Federal Reserve Bulletin

2017 Compilation

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

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Preface

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

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

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

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

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

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

- *Federal Reserve Bulletin*: www.federalreserve.gov/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

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Residential Mortgage Lending in 2016: Evidence from the Home Mortgage Disclosure Act Data

Neil Bhutta, Steven Laufer, 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 2016 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). Mortgage debt is by far the largest component of household debt in the United States, and mortgage transactions can have important implications for households' financial well-being. The HMDA data are the most comprehensive source of publicly available information on the U.S. mortgage market, providing unique details on how much mortgage credit gets extended each year, who obtains this credit, and which institutions provide this credit.

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, to provide information that could facilitate the efforts of public entities to distribute funds to local communities for the purpose of attracting private investment, and to 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]

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[1] The 2016 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.

Mortgage lending during 2016 occurred in the context of rising house prices, the continuation of an upward trend in prices evident since 2012.[4] Mortgage interest rates remained low for most of the year, hovering just slightly above their historical lows reached in late 2012 and early 2013. Mortgage rates jumped sharply, however, following the November elections. Mortgage credit conditions continued to slowly ease, but credit remained more difficult to obtain for individuals with lower credit scores or hard-to-document incomes. According to the Senior Loan Officer Opinion Survey on Bank Lending Practices, much of the easing in mortgage underwriting that occurred over the course of 2016 was for loans that were eligible for purchase by the government-sponsored enterprises (GSEs).[5] Growth in new housing construction remained sluggish despite the gains in house prices and strengthening demand for both new and existing homes.[6]

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

1. The number of mortgage originations in 2016 rose 13 percent, to 8.4 million from 7.4 million in 2015. For loans secured by one- to four-family properties, growth was strong in both home-purchase originations—which increased to 4.0 million from 3.7 million in 2015—and refinance originations—which increased to 3.8 million from 3.2 million in 2015.
2. Black and Hispanic white borrowers increased their share of home-purchase loans for one- to four-family, owner-occupied, site-built properties in 2016, the third consecutive annual rise for both groups. The HMDA data indicate that 6.0 percent of such loans went to black borrowers, up from 5.5 percent in 2015, while 8.8 percent went to Hispanic white borrowers, up from 8.3 percent in 2015. The share of home-purchase loans to low- or moderate-income (LMI) borrowers decreased to 26 percent in 2016 from 28 percent in 2015.
3. The average value of home-purchase loans rose 3.2 percent in 2016, to $257,000, with similar increases for loans made to borrowers of different racial and ethnic groups. The average value of home-purchase loans to Hispanic white borrowers remained well below the 2006 peak, while the averages for Asian, black, and non-Hispanic white borrowers were all above their 2006–07 peaks.
4. Black and Hispanic white borrowers continued to be much more likely to use nonconventional loans (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)) than conventional loans compared with other racial and ethnic groups. In 2016, among home-purchase borrowers, 69 percent of blacks and 60 percent of Hispanic whites took out a nonconventional loan, whereas about 35 percent of non-Hispanic whites and just 16 percent of Asians did so.

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[4] For additional analysis of how rapid house price growth in some parts of the country could be deterring lower-income families' homebuying, see Neil Bhutta, Steven Laufer, and Daniel Ringo (2017), "Are Rising Home Values Restraining Homebuying for Lower-Income Families?" FEDS Notes (Washington: Board of Governors of the Federal Reserve System, September 28), https://www.federalreserve.gov/econres/notes/feds-notes/are-rising-home-values-restraining-home-buying-for-lower-income-families-20170928.htm.

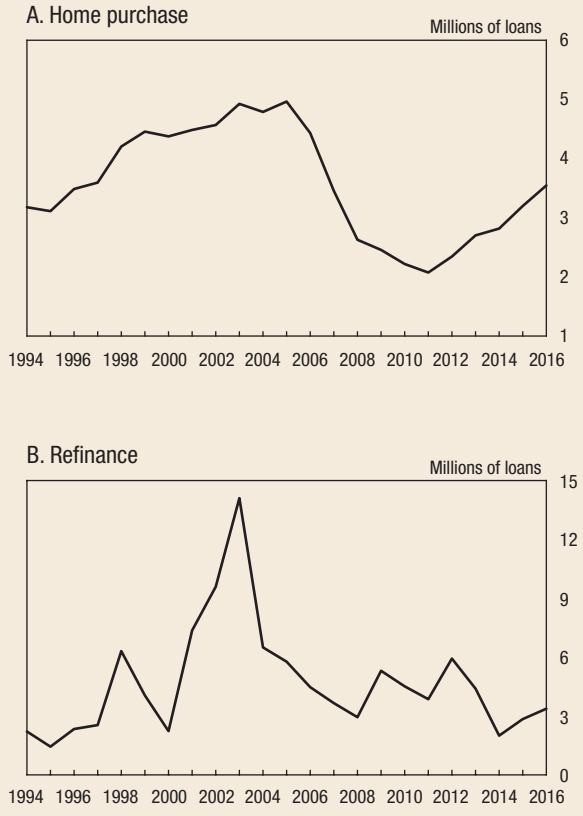
[5] The survey is available on the Board's website at www.federalreserve.gov/boarddocs/snloansurvey.

[6] For more information on credit and economic conditions during 2016, see Board of Governors of the Federal Reserve System (2017), *Monetary Policy Report* (Washington: Board of Governors, February 14), www.federalreserve.gov/monetarypolicy/mpr_default.htm.

[7] 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 releases for 2016 and 2015 and from amended HMDA data for previous years. Consequently, numbers in this article for the years 2014 and earlier may differ somewhat from numbers calculated from the public release files.

5. The share of mortgages originated by nondepository, independent mortgage companies has increased sharply in recent years. In 2016, this group of lenders accounted for 53 percent of first-lien owner-occupant home-purchase loans, up from 50 percent in 2015.[8] Independent mortgage companies also originated 52 percent of first-lien owner-occupant refinance loans, an increase from 48 percent in 2015. For the first time since at least 1995, nondepository, independent mortgage companies accounted for a majority of each of these types of loans.

Figure 1. Number of home-purchase and refinance mortgage originations reported under the Home Mortgage Disclosure Act, 1994–2016



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

Mortgage Applications and Originations

In 2016, 6,762 financial institutions—banks, savings associations, credit unions, and nondepository mortgage lenders—reported data under HMDA on the nearly 14 million home mortgage applications they received (including about 2.4 million applications that were closed by the lender for incompleteness or were withdrawn by the applicant before a decision was made), which resulted in about 8.4 million originations. The number of originations in 2016 was up from 7.4 million originations in 2015 (table 1).

Refinance mortgages for one- to four-family properties increased by 530,000, or 16 percent, from 2015 to 2016. One- to four-family home-purchase originations grew by 384,000, or 10 percent, from 2015. Most one- to four-family home-purchase loans are first liens for owner-occupied properties. In the past five years, the number of such loans grew over 70 percent, from less than 2.1 million in 2011 to 3.5 million in 2016. However, the number of such home-purchase originations remained well below its peak in 2005 and was near levels observed in the mid-1990s (figure 1).[9] The number of first-lien home-purchase loans

[8] For additional analysis comparing patterns of lending to LMI borrowers by nonbanks and banks, see Neil Bhutta, Steven Laufer, and Daniel Ringo (2017), "The Decline in Lending to Lower-Income Borrowers by the Biggest Banks," FEDS Notes (Washington: Board of Governors of the Federal Reserve System, September 28), https://www.federalreserve.gov/econres/notes/feds-notes/the-decline-in-lending-to-lower-income-borrowers-by-the-biggest-banks-20170928.htm.

[9] 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 2016 does not change the conclusion that home-purchase lending in 2016 was similar to that in the mid-1990s, particularly 1994.

