of Illinois, Indiana, Nevada, or Ohio that would apply to Chemical's acquisition of Talmer.¹³

On consummation of the proposed transaction, Chemical would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, Chemical would control approximately 5.7 percent of the total amount of deposits of insured depository institutions in Michigan, the only state in which

⁷ 12 U.S.C. § 1842(d)(1)(A).

⁸ 12 U.S.C. § 1842(d)(1)(B).

⁹ Similarly, the Bank Merger Act provides that, in general, the Board may not approve a bank merger if the transaction involves insured depository institutions with different home states and the resulting bank would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1828(c)(13). For purposes of the Bank Merger Act, the home state of both Chemical Bank and Talmer Bank is Michigan. 12 U.S.C. § 1828(c)(13)(C)(ii)(II). Accordingly, the deposit cap requirement of the Bank Merger Act does not apply to the proposed bank merger.

¹⁰ 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).

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 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.

¹² 12 U.S.C. § 2901 *et seq.*

¹³ *See* 205 Ill. Comp. Stat. 5/21.2(a); Ind. Code § 28-2-17; Nev. Rev. Stat. § 666.405; Ohio Rev. Code Ann. § 1115.05.

Chemical and Talmer have overlapping banking operations. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.¹⁴

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.¹⁵ 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.¹⁶

Chemical and Talmer have subsidiary depository institutions that compete directly in six banking markets: Bad Axe, Bay City-Saginaw, Detroit, Grand Rapids, and Kalamazoo-Battle Creek, all located in Michigan; and Elkhart-Niles-South Bend, located in Michigan and Indiana.

The Board has considered the competitive effects of the proposal in each of the relevant markets. In particular, the Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) that would be controlled by Chemical;¹⁷ 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”);¹⁸ and other characteristics of the markets.

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 Bay City-Saginaw, Detroit, Grand Rapids, Elkhart-Niles-South Bend, and Kalamazoo-Battle Creek banking markets. On consummation of the proposal, the Grand Rapids banking market would remain unconcentrated, and the Bay City-Saginaw, Detroit, Elkhart-Niles-South Bend, and

¹⁴ Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle-Neal Act”) permits the Board, in certain circumstances, to approve interstate merger transactions that would otherwise be prohibited under state law. 12 U.S.C. § 1831u(a)(1). For purposes of the Riegle-Neal Act, an “interstate merger transaction” is one in which the insured banks proposing to merge have different home states. *See* 12 U.S.C. § 1831u(g)(4) and (6). The home state of both Chemical Bank and Talmer Bank is Michigan; therefore section 102 of the Riegle-Neal Act does not apply to the proposed bank merger. *Id.*

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

¹⁶ 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

¹⁷ Local deposit and market share data are as of June 30, 2015, 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).

¹⁸ 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.

Kalamazoo-Battle Creek banking markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in these markets would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in each of these banking markets.¹⁹

Banking Market Warranting Special Scrutiny

The structural effects that consummation of the proposal would have on the Bad Axe banking market²⁰ warrant a detailed review because the concentration level on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines when using initial competitive screening data. Using the initial screening data, Chemical is the fifth largest depository organization in the Bad Axe banking market, controlling approximately \$99.4 million in deposits, which represent 10.5 percent of market deposits. Talmer is the second largest depository organization in the market, controlling approximately \$170.1 million in deposits, which represent 18.0 percent of market deposits. On consummation, the combined entity would be the largest depository institution in the Bad Axe banking market, controlling approximately \$269.5 million in deposits, which would represent approximately 28.5 percent of market deposits. The HHI in this market would increase by 378 points, from 1545 to 1923.

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 Bad Axe banking market.²¹ In particular, three credit unions exert a competitive influence in the Bad Axe 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 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 Bad Axe banking market is less significant than would appear from the initial competitive screening data, which focused on commercial bank competitors. After consummation, adjusting to reflect competition from credit unions in the market, the market concentration level in the Bad Axe banking market as measured by the HHI would increase by 364, from a level of 1494 to 1858, and the market share of Chemical resulting from the transaction would increase in the market from 10.3 percent to 28.0 percent. In addition to the three credit unions, six commercial bank competitors would remain in the market, three of which would have market shares of 20 percent, 17.1 percent, and 16.5 percent, respec-

¹⁹ These five banking markets and the structural effects of the proposal in these markets are described in Appendix B.