Table 1. Applications and originations, 2004–16

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	2016
1–4 Family													
Home purchase													
Applications[1]	9,804	11,685	10,929	7,609	5,060	4,217	3,848	3,650	4,023	4,586	4,679	5,181	5,693
Originations	6,437	7,391	6,740	4,663	3,139	2,793	2,547	2,430	2,742	3,139	3,248	3,662	4,046
First lien, owner occupied	4,789	4,964	4,429	3,454	2,628	2,455	2,218	2,073	2,343	2,703	2,815	3,200	3,545
Site-built, conventional	4,107	4,425	3,912	2,937	1,581	1,089	1,005	999	1,251	1,630	1,741	1,894	2,123
Site-built, nonconventional	553	411	386	394	951	1,302	1,151	1,019	1,033	1,007	1,006	1,230	1,340
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	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	26.9
FSA/RHS share (percent)	3.9	4.7	5.0	7.1	5.9	9.0	7.4	10.9	12.0	13.1	13.3	9.4	8.5
Manufactured, conventional	106	100	101	95	68	43	44	40	44	51	51	56	59
Manufactured, nonconventional	24	27	30	29	28	21	17	15	14	14	16	20	22
First lien, non-owner occupied	857	1,053	880	607	412	292	285	314	355	388	378	403	436
Junior lien, owner occupied	738	1,224	1,269	552	93	44	42	41	43	46	53	58	65
Junior lien, non-owner occupied	53	150	162	50	6	2	2	1	1	1	2	2	2
Refinance													
Applications	16,085	15,907	14,046	11,566	7,805	9,983	8,433	7,422	10,526	8,564	4,526	5,940	7,178
Originations	7,591	7,107	6,091	4,818	3,491	5,772	4,969	4,330	6,668	5,141	2,370	3,228	3,755
First lien, owner occupied	6,497	5,770	4,469	3,659	2,934	5,301	4,516	3,856	5,930	4,393	2,001	2,841	3,371
Site-built, conventional	6,115	5,541	4,287	3,407	2,363	4,264	3,835	3,315	4,971	3,634	1,608	2,152	2,527
Site-built, nonconventional	297	151	110	180	506	979	646	508	917	715	363	658	810
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	49.4
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	50.3
FSA/RHS share (percent)	.2	.3	.2	.1	.2	.4	.4	.9	.9	1.2	.5	.3	.4
Manufactured, conventional	77	70	60	56	42	36	25	25	31	32	22	21	20
Manufactured, nonconventional	7	8	12	16	22	22	10	9	11	12	8	10	14
First lien, non-owner occupied	618	582	547	474	330	350	359	394	660	673	310	328	329
Junior lien, owner occupied	464	729	1,036	661	219	115	88	74	73	70	55	55	52
Junior lien, non-owner occupied	13	25	39	23	9	7	6	5	5	5	4	4	3
Home improvement													
Applications	2,200	2,544	2,481	2,218	1,413	832	670	675	779	833	846	921	1,005
Originations	964	1,096	1,140	958	573	390	341	335	382	425	411	474	537
Multifamily[2]													
Applications	61	58	52	54	43	26	26	35	47	51	46	52	50
Originations	48	45	40	41	31	19	19	27	37	40	35	41	40
Total applications	**28,151**	**30,193**	**27,508**	**21,448**	**14,320**	**15,057**	**12,977**	**11,782**	**15,375**	**14,034**	**10,097**	**12,094**	**13,926**
Total originations	**15,040**	**15,638**	**14,011**	**10,480**	**7,234**	**8,974**	**7,876**	**7,122**	**9,828**	**8,744**	**6,064**	**7,404**	**8,378**
Memo													
Purchased loans	5,142	5,868	6,236	4,821	2,935	4,301	3,229	2,939	3,163	2,788	1,800	2,102	2,232
Requests for preapproval[3]	1,068	1,260	1,175	1,065	735	559	445	429	474	474	496	531	530
Requests for preapproval that were approved but not acted on	167	166	189	197	99	61	53	55	64	69	64	63	60
Requests for preapproval that were denied	171	231	222	235	177	155	117	130	149	123	125	114	115

Note: Components may not sum to totals because of rounding. FHA is Federal Housing Administration; VA is U.S. Department of Veterans Affairs; FSA is Farm Service Agency; RHS is Rural Housing Service.

[1] Applications by year of action, as opposed to year of application submission. Applications include those withdrawn and those closed for incompleteness.

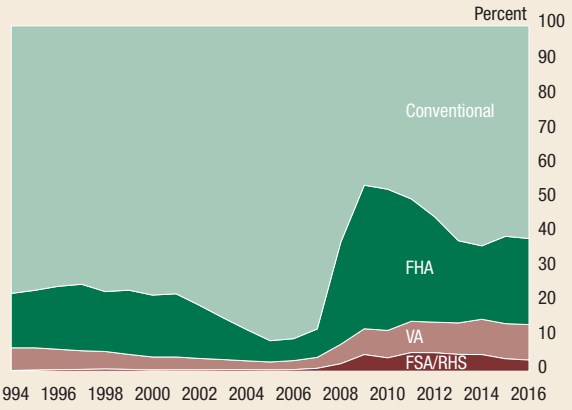
[2] A multifamily property consists of five or more units.

[3] 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).

for non-owner-occupied properties—which are primarily used as rental properties and second homes—increased 8 percent, from 403,000 in 2015 to 436,000 in 2016.

Figure 2. Nonconventional share of home-purchase mortgage originations, 1994–2016



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).

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.)[10] 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).[11] 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 as well as those held in banks' portfolios.

Nonconventional loans 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 about 9 percent in 2016, while conventional loans rose about 12 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 2016, little changed from 2015 and down from a peak of 54 percent in 2009 (figure 2).[12]

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 appears to help explain the fluctuations in the FHA share concerns changes in the up-front and annual mortgage insurance premiums (MIPs) that the FHA charges borrowers. For example, between October 2010 and April 2013, the annual MIP for

[10] In addition to the monthly data at the national level posted online, a data set providing the count of home-purchase and refinance applications and originations, and the dollar volume of home-purchase and refinance originations, by month and county since 1994 for the 500 largest counties each year is provided online as well. Both files are available on the Board's website at https://www.federalreserve.gov/publications/bulletin.htm.

[11] 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.

[12] 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, https://www.federalreserve.gov/pubs/bulletin/2010/articles/2009HMDA/default.htm.

a typical home-purchase loan more than doubled, from 0.55 percent of the loan amount to 1.35 percent.[13] Drops in the FHA's market share have been observed each time the FHA has raised premiums. In January 2015, the annual MIP was reduced to 0.85 percent for most borrowers, and the FHA share of home-purchase loans subsequently increased.[14]

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.[15] 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 530,000 preapproval requests; roughly 67 percent of these requests turned into an actual loan application for a specific property in 2016.[16] Table 1 also shows that, for 2016, lenders purchased 2.2 million loans from other institutions.

The HMDA Data's Coverage of the Mortgage Market

It is important to note that the HMDA data do not provide universal coverage of residential mortgage lending in the United States. There are two main reasons HMDA coverage is not universal. First, not all lenders are required to report data. Among deposit-taking institutions like banks, the smallest institutions as well as institutions without any branches in a metropolitan statistical area (MSA) do not have to report data. Among institutions that take no deposits, nonprofits, smaller institutions, and those that operate entirely outside of an MSA also do not have to report data.[17]

Second, not all types of mortgage originations are reported. In particular, lenders do not report mortgages that are not for the purpose of purchasing a residential property, refinancing an outstanding mortgage, or making home improvements. Thus, a mortgage taken out solely to finance education expenses, for example, would not be reported. In addition,

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[13] Changes to the FHA's up-front 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 up-front 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.

[14] For a study of the effect of MIP changes on FHA market shares and total lending, 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. Also see Neil Bhutta and Daniel Ringo (2017), "The Effect of Interest Rates on Home Buying: Evidence from a Discontinuity in Mortgage Insurance Premiums," Finance and Economics Discussion Series 2017-086 (Washington: Board of Governors of the Federal Reserve System, August), https://www.federalreserve.gov/econres/feds/files/2017086pap.pdf.

[15] 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.

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

[17] Under the current rules, depositories with less than $44 million in assets and nondepositories that had less than $10 million in assets and originated fewer than 100 home-purchase and refinance loans in the previous year are not required to report. For additional details, see Federal Financial Institutions Examination Council (2017), "A Guide to HMDA Reporting: Getting It Right!" webpage, https://www.ffiec.gov/hmda/guide.htm.

home equity lines of credit (HELOCs), regardless of their purpose, are not required to be reported under current rules.[18]

One way to assess the coverage of the HMDA data is to compare the number of loans reported under HMDA with the number of loans reported in consumer credit files. In contrast to the HMDA data, all mortgage loans regardless of purpose can be reported in consumer credit files, and all financial institutions have an incentive to report their mortgage loans to consumer credit bureaus, since reporting encourages borrowers to make on-time payments.[19] According to estimates based on the consumer credit records maintained by Equifax, one of the three nationwide consumer credit-reporting agencies, about 8.4 million first-lien home-purchase and refinance loans were originated during 2016, compared with nearly 7.7 million first-lien home-purchase and refinance loans for one- to four-family properties reported under HMDA.[20] Thus, the number of first-lien home-purchase and refinance loans in the HMDA data is approximately 90 percent of the number reported in consumer credit files.[21]

In addition, Equifax estimates that about 874,000 home equity loans and 1.4 million HELOCs were originated in 2016. Many of these loans may not be reported under HMDA for the reasons stated earlier. If they were reported under HMDA, they would be classified as home-improvement loans or as junior-lien home-purchase or junior-lien refinance loans. Lenders reported about 658,000 such loans in the 2016 HMDA data, less than 30 percent of the number of home equity loans and HELOCs reported by Equifax.

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. Such loans accounted for about 81 percent of all HMDA originations in 2016.

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[18] Beginning on January 1, 2018, covered loans under the HMDA rule (Regulation C) generally will include closed-end mortgage loans and open-end lines of credit secured by a dwelling. For more information, see Consumer Financial Protection Bureau (2017), "Home Mortgage Disclosure Act Rule Implementation: Resources to Help Industry Understand, Implement, and Comply with the Home Mortgage Disclosure Act and Regulation C," webpage, https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/hmda-implementation.

[19] In some cases, institutions may be required to report loans to the credit bureaus; for example, the GSEs require servicers to report data on GSE loans to all of the major credit bureaus. In other cases, home-purchase and refinance loans taken out by companies that are reported under HMDA may not be reported in consumer credit bureau data. For example, the HMDA data indicate that in 2016, about 97,000 first-lien home-purchase and refinance mortgages for one- to four-family non-owner-occupied properties were issued to applicants whose sex and race were reported as "not applicable," which implies that the borrower was not a "natural person" (an individual, as opposed to a company, government agency, or nongovernmental organization) and that the loan may not appear on any individual's credit record.

[20] See Equifax (2017), *Quarterly U.S. Consumer Credit Trends* (Atlanta: Equifax, July), https://investor.equifax.com/~/media/Files/E/Equifax-IR/reports-and-presentations/events-and-presentation/consumer-credit-trends-report-2q-2017.pdf.

[21] The dollar volume of first-lien home-purchase and refinance loans for one- to four-family properties reported under HMDA is about 94 percent of the dollar volume of first-lien home-purchase and refinance originations estimated by Equifax for 2016.

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 6.0 percent in 2016, up from 5.5 percent in 2015. Similarly, the Hispanic white share of home-purchase loans was 8.8 percent in 2016, up from 8.3 percent in 2015. Both shares remain well below their 2006 peaks (8.7 percent and 11.7 percent for black and Hispanic white borrowers, respectively) but have now increased for two years in a row.[22]

In terms of borrower income, the share of home-purchase loans to LMI borrowers slipped from 28.0 percent in 2015 to 26.2 percent in 2016.[23] In accordance with definitions used by the federal bank supervisory agencies to enforce 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 estimated based on the incomes of residents of the metropolitan area or nonmetropolitan portion of the state in which the loan-securing property is located.[24]

The HMDA data also shed light on borrowing patterns across neighborhoods, defined as census tracts. From 2015 to 2016, the share of home-purchase loans originated in high-income census tracts decreased slightly from 41.0 percent to 40.0 percent.[25] 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.[26] 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

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. The data reveal significant differences in the value of loans to different racial and ethnic groups. Asian borrowers took out the largest loans, averaging $373,000 for

[22] 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 2016 was about 190,000, derived by multiplying 3.4 million loans by 5.5 and then dividing by 100.

[23] 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 2016, about 90 percent of refinance loans for which borrower income was not reported were nonconventional.

[24] 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. For AMFI estimates, see Federal Financial Institutions Examination Council (2017), "FFIEC Median Family Income Report," webpage, https://www.ffiec.gov/Medianincome.htm. Note that AMFI estimates tend to reflect lagged income levels. During times when incomes are changing rapidly, such as during the Great Recession, AMFI estimates can be significantly understated or overstated.

[25] 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.

[26] 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, https://www.federalreserve.gov/pubs/bulletin/2012/articles/HMDA/default.htm.

Table 2. Distribution of home loans, by purpose of loan, 2004–16

Percent except as noted

Characteristic of borrower and of neighborhood	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
A. Home purchase													
Borrower race and ethnicity[1]													
Asian	4.8	5.0	4.5	4.5	4.9	5.3	5.5	5.2	5.3	5.7	5.4	5.3	5.5
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	6.0
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	8.8
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	66.4
Other minority[2]	1.4	1.3	1.1	1.0	.9	.9	.9	.8	.8	.7	.8	.8	.8
Joint	2.3	2.3	2.3	2.5	2.8	2.8	2.7	2.8	2.9	3.1	3.4	3.5	3.6
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	8.9
All	100	100	100	100	100	100	100	100	100	100	100	100	100
Borrower income[3]													
Low or moderate	27.7	24.6	23.6	24.7	28.1	36.7	35.5	34.4	33.3	28.5	27.0	28.0	26.2
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	26.4
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	46.4
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	1.2	1.2	1.0
All	100	100	100	100	100	100	100	100	100	100	100	100	100
Neighborhood income[4]													
Low or moderate	14.5	15.1	15.7	14.4	13.1	12.6	12.1	11.0	12.8	12.7	13.3	13.5	14.1
Middle	48.7	49.2	49.5	49.6	49.8	50.2	49.4	49.4	43.6	43.7	44.7	45.2	45.8
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	40.0
All	100	100	100	100	100	100	100	100	100	100	100	100	100
B. Refinance													
Borrower race and ethnicity[1]													
Asian	3.5	2.9	3.0	3.1	3.1	4.1	5.2	5.4	5.5	4.7	4.3	5.0	5.5
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	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	6.2
Non-Hispanic white	57.2	60.9	59.6	62.7	70.7	74.6	74.3	73.5	72.5	70.5	67.8	67.2	65.2
Other minority[2]	1.4	1.4	1.3	1.1	.8	.6	.5	.6	.6	.7	.9	.8	.9
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	3.4
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	13.8
All	100	100	100	100	100	100	100	100	100	100	100	100	100
Borrower income[3]													
Low or moderate	26.2	25.5	24.7	23.3	23.5	19.6	19.0	19.2	19.6	21.1	22.1	19.0	16.9
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	20.3
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	47.5
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	15.3
All	100	100	100	100	100	100	100	100	100	100	100	100	100
Neighborhood income[4]													
Low or moderate	15.3	16.5	17.9	16.1	11.9	7.7	7.2	7.4	10.1	12.1	13.3	12.3	12.0
Middle	50.0	51.3	52.0	52.2	51.9	47.5	46.1	46.1	41.9	43.7	45.3	43.8	43.4
High	33.9	31.6	29.4	31.0	35.2	43.5	46.0	46.0	47.6	43.9	41.3	43.7	44.4
All	100	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	2,747	3,124	3,463
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	1,971	2,810	3,338

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 2012–16 and from the 2000 census for 2004–11, and the three categories have the same cutoffs as the borrower-income groups (see note 3).