²⁰ The Bad Axe banking market is defined as Huron County; Argyle, Austin, Delaware, Forester, Greenleaf, Minden, Moore and Wheatland townships in Sanilac County; and Elkland and Elmwood townships in Tuscola County, all in Michigan.

²¹ 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 Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

²² The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015); *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); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

tively. The presence of these viable competitors suggests that Chemical would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Chemical in the Bad Axe market.

The DOJ also has 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, including the Bad Axe 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 Bad Axe 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 and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²³ In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding 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, as well as public comments on the proposal. 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 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 Talmer are both well capitalized and the combined entity would remain so on consummation of the proposed transaction. 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.²⁴ The asset quality, earnings, and liquidity of Chemical Bank and Talmer Bank are consistent with approval, and Chemical 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.

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, Talmer, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has

²³ 12 U.S.C. §§ 1842(c)(2), (5), and (6), and 1828(c)(5) and (11).

²⁴ To effect the holding company merger, each share of Talmer common stock would be converted into a right to receive Chemical common stock and cash, based on an exchange ratio. Chemical expects to fund some of the cash portion of the exchange with financing from a third-party lender. Chemical has the financial resources to support the obligation.

considered information provided by Chemical; the Board's supervisory experiences with Chemical and Talmer 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; as well as information provided by the commenter.

Chemical and its subsidiary depository institution are both considered to be well managed. Chemical has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Chemical's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and its risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Chemical's plans for implementing the proposal. Chemical has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-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's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner,²⁵ and Chemical plans to integrate Talmer's existing management and personnel in a manner that augments Chemical's management.²⁶

Based on all the facts of record, including Chemical's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and the comment received on the proposal, 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 Chemical and Talmer in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁷ 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, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions 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,²⁸ and requires the appropriate federal financial supervisory agency to assess a depository institution's

²⁵ Chemical 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 Chemical's compliance with these regulations through the supervisory process.

²⁶ On consummation, five of Talmer's directors will be added to Chemical's board, which will expand from seven to twelve members, and two of Talmer's directors will be added to Chemical Bank's board, which will expand from twelve to fourteen members. In addition, the chairman of Talmer will serve as the chairman of Chemical, the chief executive officer of Talmer will serve as the vice chairman of Chemical, and certain key executives of Talmer and Talmer Bank will be employed by Chemical and Chemical Bank following consummation of the proposal.

²⁷ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²⁸ 12 U.S.C. § 2901(b).

record of helping to meet the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²⁹

In addition, the Board considers the banks’ overall compliance records and the results of 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 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 after consummation, and any other information the Board deems relevant.

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 Chemical Bank and Talmer Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Chemical; and the public comment received on the proposal.

Public Comment Regarding the Proposal

In this case, the Board received a comment from a commenter who objected to the proposal on the basis of alleged disparities in the number of residential real estate loans made to minorities, as compared to whites, by Chemical Bank in the Flint, Michigan Metropolitan Statistical Area (“Flint MSA”) and the Battle Creek, Michigan MSA (“Battle Creek MSA”), as reflected in data reported under the Home Mortgage Disclosure Act (“HMDA”) for 2014.³⁰ The commenter also criticized the rate at which Chemical Bank denied applications by Hispanics, compared to that for whites, for home purchase loans in the Flint MSA, as reported under HMDA for 2014. In addition, the commenter cited a complaint about an overdraft fee charged by Chemical Bank.

Businesses of the Involved Institutions and Response to the Comment

Chemical Bank is a full-service bank, offering a broad range of financial products and services to individual consumers and businesses. Through its branch network in Michigan, it offers a variety of traditional banking products to consumers, including mortgage loan products, consumer loans, credit cards, and checking and savings products. Chemical Bank’s business-focused products and services include business checking accounts, commercial loans, and commercial real estate loans. Between 2013 and 2015, Chemical acquired several depository institutions that were consolidated into Chemical Bank.³¹

Talmer Bank is a full-service bank that offers a broad range of retail and commercial banking products and services through its branch network in Michigan, Ohio, Illinois, Indiana, and Nevada. Its products and services include working capital lines of credit, business term loans, inventory and accounts receivable loans, construction loans, equipment finance and leasing, asset based loans, commercial real estate loans, home mortgage loans

²⁹ 12 U.S.C. § 2903.

³⁰ The commenter’s concerns focused on the number of home purchase loans, home refinance loans, and home improvement loans that Chemical Bank offered to African Americans and Hispanics compared to whites in the Flint MSA, as well as the number of loans that Chemical Bank offered to African Americans compared to whites in the Battle Creek MSA.

³¹ See *Chemical Financial Corporation*, FRB Order No. 2015-13 (April 20, 2015); *Chemical Financial Corporation*, Federal Reserve Release, H.2. No. 1, p. 2 (December 30, 2014), available at www.federalreserve.gov/releases/h2/20150103/h2.pdf; *Chemical Financial Corporation*, FRB Order No. 2014-16 (September 30, 2014).

for 1-4 family owner-occupied homes, home improvement loans, and commercial and residential real estate development loans.

Chemical denies that the HMDA data presented by the commenter reflect discriminatory or unfair lending practices by Chemical Bank in the Flint or Battle Creek MSAs. In response to allegations about low rates of lending to minorities in the Flint MSA, Chemical explains that Chemical Bank, with only two branches, has a small presence in a competitive market. Chemical notes that loan applications from African Americans and Hispanics in the Flint MSA represented a small percentage of total applications received by all lenders in the Flint MSA in 2014, and that Chemical's loan decisions with respect to applications it received reflected judgments based on credit history, debt-to-income ratios, and other nondiscriminatory factors. With respect to home purchase loans to African Americans, one of the products of concern for the commenter, Chemical represents that its originations to African Americans represented a higher percentage of Chemical Bank's total home purchase loans than the percentage of aggregate originations by all lenders in the Flint MSA in 2014.

Chemical also represents that Chemical Bank participates in a number of loan programs designed to meet the credit needs of LMI borrowers in the Flint MSA. Chemical Bank also has a program designed to help borrowers qualify for home mortgage loans, which includes financial literacy workshops, educational resources relating to the home ownership process, and providing funds for closing costs in exchange for borrowers completing the program. In addition to these home mortgage programs, Chemical also notes that it has products designed to meet the needs of LMI customers, such as products for borrowers with little or no credit history and checking accounts with no minimum opening deposit, minimum account balance requirements, or monthly maintenance fee. Chemical also represents that it engages in marketing efforts targeted toward minorities in the Flint MSA.

Concerning its level of lending in the Battle Creek MSA, Chemical notes that in 2014, Chemical Bank originated approximately 8 percent of all home mortgage loans and approximately 15 percent of all home refinance and home improvement loans to African American borrowers made in the Battle Creek MSA. Chemical represents that the percentage of home refinance and home improvement loans that it originated to African Americans far exceeded that of all other lenders in the MSA. Chemical asserts that it works to promote its home lending products that meet the needs of LMI borrowers in the Battle Creek MSA and that Chemical Bank engages in various outreach efforts to LMI individuals in the Battle Creek MSA, including providing financial literacy training and educational resources relating to home ownership.

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 public 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.³² In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of Chicago ("Reserve Bank").

³² See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

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.³³ 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 HMDA, 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 a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³⁴ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) 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.³⁵ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Chemical Bank

Chemical Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the Reserve Bank, as of October 26, 2015 ("Chemical Bank

³³ 12 U.S.C. § 2906.

³⁴ Examiners also consider the number and amounts 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).

³⁵ 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.

Evaluation”).³⁶ The bank received “Outstanding” ratings for each of the Lending Test, the Investment Test, and the Service Test.³⁷

Examiners found that Chemical Bank’s overall lending levels reflected excellent responsiveness to credit needs in its assessment areas.³⁸ According to examiners, the bank made extensive use of innovative and flexible lending practices in order to serve assessment area credit needs. Examiners found that a substantial majority of the bank’s loans were made to borrowers within its assessment areas. Overall, the examiners also found that the geographic distribution of the bank’s loans reflected excellent penetration throughout its assessment areas. Further, examiners found that, overall, the bank exhibited an excellent record of serving the credit needs of its assessment areas. Examiners noted that the dollar amount of Chemical Bank’s lending in its assessment areas increased by approximately 9.3 percent from the prior evaluation.