Table 3. Average value of home loans, by purpose of loan, 2004–16

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	2016
A. Home purchase													
Borrower race and ethnicity[1]													
Asian	280	316	326	334	299	276	293	291	304	328	344	360	373
Black or African American	166	183	197	197	184	172	174	174	179	193	199	209	217
Hispanic white	189	224	238	220	186	168	168	168	176	190	198	209	220
Non-Hispanic white	193	211	216	222	209	195	204	204	213	226	231	239	246
Other minority[2]	206	240	257	245	216	196	201	198	206	219	229	241	249
Joint	233	255	261	269	255	248	263	261	274	289	293	303	311
Missing	216	248	261	280	265	242	256	262	279	298	293	303	308
Borrower income[3]													
Low or moderate	114	116	117	123	128	129	128	125	131	132	132	141	146
Middle	165	170	170	176	182	187	189	184	192	194	193	204	209
High	281	306	313	317	297	291	303	302	313	323	328	340	345
Income not used or not applicable	208	235	254	266	218	195	214	225	233	260	277	315	314
Neighborhood income[4]													
Low or moderate	159	180	189	188	175	160	164	163	158	171	178	188	199
Middle	172	190	197	196	186	174	177	173	178	191	196	206	216
High	258	284	294	301	277	257	270	271	282	300	306	316	324
Memo													
All home-purchase loans	201	221	228	232	217	202	210	210	221	235	240	249	257
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	5.2
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	16.8
B. Refinance													
Borrower race and ethnicity[1]													
Asian	274	325	370	368	321	298	313	309	308	304	341	363	368
Black or African American	151	180	199	192	173	184	180	174	181	171	174	199	212
Hispanic white	178	219	252	244	193	190	191	183	190	180	190	214	228
Non-Hispanic white	180	205	221	222	205	209	210	208	212	206	216	239	251
Other minority[2]	190	229	269	258	211	217	218	207	213	201	213	240	252
Joint	210	246	265	262	243	247	254	249	254	249	266	292	305
Missing	194	226	246	250	242	243	248	253	253	244	245	268	277
Borrower income[3]													
Low or moderate	114	124	124	126	129	138	133	128	135	128	123	136	143
Middle	162	181	183	181	180	185	179	174	182	171	174	193	202
High	256	294	320	311	275	268	274	280	277	276	301	324	330
Income not used or not applicable	150	178	240	240	194	204	203	185	212	193	198	231	243
Neighborhood income[4]													
Low or moderate	142	169	188	185	164	172	172	167	163	153	157	182	196
Middle	158	184	201	198	182	184	182	175	181	173	180	201	214
High	245	282	313	311	272	259	265	269	269	270	290	311	321
Memo													
All refinance loans	185	212	232	231	212	216	220	218	221	213	222	247	259
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	4.6
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	15.7

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 conventional plus nonconventional 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.

home purchases and $368,000 for refinancings in 2016, whereas loans to black borrowers averaged $217,000 for home purchases and $212,000 for refinancings.[27]

Over time, home-purchase dollar values have followed 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 2016 was for $220,000, up from $209,000 in 2015 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 about $246,000 in 2016, higher than the pre-crisis peak in 2007 of about $222,000. The values of loans to Asian and black borrowers in 2016 were also higher than their 2006–07 peaks.

In terms of borrower income, for LMI borrowers, the average home-purchase loan amount increased to $146,000 in 2016 from $141,000 in 2015; loan amounts increased by a similar magnitude for middle- and high-income borrowers. Average loan values also increased across all borrower-income groups for refinance loans.

Jumbo Lending

The share of conventional jumbo loans—those with loan amounts in excess of the GSEs' conforming loan limits and no other government guarantee—was about 5 percent in 2016, little changed from 2015. As shown in table 3, conventional jumbo loans made up 5.2 percent of all first-lien home-purchase loans for owner-occupied, one- to four-family, site-built homes in 2016, roughly the same as in 2015.[28] Among refinance loans, the conventional jumbo fraction decreased to 4.6 percent from 4.9 percent in 2015. Because of their larger size, jumbo loans make up a correspondingly larger share of the dollar volume of mortgages, accounting for 16.8 percent of home-purchase loans and 15.7 percent of refinance loans in 2016. Since the financial crisis, most new jumbo loans have been held on the originating bank's portfolio, as the market for mortgage-backed securities without a government guarantee is thin.[29]

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 2016, among home-purchase borrowers, about 69 percent of blacks and 60 percent of Hispanic whites took out a nonconventional loan, whereas about 35 percent of non-Hispanic whites and just 16 percent of Asians did so. These numbers have declined from their peaks in 2009 and 2010, when well over three-fourths of black and Hispanic white borrowers and over one-half of non-Hispanic white borrowers took out nonconventional loans.

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

[28] 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 2016, the general conforming loan-size limit was $417,000, and the maximum high-cost area loan-size limit was $625,000 (and 50 percent higher in Alaska, Hawaii, the U.S. Virgin Islands, and Guam). 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.

[29] 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, https://www.federalreserve.gov/pubs/bulletin/2015/default.htm.

Table 4. Nonconventional share of home loans, by purpose of loan, 2004–16

Percent except as noted

Characteristic of borrower and of neighborhood	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
A. Home purchase													
Borrower race and ethnicity[1]													
Asian	2.9	1.8	2.1	2.6	13.4	26.1	26.6	25.8	21.9	16.1	14.7	16.6	15.6
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	68.5
Hispanic white	13.7	7.5	7.0	12.4	51.4	75.4	77.0	74.1	70.7	63.1	59.6	62.6	59.8
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	35.2
Other minority[2]	14.0	9.3	9.4	14.8	48.4	67.6	68.8	65.9	62.2	55.5	54.0	55.1	54.2
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	43.1
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	34.7
Borrower income[3]													
Low or moderate	20.3	15.2	14.9	16.0	46.1	65.3	66.6	64.5	59.7	52.5	50.3	53.3	51.7
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	47.5
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	26.7
Neighborhood income[4]													
Low or moderate	15.8	9.7	9.6	13.8	45.5	64.4	65.1	61.2	57.9	49.9	48.1	50.3	48.7
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	44.6
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	28.4
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	38.7
B. Refinance													
Borrower race and ethnicity[1]													
Asian	1.2	.7	.6	1.0	4.6	5.7	4.7	4.3	5.9	6.7	6.8	9.8	8.3
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	53.0
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	30.5
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	21.7
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	36.6
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	29.2
Missing	4.2	1.9	1.7	4.1	18.7	19.0	12.5	13.6	16.5	16.7	21.5	25.5	27.6
Borrower income[3]													
Low or moderate	2.3	1.6	2.9	5.7	18.3	16.6	14.0	11.5	9.3	9.3	13.0	16.5	18.3
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	15.2
High	.8	.6	1.1	2.7	10.5	7.2	6.7	6.3	5.5	6.1	8.8	9.2	9.2
Neighborhood income[4]													
Low or moderate	5.9	3.2	2.9	6.3	24.6	31.3	23.1	19.7	22.2	22.1	22.4	29.5	30.4
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	28.1
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	18.9
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	24.3

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.

Nonconventional usage is also more prevalent for borrowers with lower incomes and in neighborhoods with lower incomes. In 2016, about 52 percent of LMI home-purchase borrowers and 49 percent of those borrowing to purchase homes in LMI neighborhoods used nonconventional loans, compared with about 27 percent of high-income borrowers and 28 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 within income groups.[30] 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.[31]

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.[32] 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.[33]

Denial Rates and Denial Reasons

In 2016, the overall denial rate on applications for home-purchase loans was 11.4 percent, somewhat lower than in 2015 (table 5). The decrease in 2016 continues a trend of declining denial rates for home-purchase mortgages over the past decade.[34] In addition, denial rates have exhibited significant variation, and changes in denial rates have differed by type of loan. For example, for conventional home-purchase loan applications, the denial rate of 10.2 percent in 2016 was 8.3 percentage points lower than in 2006, while for nonconventional home-purchase loan applications, the denial rate of 13.4 percent in 2016 was 1.3 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 2016 than during the housing boom years, even though most measures of credit availability suggest that credit standards are tighter today.[35] 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 2016 than non-Hispanic white borrowers, while denial rates for Asian

[30] See Bhutta, Popper, and Ringo, "The 2014 Home Mortgage Disclosure Act Data," in note 29.

[31] 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.

[32] 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.

[33] 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.

[34] 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.