Examiners found that the distribution of the bank’s borrowers, given the product lines offered, reflected adequate penetration among customers of different income levels and excellent penetration among businesses of different sizes. Examiners also found that Chemical Bank was a leader in making community development loans, with an increase of 13.3 percent of community development lending from the prior evaluation. Chemical Bank’s community development lending efforts primarily focused on lending to support affordable housing and community development organizations that provide essential services to LMI individuals, as well as on revitalizing and stabilizing economically distressed geographies within the bank’s assessment areas.

In the Battle Creek MSA, an area of concern for the commenter, examiners found the bank’s lending to reflect excellent responsiveness to the credit needs of the assessment area. Examiners also noted Chemical Bank’s distribution of borrowers, given the product lines offered, was good among customers of different income levels and excellent among businesses of different sizes. Chemical Bank was found to have a good record of serving the credit needs of LMI individuals and geographies and of small businesses, and to have made an adequate level of community development loans within the Battle Creek MSA. Examiners also highlighted Chemical Bank’s extensive use of innovative and flexible lending practices within this assessment area.

In the Flint MSA, another area of concern for the commenter, examiners found the bank’s lending to reflect adequate responsiveness to the credit needs of the assessment area. Examiners also found that the geographic distribution of the bank’s loans reflected

³⁶ The Chemical Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reported, pursuant to HMDA and CRA data collection requirements (geographic distribution and borrower distribution) in 2013 and 2014. The evaluation period for community development lending, investments, and services was August 27, 2013, through October 26, 2015.

³⁷ The Chemical Bank Evaluation included full-scope evaluations of the Battle Creek, Michigan MSA; the Flint, Michigan MSA; the Grand Rapids-Wyoming, Michigan MSA; the Midland, Michigan MSA; the Niles-Benton Harbor, Michigan MSA; the Saginaw-Saginaw Township North, Michigan MSA; and the Northern Non-MSA (comprised of Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Iosco, Isabella, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montmorency, Newaygo, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, and Wexford counties). Limited scope evaluations were performed in the Bay City, Michigan MSA; the Kalamazoo-Portage, Michigan MSA; the South Bend-Mishawaka, Indiana-Michigan MSA (consisting of Cass County, Michigan); the Central Non-MSA (comprised of Gratiot, Ionia, and Shiawassee counties); the Eastern Non-MSA (comprised of Huron, Sanilac, and Tuscola counties); the Southern Non-MSA (comprised of Branch and Hillsdale counties); and the Western Non-MSA (consisting of Allegan County).

³⁸ The commenter contended that, although Chemical previously asserted that its acquisition of Northwestern Bancorp, Inc. (“Northwestern”), in 2014 would result in increased lending, such increased lending did not occur. In the Chemical Bank Evaluation, examiners found that the bank exhibited an excellent record of serving the credit needs of its assessment areas, including in the areas of northern Michigan where it acquired branches of Northwestern’s subsidiary depository institution.

adequate penetration throughout the assessment area, and that the distribution of borrowers, given the product lines offered, reflected adequate distribution among customers of different income levels and excellent penetration among businesses of different sizes. Chemical Bank was found to exhibit an adequate record of serving LMI individuals and areas, and an excellent record of lending to very small businesses. The bank was found to use innovative and flexible lending practices; however, the bank made a low level of community development loans in the assessment area.

Examiners found that Chemical Bank made an excellent level of qualified community development investments and grants within its assessment areas. The bank was found to be a leader in providing investments not routinely provided by private investors. Examiners found that Chemical Bank made significant use of innovative and complex investments to support development initiatives. Examiners also found that Chemical Bank exhibited excellent responsiveness to credit and community development needs. Examiners noted that Chemical Bank's CRA-qualified investments and qualified community development donations increased by approximately 49.3 percent and 19.0 percent, respectively, in dollar amounts from the prior evaluation.

In the Battle Creek MSA, examiners found that Chemical Bank had made an excellent level of CRA-qualified community development investments and grants, and in the Flint MSA, Chemical Bank made a significant level of CRA-qualified community development investments and grants. These investments and grants included those not routinely provided by private investors, and Chemical Bank was found to occasionally be in a leadership position. In each of these MSAs, Chemical Bank was also found to make extensive use of innovative and complex investments to support community development initiatives, as well as to exhibit excellent responsiveness to the credit and community development needs of the assessment areas.

Examiners found Chemical Bank's delivery systems to be readily accessible to the bank's geographies and individuals of different income levels in the bank's assessment areas. Examiners also found that the bank's record of opening and closing branches did not adversely affect the accessibility of its delivery systems, particularly in LMI geographies or with LMI individuals.³⁹ Further, examiners highlighted that Chemical Bank was a leader in providing community development services throughout its assessment areas.

In the Battle Creek MSA and the Flint MSA, examiners found Chemical Bank's delivery systems to be accessible to the bank's geographies and individuals of different income levels. Examiners also found that the bank was a leader in providing community development services in both of these MSAs, and that the bank's services did not vary in a way that inconvenienced these assessment areas.

CRA Performance of Talmer Bank

Talmer Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 21, 2015 ("Talmer Bank Evaluation"),⁴⁰

³⁹ Examiners reviewed all complaints received by Chemical Bank between January 2014 and June 2016 related to overdraft fees charged by Chemical Bank and found that the bank consistently charged overdraft fees in accordance with its policies, procedures, and customer disclosures. During this review, examiners did not identify any unfair or deceptive acts or practices or any other violations of applicable law.

⁴⁰ The Talmer Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed the bank's lending activity from January 1, 2013, through June 30, 2015. The evaluation period for community development loans, investments, and services was from July 11, 2012, through September 21, 2015.

with ratings of “High Satisfactory” for the Lending Test, Investment Test, and Service Test.⁴¹

Examiners found that Talmer Bank’s lending levels reflected adequate responsiveness to the credit needs within its assessment areas, and that the bank exhibited a good record of serving the credit needs of LMI geographies and individuals within its assessment areas. Examiners also found the bank’s geographic distribution of loans reflected good penetration throughout its assessment area, and the bank’s distribution of loans to borrowers reflected adequate penetration among customers of different income levels and businesses of different sizes. Further, examiners found the bank made extensive use of innovative and flexible lending practices in order to serve the credit needs of the assessment areas, and made a relatively high level of community development loans.

Examiners found that Talmer Bank exhibited good responsiveness to the credit and community economic development needs of its assessment areas. Examiners noted that Talmer Bank made a significant level of community development investments and grants and occasionally was in a leadership position, particularly for investments that were not routinely provided by private investors. Talmer Bank was also found to make significant use of innovative and complex investments to support community development initiatives.

Examiners noted that Talmer Bank’s delivery systems were accessible throughout the bank’s assessment areas. Examiners also found that services and business hours did not vary in a way that inconvenienced LMI geographies or individuals in the bank’s assessment areas. Further, examiners found that Talmer Bank provided a relatively high level of community development services.

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance examination and fair lending review of Chemical Bank conducted by Reserve Bank examiners. The Board reviewed the examination report regarding Chemical Bank’s record of compliance with fair lending and other consumer protection laws and regulations; the bank’s policies and procedures to help ensure compliance with fair lending and other consumer protection laws and regulations; and as the bank’s lending record. Chemical Bank intends to implement its policies and procedures at the combined organization following consummation of the transaction. Moreover, Chemical plans to expand its compliance program; create a comprehensive fair banking policy and program; and significantly increase the number of dedicated compliance, fair lending, and CRA staff for the combined organization on consummation of the transaction.

The Board has taken the information discussed above into account in evaluating whether Chemical has the experience and resources to ensure that the combined organization effectively implements policies and programs that allow the combined organization to effectively serve the credit needs of all the communities within the firm’s assessment areas.

⁴¹ The Talmer Bank Evaluation included full-scope evaluations of the Warren-Troy-Farmington Hills, Michigan Metropolitan Division (“MD”); the Detroit-Livonia-Dearborn, Michigan MD; the Non-MSA, Michigan (consisting of the Huron, Sanilac, and Tuscola counties); the Youngstown-Warren-Boardman, Ohio, MSA; the Chicago-Naperville-Arlington Heights, Illinois MD; the Elkhart-Goshen, Indiana MSA; and the Las Vegas-Henderson-Paradise, Nevada MSA. Limited scope evaluations were performed in the Ann Arbor, Michigan MSA; the Flint, Michigan MSA; the Grand Rapids-Wyoming, Michigan, MSA; the Kalamazoo-Portage, Michigan MSA; the Muskegon, Michigan MSA; the Saginaw, Michigan MSA; the Akron, Ohio MSA; the Cleveland-Elyria, Ohio MSA, and the Columbus, Ohio MSA.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Chemical represents that upon consummation of the proposal, existing customers of Talmer would have access to a complement of products and services that are more expansive than those currently available to Talmer customers, including expanded automobile, boat, and recreational vehicle lending; courier services for commercial customers; and certain consumer lending products not currently offered by Talmer. Chemical also intends to expand its municipal lending program to markets served by Talmer. Chemical also represents that no products would be discontinued as a result of the proposal. Moreover, Chemical asserts that customers of both institutions would benefit from a more expansive branch network.