[35] 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, 2004–16

Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
A. Home purchase													
Conventional and nonconventional[1]													
All applicants	14.4	16.0	18.0	18.7	18.0	15.5	15.6	15.8	14.9	14.4	13.3	12.1	11.4
Asian	13.7	15.9	16.9	17.5	19.2	16.3	15.8	16.5	15.8	15.3	14.1	12.6	11.6
Black or African American	23.6	26.5	30.3	33.5	30.6	25.5	24.8	26.0	26.0	25.5	23.0	20.8	19.8
Hispanic white	18.3	21.1	25.1	29.5	28.3	22.2	21.8	21.1	20.2	20.5	18.4	16.1	14.9
Non-Hispanic white	11.1	12.2	12.9	13.3	14.0	12.8	12.9	13.1	12.5	12.0	11.1	10.0	9.4
Other minority[2]	19.4	20.8	24.0	26.7	25.5	21.2	21.9	20.9	20.8	21.2	19.0	17.2	16.6
Conventional only													
All applicants	14.6	16.3	18.5	19.0	18.3	15.8	15.2	15.1	13.6	12.9	11.9	10.8	10.2
Asian	13.7	16.0	17.1	17.5	19.1	15.8	14.8	15.5	14.4	14.2	13.3	11.9	10.9
Black or African American	25.0	27.8	31.9	35.7	37.6	35.8	33.6	33.2	32.0	28.5	25.1	23.3	22.0
Hispanic white	18.6	21.4	25.7	30.5	32.5	26.9	24.9	24.2	22.4	21.5	18.9	17.2	15.4
Non-Hispanic white	11.2	12.3	13.2	13.3	14.1	13.3	12.9	12.7	11.6	10.8	9.9	9.1	8.4
Other minority[2]	19.7	21.2	24.8	27.8	29.0	25.9	28.0	24.6	23.6	22.5	20.2	18.3	16.8
Nonconventional only[1]													
All applicants	13.3	12.5	12.1	16.2	17.4	15.3	16.0	16.5	16.3	16.8	15.8	13.9	13.4
Asian	12.6	11.6	10.6	15.5	20.2	17.7	18.6	19.3	20.2	20.6	18.9	16.1	14.9
Black or African American	17.7	16.8	16.2	22.8	25.3	22.6	22.7	23.9	24.0	24.1	21.9	19.7	18.7
Hispanic white	16.3	17.2	15.7	20.5	23.1	20.4	20.7	19.9	19.3	19.9	18.0	15.5	14.6
Non-Hispanic white	10.7	10.2	10.0	13.1	13.9	12.5	13.0	13.6	13.7	14.1	13.4	11.7	11.2
Other minority[2]	16.8	16.3	15.2	18.6	20.9	18.7	18.7	18.8	18.9	20.1	17.9	16.3	16.4
B. Refinance													
Conventional and nonconventional[1]													
All applicants	29.5	32.6	35.4	39.6	37.7	24.0	23.3	23.8	19.9	23.3	31.0	27.4	29.8
Asian	18.8	23.5	27.5	32.6	32.5	21.4	19.5	20.1	17.3	21.0	28.1	23.8	25.0
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	45.9
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	33.8
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	26.9
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	44.2
Conventional only													
All applicants	30.1	32.9	35.6	39.9	37.0	22.1	21.3	22.3	19.4	22.5	29.6	26.4	28.8
Asian	18.8	23.5	27.5	32.5	31.5	20.2	18.5	19.4	17.0	20.5	27.2	23.1	23.7
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	52.3
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	35.2
Non-Hispanic white	24.6	27.1	30.4	33.9	31.5	19.1	18.9	20.1	17.4	19.9	26.2	23.2	25.7
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	45.9
Nonconventional only[1]													
All applicants	15.0	20.1	21.9	31.6	40.9	31.1	33.3	32.2	22.2	26.7	36.5	30.3	32.9
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	36.6
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	38.8
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	30.3
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	30.9
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	41.1

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.

borrowers were more similar to those for non-Hispanic white borrowers. For example, the denial rates for conventional home-purchase loans were about 22 percent for black borrowers, 15 percent for Hispanic white borrowers, 11 percent for Asian borrowers, 17 percent for other minority borrowers, and 8 percent for non-Hispanic white borrowers.

Previous research and experience gained in the fair lending enforcement process show that differences in denial rates and in the incidence of higher-priced lending (the topic of the next subsection) among racial or ethnic groups stem, at least in part, from factors related to credit risk that are not available in the HMDA data, such as credit history (including credit score), ratio of total debt service payments to income (DTI), and LTV ratio. 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.[36] 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 2016, about 72 percent of denied home-purchase applications and about 46 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 2016, credit history was cited as a denial reason for about 24 percent of denied black applicants, 17 percent of denied Hispanic white applicants, 18 percent of denied non-Hispanic white applicants, and just 11 percent of denied Asian applicants. The DTI ratio was cited most often as a denial reason for home-purchase applicants in all racial and ethnic groups. For Asian home-purchase applicants, collateral was the second most common reason cited for denial, while for other groups, credit history was the second most common reason cited.

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).[37] The spread for junior-lien loans must be at

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

[37] 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 12.

Table 6. Reasons for denial, by purpose of loan, 2016

Percent

Type of loan and race and ethnicity of borrower	Debt-to-income ratio	Employment history	Credit history	Collateral	Insufficient cash	Unverifiable information	Credit application incomplete	Mortgage insurance denied	Other	No reason given
A. Home purchase										
Conventional and nonconventional[1]										
All applicants	23.1	3.8	18.5	13.8	7.1	5.8	9.0	.4	10.1	27.6
Asian	29.5	5.0	11.0	11.7	9.4	9.6	11.1	.3	11.2	23.3
Black or African American	26.1	3.2	24.0	10.4	7.9	4.6	6.7	.4	10.1	28.7
Hispanic white	25.4	4.4	17.2	11.7	7.3	7.2	6.7	.4	11.7	29.5
Non-Hispanic white	21.7	3.8	18.2	15.0	6.7	5.5	9.1	.5	9.9	27.9
Other minority[2]	24.8	4.1	20.9	10.7	8.0	4.9	7.0	.6	10.6	29.8
Conventional only										
All applicants	24.7	3.2	19.2	15.8	7.9	6.1	9.8	.7	9.9	23.4
Asian	29.9	4.7	10.6	12.1	10.2	9.9	11.9	.4	11.0	21.8
Black or African American	27.6	2.6	29.3	12.8	9.3	4.2	6.7	.9	10.7	22.0
Hispanic white	27.2	3.2	19.7	14.6	8.2	7.0	6.9	.8	11.9	24.0
Non-Hispanic white	23.4	3.2	18.6	16.8	7.4	5.9	9.7	.7	9.3	24.4
Other minority[2]	26.5	3.6	24.3	12.2	9.9	5.1	6.7	1.3	12.1	24.7
Nonconventional only[1]										
All applicants	21.3	4.5	17.7	11.5	6.2	5.4	8.0	.1	10.4	32.5
Asian	27.8	6.1	12.7	10.0	6.2	8.5	8.2	.20	12.0	29.0
Black or African American	25.3	3.6	21.0	9.0	7.1	4.9	6.7	.2	9.8	32.5
Hispanic white	24.1	5.3	15.3	9.6	6.6	7.3	6.7	.2	11.5	33.4
Non-Hispanic white	19.3	4.6	17.7	12.5	5.8	4.9	8.3	.1	10.6	32.8
Other minority[2]	23.4	4.6	18.0	9.5	6.3	4.7	7.3	.0	9.2	34.2
B. Refinance										
Conventional and nonconventional[1]										
All applicants	12.0	.7	12.5	9.7	2.3	2.3	9.5	.1	6.1	53.8
Asian	18.3	1.1	10.3	7.3	2.9	3.9	9.8	.1	7.0	50.1
Black or African American	9.2	.4	15.2	7.8	2.2	1.5	7.0	.0	6.2	58.9
Hispanic white	18.1	.9	17.6	7.8	3.2	3.3	8.8	.1	8.6	44.9
Non-Hispanic white	11.5	.7	11.7	9.8	2.1	2.3	8.4	.1	5.7	56.0
Other minority[2]	10.4	.6	12.6	6.3	1.9	1.9	7.2	.0	5.4	61.8
Conventional only										
All applicants	14.5	.8	13.4	10.0	2.4	2.7	8.7	.1	6.1	51.5
Asian	20.2	1.2	10.6	7.8	3.1	4.2	9.6	.1	7.1	47.7
Black or African American	11.9	.4	16.7	8.0	2.2	1.6	5.7	.1	6.2	57.5
Hispanic white	21.6	.9	19.3	8.4	3.5	3.5	7.7	.1	8.5	41.6
Non-Hispanic white	13.9	.8	12.6	10.5	2.2	2.6	7.8	.1	5.8	53.3
Other minority[2]	12.9	.6	14.1	6.6	2.2	2.2	6.1	.0	5.7	59.2
Nonconventional only[1]										
All applicants	5.5	.5	10.1	8.8	1.9	1.5	11.6	.03	6.2	59.4
Asian	7.8	.5	8.7	4.5	1.7	2.2	10.9	.0	6.3	64.0
Black or African American	5.3	.3	12.9	7.5	2.4	1.3	8.9	.01	6.1	61.0
Hispanic white	8.4	.7	13.0	6.0	2.4	2.7	11.9	.06	9.1	53.9
Non-Hispanic white	4.9	.6	9.2	8.0	1.7	1.4	10.3	.03	5.6	63.4
Other minority[2]	5.3	.4	9.6	5.7	1.4	1.2	9.3	.0	4.9	67.2

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.

least 3.5 percentage points for such loans to be considered higher priced. The APR of a mortgage differs from the interest rate because the APR measure incorporates up-front fees and other loan costs such as mortgage insurance. 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.[38]

In 2016, the fraction of home-purchase loans (again, first liens for one- to four-family, owner-occupied, site-built properties) above the higher-priced threshold was 7.7 percent (table 7.A). Although the overall fraction of higher-priced loans was little changed from 2015, there were moderate changes in the share of higher-priced lending among different types of loans. In particular, the higher-priced share of nonconventional loans declined from 14.5 percent to 13.9 percent, while the higher-priced share of conventional loans rose from 3.2 percent to 3.7 percent.