Branch Closures

The commenter expressed concerns about Chemical's record of opening branches in connection with prior acquisitions. 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.⁴² Specifically, examiners noted in the Chemical Bank Evaluation that Chemical Bank's branch openings and closures did not adversely affect the accessibility of products and services to LMI individuals or in LMI geographies, and that its branch closures were the result of reductions in branch activity. The Board also 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.⁴³ Chemical plans to close a Talmer Bank branch located in Holland, a moderate-income tract, and a branch in each of Flint and Port Hope, which are both middle-income tracts, all in Michigan.⁴⁴ For the branches in Holland and Flint, the receiving branches to which customers' accounts would be transferred are both within 0.6 miles from the proposed closing branch. Following the proposed closures, Chemical would continue to operate four branches in each of Holland and Flint. For the Port Hope branch, the receiving branch to which customers' accounts would be transferred is centrally located in Port Hope and would have longer business hours than the branch that is proposed to be closed.⁴⁵ Each of the receiving branches would be in the same income level tract as that of the proposed closing branches from which it would receive customers' accounts.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information

⁴² See, e.g., 12 CFR 228.24(d)(2). In addition, the Board, 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.

⁴³ 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.

⁴⁴ Chemical proposes to close Talmer Bank's branch offices located at 240 E. 8th Street, Holland; 4409 Miller Road, Flint; and 4474 Main Street, Port Hope, all of Michigan.

⁴⁵ Chemical also plans to sell two of Talmer Bank's branches, one located in Las Vegas, Nevada, and another in Chicago, Illinois, and to consolidate four Talmer Bank branches located in Michigan with Chemical Bank branches that are located within 1,000 feet of each branch.

provided by Chemical, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval. The Board expects Chemical to implement policies, programs, and activities that are commensurate with the increased size and complexity of the institution.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of 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.”⁴⁶

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.⁴⁷ 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.⁴⁸

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Chemical would have approximately \$16.0 billion in consolidated assets and, by any of a number of alternative measures of firm size, Chemical would not be likely to pose systemic risks. The Board generally presumes that a proposal 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.

⁴⁶ Sections 604(d) and (f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602, codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

⁴⁷ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

⁴⁸ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

Establishment of Branches

Chemical Bank has applied under section 9 of the FRA to establish branches at the current locations of Talmer Bank.⁴⁹ The Board has assessed the factors it is required to consider when reviewing an application under that section.⁵⁰ 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.⁵¹ 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 proposal should be, and hereby is, approved.⁵² 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 this proposal is specifically conditioned on compliance by Chemical with all the conditions set forth in this Order, including receipt of all required regulatory approvals, and on 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.

⁴⁹ 12 U.S.C. § 321. 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 retain any branch following a merger that was a branch of any bank participating in the merger prior to February 25, 1927, or under state law, may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§ 36(b)(2) and (c). Upon consummation, all of Chemical Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/5(15)(a); Mich. Comp. Laws § 487.13705; Nev. Rev. Stat. § 660.015; Ohio Rev. Code Ann. § 1117.01; Ind. Code § 28-2-13-19.

⁵⁰ 12 U.S.C. § 322; 12 CFR 208.6.

⁵¹ Upon consummation of the proposed transaction, Chemical Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

⁵² The commenter requested that the Board hold public hearings or meetings on the proposal. The Bank Merger Act and section 9 of the FRA do not require a public meeting or a formal public hearing on an application. Section 3 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 U.S.C. § 1842(b); 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 written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

The commenter also 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 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 request for additional time to comment does 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 comment period.

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 by the Reserve Bank acting under delegated authority.

By order of the Board of Governors, effective August 8, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix A

Illinois Branch to Be Established

1. 333 West Wacker Drive, Suite 710, Chicago, Illinois

Indiana Branches to Be Established

1. 303 South Third Street, Elkhart, Indiana
2. 511 West Lincoln Avenue, Goshen, Indiana

Michigan Branches to Be Established

1. 301 Summer Street, Algonac, Michigan
2. 2950 State Street South, Ann Arbor, Michigan
3. 1988 North Opdyke Road, Auburn Hills, Michigan
4. One East Huron Avenue, Bad Axe, Michigan
5. 833 North Van Dyke, Bad Axe, Michigan
6. 980 South Woodward, Birmingham, Michigan
7. 8700 North Second Street, Brighton, Michigan
8. 345 North State Street, Caro, Michigan
9. 727 South State Road, Davison, Michigan
10. 645 Griswold Street, Suite 70, Detroit, Michigan
11. 333 West Fort Street, Detroit, Michigan⁵³
12. 31731 Northwestern Highway #105, Farmington Hills, Michigan
13. 33205 Grand River Avenue, Farmington, Michigan
14. 37386 Twelve Mile Road, Farmington Hills, Michigan
15. 3213 Genesee Road, Flint, Michigan
16. 4409 Miller Road, Flint, Michigan
17. 6120 Fenton Road, Flint, Michigan
18. 4778 24th Avenue, Fort Gratiot, Michigan
19. 220 East Main Street, Flushing, Michigan
20. 170 West Genesee Street, Frankenmuth, Michigan
21. 333 Washington Avenue, Grand Haven, Michigan
22. 4505 Cascade Road Southeast, Grand Rapids, Michigan
23. 20276 Mack Avenue, Grosse Pointe Woods, Michigan
24. 99 Kercheval Avenue, Grosse Pointe Farms, Michigan
25. 9252 Joseph Campau Avenue, Hamtramck, Michigan
26. 106 South Huron, Harbor Beach, Michigan
27. 240 East 8th Street, Holland, Michigan
28. 715 South Cedar Street, Imlay City, Michigan

⁵³ Chemical has represented that Talmer has applied to the FDIC to relocate its branch located at 645 Griswold Street, Suite 70, Detroit, Michigan, to 333 West Fort Street, Detroit.

29. 2855 Wadhams Road, Kimball, Michigan
30. 567 East Genesee Street, Lapeer, Michigan
31. 17900 Haggerty Road, Livonia, Michigan
32. 624 West Nepessing Street, Suite 105, Lapeer, Michigan
33. 5536 Main Street, Lexington, Michigan
34. 1800 East Twelve Mile Road, Madison Heights, Michigan
35. 210 South Parker Street, Marine City, Michigan
36. 2015 Gratiot Avenue, Marysville, Michigan
37. 100 North Main Street, Mount Clemens, Michigan
38. 281 Seminole Road, Muskegon, Michigan
39. 800 East Milham, Portage, Michigan
40. 1527 Hancock Street, Port Huron, Michigan
41. 201 Huron Avenue, Port Huron, Michigan
42. 3136 Lapeer Road, Port Huron, Michigan
43. 4474 Main Street, Port Hope, Michigan
44. 525 Water Street, Port Huron, Michigan
45. 440 Main Street, Rochester, Michigan
46. 629 West Sanilac Road, Sandusky, Michigan
47. 668 Unionville Road, Sebawaing, Michigan
48. 50787 Corporate Drive, Shelby Township, Michigan
49. 270 Clinton Avenue, St. Clair, Michigan
50. 24805 West Twelve Mile Road, Southfield, Michigan
51. 3801 Metropolitan Parkway, Sterling Heights, Michigan
52. 2301 West Big Beaver Road, Troy, Michigan
53. 14801 East Twelve Mile Road, Warren, Michigan
54. 7950 West Maple Road, West Bloomfield, Michigan