Table 7.A also shows that, in 2016 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 2016, 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.[39] Second, even data from years prior to 2009 are not easily comparable from year to year, as the price-reporting rule used during this period created unintended distortions in reporting over time (which is why the reporting rule was changed).[40]

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 when the old pricing rule was in effect.[41] 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.[42] Higher-priced lending by this measure virtually disappeared by 2008 and has not reemerged, likely reflecting the lack of subprime mortgage lending.

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

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

[40] 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, https://www.federalreserve.gov/pubs/bulletin/2014/articles/hmda/2013-HMDA-Data.htm.

[41] 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.

[42] For a more detailed discussion of this adjustment technique, see Avery and others, "The 2009 HMDA Data," in note 12.

Table 7. Incidence of higher-priced lending, by purpose of loan, 2004–16

A. Unadjusted

Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Home purchase													
Conventional and nonconventional[1]													
All borrowers	9.8	22.5	23.2	12.7	8.1	4.6	2.2	3.3	3.1	7.1	11.6	7.6	7.7
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	3.7
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	15.7
Hispanic white	17.5	42.0	43.3	25.9	15.8	8.1	3.9	6.1	5.9	16.9	28.5	18.5	17.9
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	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	13.7	8.9	9.2
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	3.7
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	2.5
Black or African American	30.6	54.1	53.4	34.0	17.4	8.7	6.1	8.0	6.7	6.1	7.7	6.8	8.3
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	10.1
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	3.3
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	5.6
Nonconventional only[1]													
All borrowers	1.2	.9	1.8	3.0	9.5	4.6	1.3	2.7	3.0	13.9	26.3	14.5	13.9
Asian	2.4	.6	.8	1.3	8.2	3.9	.8	2.0	1.9	13.4	26.3	11.4	10.1
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	19.1
Hispanic white	2.0	1.4	3.5	4.5	14.0	7.1	2.2	4.5	4.8	22.5	43.4	24.6	23.2
Non-Hispanic white	1.0	.7	1.5	2.5	8.4	3.9	1.0	2.3	2.6	12.1	22.5	12.2	11.7
Other minority[2]	4.4	.7	2.1	2.4	8.8	4.7	1.2	2.5	2.4	11.9	21.0	12.2	12.2
Refinance													
Conventional and nonconventional[1]													
All borrowers	14.5	25.0	30.3	21.0	10.9	3.8	1.8	2.1	1.5	1.9	3.3	2.5	2.0
Asian	5.8	15.1	19.5	12.5	3.1	.9	.4	.5	.4	.5	1.1	.7	.6
Black or African American	30.0	46.2	50.7	38.1	22.8	9.0	6.5	6.8	4.1	3.8	5.7	5.1	3.8
Hispanic white	18.2	32.6	36.9	26.5	15.1	7.0	4.4	4.4	2.6	3.1	4.8	3.9	3.1
Non-Hispanic white	12.3	20.4	25.0	17.6	10.2	3.7	1.8	2.2	1.5	2.0	3.4	2.4	2.1
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	2.2
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	1.5
Asian	5.8	15.2	19.6	12.5	2.9	.7	.2	.3	.3	.3	.7	.4	.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	3.2
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	2.3
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	1.6
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	1.7
Nonconventional only[1]													
All borrowers	1.5	.9	3.1	6.6	13.2	6.7	4.9	5.9	3.2	3.9	8.3	5.4	3.8
Asian	3.6	2.1	2.5	4.9	8.9	4.8	3.1	4.0	1.8	2.6	7.2	3.3	2.6
Black or African American	1.0	1.2	4.1	7.8	15.2	8.2	9.8	10.9	6.0	4.6	8.5	7.1	4.4
Hispanic white	2.0	.9	2.6	6.2	11.6	6.6	7.3	7.9	3.6	5.1	12.2	7.0	5.0
Non-Hispanic white	1.3	.7	2.8	6.0	12.1	6.5	4.6	5.9	3.3	4.2	8.9	5.4	3.9
Other minority[2]	8.1	3.9	9.6	9.9	10.5	4.5	4.6	4.3	2.9	2.8	6.0	4.4	2.9

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] See table 5, note 1.

[2] See table 2, note 2.

Table 7. Incidence of higher-priced lending, by purpose of loan, 2004–16
B. Adjusted
Percent

Type of loan and race and ethnicity of borrower	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Home purchase													
Conventional and nonconventional[1]													
All borrowers	7.4	18.3	17.1	6.3	1.3	1.3	.6	.8	.8	.7	.8	.7	.8
Asian	3.8	13.0	11.4	3.1	.5	.5	.3	.3	.3	.3	.4	.5	.6
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	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	1.6
Non-Hispanic white	5.8	12.1	10.9	4.3	1.3	1.4	.7	.8	.8	.7	.7	.6	.7
Other minority[2]	10.5	24.7	22.7	8.0	1.5	1.4	.8	.9	1.1	.9	.9	.9	.8
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	.8
Asian	3.8	13.3	11.6	3.2	.5	.6	.3	.4	.4	.3	.4	.5	.7
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	1.6
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	2.9
Non-Hispanic white	6.5	13.2	12.0	4.9	1.9	2.6	1.3	1.5	1.2	.8	.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	1.3
Nonconventional only[1]													
All borrowers	.9	.3	.2	.3	.4	.4	.1	.2	.3	.5	.8	.5	.6
Asian	2.2	.3	.1	.2	.2	.2	.1	.2	.2	.3	.5	.2	.3
Black or African American	1.0	.5	.3	.6	.4	.7	.2	.3	.3	.8	1.1	1.0	1.1
Hispanic white	1.6	.3	.3	.2	.5	.4	.1	.3	.3	.8	1.1	.7	.7
Non-Hispanic white	.8	.2	.2	.2	.3	.3	.1	.2	.3	.5	.7	.5	.6
Other minority[2]	3.9	.3	.2	.2	.3	.3	.1	.1	.2	.3	.6	.4	.4
Refinance													
Conventional and nonconventional[1]													
All borrowers	11.3	20.1	21.3	12.7	4.3	1.4	.6	.8	.7	.7	1.0	.6	.4
Asian	4.1	12.2	12.1	5.4	.8	.2	.1	.2	.1	.1	.2	.1	.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	2.1	1.3	.6
Hispanic white	13.4	27.0	25.8	14.8	5.6	2.5	1.8	1.8	1.1	.9	1.1	.7	.5
Non-Hispanic white	9.5	15.9	16.9	10.3	4.1	1.4	.6	.8	.7	.7	1.1	.6	.4
Other minority[2]	13.2	22.0	22.3	14.5	7.1	2.1	.9	1.1	1.1	.8	1.1	.7	.3
Conventional only													
All borrowers	11.8	20.7	21.9	13.3	5.1	1.5	.5	.6	.4	.4	.7	.5	.4
Asian	4.1	12.3	12.1	5.4	.9	.2	.1	.1	.0	.0	.1	.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	1.0
Hispanic white	14.1	27.7	26.2	15.4	6.9	3.5	1.4	1.3	.8	.7	.8	.8	.6
Non-Hispanic white	9.9	16.3	17.3	10.9	4.8	1.6	.5	.6	.4	.5	.8	.5	.4
Other minority[2]	13.6	22.6	22.7	14.9	8.3	2.8	.9	.9	.7	.7	.7	.6	.4
Nonconventional only[1]													
All borrowers	1.0	.6	.7	.5	.4	.5	1.2	2.5	2.4	1.8	2.5	.9	.3
Asian	2.9	1.8	1.3	1.4	.5	.3	.5	1.5	1.4	1.1	2.0	.4	.3
Black or African American	.6	.8	1.2	.6	.5	1.1	3.5	5.9	4.9	2.6	3.2	1.5	.2
Hispanic white	1.4	.4	.3	.6	.7	.8	2.8	3.5	1.9	1.3	2.1	.6	.3
Non-Hispanic white	.8	.4	.4	.3	.4	.5	1.0	2.4	2.5	2.1	3.0	1.0	.4
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	.1

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.

The higher-priced fraction of FHA home-purchase loans was about 21 percent in 2016, much higher than for other types of loans, in part because of the relatively high up-front and annual MIPs charged by the FHA (table 8). In contrast, only about 1 percent of VA/RHS/FSA home-purchase loans were higher priced. The higher-priced fractions for both types of loans were little changed from 2015.

Table 8. Distribution of price spread, 2016
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	2,123,365	78,775	3.7	56.1	21.5	9.4	7.5	2.9	2.6
FHA[2]	865,897	180,864	20.9	76.6	19.1	2.9	1.3	.08	.04
VA/RHS/FSA[3]	473,755	5,563	1.2	83.6	5.9	1.2	8.6	.6	.1
Refinance									
Conventional	2,527,430	36,826	1.5	54.0	18.5	9.3	9.9	4.9	3.3
FHA[2]	400,147	28,831	7.2	76.9	14.8	2.7	4.7	.6	.2
VA/RHS/FSA[3]	410,163	1,911	.5	87.2	10.2	.7	1.7	.2	.1
Manufactured homes									
Home purchase									
Conventional	59,093	44,971	76.1	5.6	5.0	5.3	13.7	12.2	58.3
FHA[2]	17,572	9,871	56.2	53.9	25.5	8.7	2.1	1.0	8.9
VA/RHS/FSA[3]	4,912	234	4.8	73.5	13.2	6.4	6.0	0	0
Refinance									
Conventional	19,553	5,775	29.5	29.0	15.5	12.4	18.2	9.9	15.0
FHA[2]	8,560	1,897	22.2	69.0	20.5	7.0	3.1	.4	.2
VA/RHS/FSA[3]	5,031	129	2.6	70.5	26.4	1.6	1.6	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 HELOCs 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

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.[43]

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 2016, the total was only 1,903 loans, despite the extension of HOEPA protections to home-purchase loans.[44]

Table 9. Distribution of HOEPA loans, by characteristic of loan, 2004–16
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	2016
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**	**1,903**
Loan purpose													
Home purchase	0	0	0	0	0	0	0	0	0	0	31.4	39.5	58.7
Home improvement	37.7	26.1	42.4	45.4	30.5	31.1	32.6	32.3	31.5	30.1	17.9	14.9	14.9
Refinance	62.3	73.9	57.6	54.6	69.5	68.9	67.4	67.7	68.5	69.9	50.7	45.6	26.3
Lien status													
First	55.5	60.5	53.6	52.8	78.5	84.1	83.9	82.8	84.6	84.2	90.3	88.4	90.0
Junior	44.5	39.5	46.4	47.2	21.5	15.9	16.1	17.2	15.4	15.8	9.7	11.6	10.0
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	86.3
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	13.7
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	52.9	36.9	35.0
Greater than $50,000	27.6	51.6	27.9	25.7	33.3	27.5	23.5	22.2	24.4	28.7	47.1	63.1	65.0

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.

Lending Institutions

In 2016, there were 6,762 reporting institutions (table 10). The total consisted of 3,805 banks and thrifts (hereafter, banks), of which 3,033 were small, defined as having assets of less than $1 billion; 1,939 credit unions; 131 mortgage companies affiliated with depositories (banks and credit unions); and 887 independent mortgage companies.[45] Banks collectively accounted for about 38 percent of all reported mortgage originations; independent mortgage companies, about 48 percent; credit unions, about 9 percent; and affiliates, the remainder. Over the past few years, the share of loans originated by independent mortgage companies has risen sharply. In 2016, these lenders originated 53 percent of first-lien owner-occupant home-purchase loans, up from 50 percent in 2015 and just 35 percent in 2010. Independent mortgage companies also originated 52 percent of first-lien owner-occupant refinance loans, an increase from 48 percent in 2015.

[43] 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.

[44] For an analysis of the potential effects of the new HOEPA rule on lending patterns, see Bhutta, Popper, and Ringo, "The 2014 Home Mortgage Disclosure Act Data," in note 29.

[45] 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 a few large credit unions, which report to the Consumer Financial Protection Bureau.

Table 10. Lending activity, by type of institution, 2016
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	3,033	772	1,939	131	887	6,762
Applications (thousands)	894	4,059	1,190	567	7,216	13,926
Originations (thousands)	651	2,573	724	384	4,046	8,378
Purchases (thousands)	23	1,099	18	182	910	2,232
Number of institutions with fewer than 100 loans	1,630	136	1,025	25	84	2,900
Originations (thousands)	66.9	5.9	40.5	.9	3.4	117.5
Number of institutions with fewer than 25 loans	557	39	374	11	37	1,018
Originations (thousands)	7.0	.4	4.5	.1	.4	12.4
Home-purchase loans (thousands)[2]	246	948	215	210	1,845	3,463
Conventional	71.9	77.3	86.7	58.0	49.1	61.3
Higher-priced share of conventional loans	10.4	2.3	5.0	2.2	3.5	3.7
LMI borrower[3]	28.1	21.8	25.2	29.2	27.9	26.2
LMI neighborhood[4]	12.4	12.0	13.2	13.4	15.5	14.1
Non-Hispanic white[5]	79.1	68.4	69.2	69.6	62.9	66.4
Minority borrower[5]	13.0	18.7	15.8	17.0	24.5	21.1
Sold[6]	75.2	71.5	48.2	97.0	97.2	85.5
Refinance loans (thousands)[2]	179	1,007	277	130	1,744	3,338
Conventional	83.5	91.7	96.0	71.5	62.8	75.7
Higher-priced share of conventional loans	6.2	1.2	2.6	.6	.8	1.5
LMI borrower[3]	17.1	17.3	21.2	15.6	16.0	16.9
LMI neighborhood[4]	9.5	10.5	12.8	11.5	13.1	12.0
Non-Hispanic white[5]	82.2	68.9	68.9	69.3	60.4	65.2
Minority borrower[5]	8.5	16.9	15.1	14.9	19.6	17.6
Sold[6]	73.9	70.5	39.6	97.2	98.5	84.0

[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 2016. 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).

Many institutions report little activity. About 43 percent of institutions (2,900 out of 6,762) reported fewer than 100 mortgage originations in 2016, accounting for about 118,000 originations, or less than 2 percent of all originations. About 15 percent of institutions originated fewer than 25 loans, in total accounting for about one-tenth of 1 percent of all originations.[46]

[46] Under changes to the HMDA regulations (Regulation C) finalized in 2015, banks, savings associations, and credit unions that originated fewer than 25 home-purchase loans (including refinancings of home-purchase loans) in either 2015 or 2016 will not be subject to HMDA reporting requirements in 2017. Beginning in 2018, lending institutions will not be subject to HMDA reporting requirements unless they originated at least 25 covered closed-end mortgage loans or 100 covered open-end lines of credit in each of the two preceding calendar years. For a more detailed description of these and other changes to Regulation C, see Consumer

Table 10 provides several other statistics to help compare the lending patterns of different types of institutions in 2016, and we discuss some highlights here. First, depositories tend to originate a significantly higher fraction of conventional loans than nondepositories. Second, small banks and credit unions have accounted for a highly disproportionate share of conventional higher-priced loans in recent years.

Third, independent mortgage companies originated a higher share of their home-purchase loans to minority borrowers and in LMI neighborhoods than other types of lenders. Fourth, large banks originate a significantly lower share of home-purchase mortgages to LMI borrowers compared with other types of lenders. In a supplementary analysis, we show that much of the decline in lending by large banks to LMI borrowers in recent years can be explained by their decreasing share of FHA-guaranteed mortgages, which are more likely to be originated to LMI borrowers.[47]

Finally, 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.[48] Nondepositories sold virtually all of their loans in 2016. In contrast, credit unions sold about one-half of the home-purchase loans they originated and about 40 percent of the refinance loans they originated. That said, portfolio lending among depositories has declined significantly over the longer term.[49]

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.[50] Wells Fargo reported the most originations, with about 438,000.[51] The next-highest total was for Quicken Loans, followed by JPMorgan Chase (JPMC) and Bank of America. Overall, the top 25 lenders accounted for about 34 percent of all loan originations in 2016, up slightly from 33 percent in 2015. These same firms also provided additional funding by purchasing over 1.2 million loans from other lending institutions during 2016 (these loans could have been originated in 2015 or in earlier years), equal to about 43 percent of the number of loans they originated during the year.