Nevada Branch to Be Established

1. 1700 West Horizon Ridge Parkway, Suite 101, Henderson, Nevada

Ohio Branches to Be Established

1. 1977 Cooper Foster Park Road, Amherst, Ohio
2. 724 Boardman-Poland Road, Boardman, Ohio
3. 7290 Warren Sharon Road, Brookfield, Ohio
4. 3801 Boardman Canfield Road, Canfield, Ohio
5. 325 South High Street, Cortland, Ohio
6. 6033 Perimeter Drive, Dublin, Ohio
7. 111 Antioch Drive, Elyria, Ohio
8. 200 Middle Avenue, Elyria, Ohio
9. 361 Midway Mall Boulevard, Elyria, Ohio
10. 351 North Main Street, Grafton, Ohio
11. 35423 Center Ridge Road, North Ridgeville, Ohio
12. 10416 Main Street, New Middletown, Ohio
13. 2 South Main Street, Poland, Ohio
14. 999 East Main Street, Ravenna, Ohio
15. 4183 Tallmadge Road, Rootstown, Ohio
16. 6150 Enterprise Parkway, Solon, Ohio
17. 185 East Market Street, Warren, Ohio
18. 2001 Elm Road Northeast, Warren, Ohio
19. 4460 Mahoning Avenue Northwest, Warren, Ohio
20. 8226 East Market Street, Warren, Ohio
21. 6002 Youngstown Warren Road, Niles, Ohio
22. 4682 Belmont Avenue, Youngstown, Ohio

23. 25 Market Street, Youngstown, Ohio
24. 3900 Market Street, Youngstown, Ohio
25. 101 South Canfield-Niles Road, Youngstown, Ohio
26. 3516 South Meridian Road, Youngstown, Ohio

Appendix B

Chemical Bank/Talmer Bank Banking Markets in Michigan Consistent with Board Precedent and DOJ Bank Merger Guidelines						
Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Bay City-Saginaw, Michigan – Bay County; Saginaw County; Tuscola County (excluding Elmwood and Elkland townships); Arenac County (excluding Mason, Turner, and Whitney townships), all of Michigan.						
Chemical Bank Pre-Consummation	2	\$590.0M	16.7			
Talmer (Talmer Bank)	15	\$36.5M	1.0			
Chemical Bank Post-Consummation	2	\$626.5M	17.7	1278	34	17
Detroit, Michigan – Oakland County; Macomb County; Wayne County; Lapeer County; Genesee County; Washtenaw County; St. Clair County; Livingston County; Lenawee County; Shiawassee County; Monroe County (excluding Whiteford, Bedford, and Erie townships); Sanilac County (excluding Greenleaf, Austin, Argyle, Moore, Minden, Wheatland, Delaware, and Forester townships), all of Michigan.						
Chemical Bank Pre-Consummation	24	\$278.5M	0.2			
Talmer (Talmer Bank)	9	\$3,148.3M	2.5			
Chemical Bank Post-Consummation	8	\$3,426.8M	2.7	1451	1	51
Grand Rapids, Michigan – Allegan County; Barry County; Ionia County; Kent County; Mecosta County; Montcalm County; Muskegon County; Newaygo County; Oceana County; Ottawa County; Newkirk, Dover, Ellsworth, Cherry Valley, Pinona, Yates, and Chase townships of Lake County; and Richmond, Ewart, Hersey, and Orient townships of Osceola County, all of Michigan.						
Chemical Bank Pre-Consummation	3	\$2,201.6M	9.5			
Talmer (Talmer Bank)	22	\$131.8M	0.5			
Chemical Bank Post-Consummation	3	\$2,333.4M	10.0	941	10	32
Elkhart-Niles-South Bend, Indiana – Elkhart, St. Joseph, Kosciusko, LaGrange, and Marshall counties, of Indiana; Davis, Oregon, Washington, and North Bend (including the entire city of Bass Lake) townships in Starke County, Indiana; Cass County; Buchanan, Niles and Bertrand townships in Berrien County; the Southern half of St. Joseph County (Constantine, Florence, Sherman, Burr Oak, Mottville, White Pigeon, Sturgis, and Fawn River Townships), of Michigan.						
Chemical Bank Pre-Consummation	14	\$107.4M	1.1			
Talmer (Talmer Bank)	19	\$54.6M	0.5			
Chemical Bank Post-Consummation	13	\$162.0M	1.6	1291	2	30
Kalamazoo-Battle Creek, Michigan – Kalamazoo and Van Buren counties; Flowerfield, Park, Mendon, Leonidas, Fabius, Lockport, Nottawa, and Colon townships of St. Joseph County, all of Michigan.						
Chemical Bank Pre-Consummation	3	\$346.7M	9.1			
Talmer (Talmer Bank)	15	\$59.7M	1.6			
Chemical Bank Post-Consummation	3	\$406.4M	10.6	1334	28	17
Deposit data are as of June 30, 2015. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.						

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