The top institutions differ significantly in their lending patterns. Some of this variation reflects differences between types of institutions, which were discussed earlier. For example,

Financial Protection Bureau (2015), "New Rule Summary: Home Mortgage Disclosure (Regulation C)," October 15, http://files.consumerfinance.gov/f/201510_cfpb_hmda-executive-summary.pdf.

47 See Bhutta, Laufer, and Ringo, "Decline in Lending to Lower-Income Borrowers," in note 8.

48 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.

49 See table 13 in Bhutta, Popper, and Ringo, "The 2014 Home Mortgage Disclosure Act Data," in note 29.

50 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. SunTrust is one notable exception. Combined mortgage originations across its bank and mortgage affiliates totaled about 75,000.

51 Notably, loan counts and 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, 2016
Percent except as noted

Respondent	Institution type[1]	Total originations (thousands)	Total purchases (thousands)	Home-purchase loans[2]							
				Number (thousands)	Conventional	Higher priced[3]	LMI borrower[4]	LMI neighborhood[5]	Non-Hispanic white[6]	Minority borrower[6]	Sold[7]
Wells Fargo Bank, NA	Large bank	438	513	154	85.1	2.2	16.2	11.2	66.4	21.2	72.9
Quicken Loans, Inc.	Ind. mort. co.	436	0	89	52.8	.5	29.1	14.8	53.2	13.6	99.9
JPMorgan Chase Bank, NA	Large bank	185	154	56	96.7	.8	10.9	8.8	60.5	23.0	47.7
Bank of America, NA	Large bank	159	30	47	91.1	.1	15.4	10.9	58.7	30.2	45.7
Freedom Mortgage Corp.	Ind. mort. co.	155	87	22	33.5	1.9	29.0	17.2	55.2	32.1	99.7
loanDepot.com	Ind. mort. co.	133	0	36	58.6	3.4	18.6	14.4	52.5	28.8	98.7
U.S. Bank, NA	Large bank	122	139	34	82.4	1.2	26.7	11.8	68.3	13.5	75.8
Caliber Home Loans, Inc.	Ind. mort. co.	108	49	65	52.6	4.2	30.4	16.2	60.2	25.7	99.8
Flagstar Bank, FSB	Large bank	103	18	43	53.3	2.8	24.7	13.4	65.6	25.8	98.3
United Shore Financial Services, LLC	Ind. mort. co.	83	0	32	84.3	2.2	27.1	14.6	60.2	29.7	98.7
Fairway Independent Mortgage Corp.	Ind. mort. co.	73	0	52	51.7	4.1	31.3	15.0	70.8	18.4	99.7
Nationstar Mortgage	Ind. mort. co.	70	29	1	74.5	2.4	16.1	13.8	48.9	19.7	90.9
Guild Mortgage Co.	Ind. mort. co.	67	3	38	47.1	5.0	28.7	18.0	57.8	20.3	99.9
USAA Federal Savings Bank	Large bank	67	0	42	31.1	.1	14.0	10.5	65.1	15.7	96.6
Guaranteed Rate, Inc.	Ind. mort. co.	65	0	32	73.8	1.8	21.2	14.1	71.2	17.4	100.0
PrimeLending, a PlainsCapital Company	Affiliated mort. co.	64	1	44	57.9	4.5	28.8	14.1	67.3	17.8	99.9
Navy Federal Credit Union	Credit union	64	0	29	42.3	26.5	19.8	12.6	55.8	23.2	56.4
PNC Bank, NA	Large bank	64	1	17	74.2	.0	30.5	13.8	61.1	13.5	83.1
Finance of America Mortgage	Ind. mort. co.	62	0	30	48.9	1.4	24.7	18.6	61.6	24.7	99.9
Citibank, NA	Large bank	55	22	17	97.9	.0	16.0	16.6	37.3	38.7	51.3
Movement Mortgage, LLC	Ind. mort. co.	54	0	43	46.0	3.8	30.8	16.7	68.7	24.7	87.8
Stearns Lending, Inc.	Ind. mort. co.	54	40	27	47.6	2.5	26.7	17.5	59.4	28.8	100.0
SunTrust Mortgage, Inc.	Affiliated mort. co.	51	59	16	87.1	.2	16.5	10.8	62.4	17.8	98.9
Ditech Financial, LLC	Ind. mort. co.	47	58	3	78.4	1.2	23.9	13.3	75.0	16.2	98.0
Mortgage Research Center, LLC	Ind. mort. co.	46	0	36	1.6	.0	28.2	14.0	61.7	21.9	100.0
Top 25 institutions	…	2,828	1,203	1,004	62.6	2.8	23.2	13.7	62.0	22.0	86.3
All institutions	**…**	**8,378**	**2,232**	**3,463**	**61.3**	**3.7**	**26.2**	**14.1**	**66.4**	**21.1**	**85.5**

[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)

table 11 shows that large banks like Bank of America have a higher share of conventional mortgages and a smaller share of lending in LMI neighborhoods compared with independent mortgage companies like Quicken Loans.

In addition to the variation across lender types, there is substantial variation in lending patterns within lender types. For example, regarding large banks, about 97 percent of JPMC's home-purchase loans were conventional, compared with about 82 percent for U.S. Bank. There is also significant variation among the large banks in the fraction of loans sold, with Wells Fargo selling almost 73 percent of its home-purchase originations, compared with less than 46 percent for Bank of America.

Table 11. Top 25 respondents in terms of total originations, 2016–*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	195	88.7	1.0	16.8	11.2	66.9	19.7	88.1
Quicken Loans, Inc.	Ind. mort. co.	325	67.2	.1	23.3	13.0	46.6	10.8	100.0
JPMorgan Chase Bank, NA	Large bank	102	97.2	.8	16.6	9.7	65.5	20.3	60.9
Bank of America, NA	Large bank	88	99.5	.1	19.1	11.5	63.1	24.9	61.0
Freedom Mortgage Corp.	Ind. mort. co.	123	10.6	.0	4.1	15.1	59.6	24.4	99.8
loanDepot.com	Ind. mort. co.	88	64.5	1.9	16.7	12.1	65.0	18.0	99.9
U.S. Bank, NA	Large bank	62	95.9	3.1	20.9	12.3	65.7	12.8	43.8
Caliber Home Loans, Inc.	Ind. mort. co.	31	72.0	.9	15.4	11.9	63.9	20.1	99.9
Flagstar Bank, FSB	Large bank	47	76.5	.7	13.1	11.0	61.7	27.3	97.6
United Shore Financial Services, LLC	Ind. mort. co.	42	96.1	.2	13.9	11.1	59.0	27.8	98.9
Fairway Independent Mortgage Corp.	Ind. mort. co.	13	80.3	.6	16.3	10.9	76.1	11.8	99.9
Nationstar Mortgage	Ind. mort. co.	59	72.2	1.2	9.8	17.2	59.9	25.6	99.9
Guild Mortgage Co.	Ind. mort. co.	17	68.8	.2	17.5	15.6	64.2	16.5	100.0
USAA Federal Savings Bank	Large bank	20	33.9	.1	6.4	9.5	60.7	18.4	90.9
Guaranteed Rate, Inc.	Ind. mort. co.	25	93.4	.4	11.3	9.7	75.4	13.1	100.0
PrimeLending, a PlainsCapital Company	Affiliated mort. co.	12	89.1	1.3	17.1	10.7	73.6	14.0	99.9
Navy Federal Credit Union	Credit union	17	49.8	2.2	12.9	11.1	54.4	25.6	62.8
PNC Bank, NA	Large bank	30	90.6	.0	25.3	12.1	67.1	11.6	58.6
Finance of America Mortgage	Ind. mort. co.	26	81.3	.0	14.4	13.8	62.6	24.3	99.9
Citibank, NA	Large bank	28	97.1	.0	19.9	12.2	56.3	20.0	82.1
Movement Mortgage, LLC	Ind. mort. co.	6	78.4	.5	19.6	12.5	75.8	17.5	77.3
Stearns Lending, Inc.	Ind. mort. co.	22	69.4	.2	14.4	13.6	62.6	24.4	100.0
SunTrust Mortgage, Inc.	Affiliated mort. co.	29	89.5	.1	18.9	10.6	63.8	15.0	99.1
Ditech Financial, LLC	Ind. mort. co.	34	94.9	.0	36.4	16.8	65.0	19.8	99.8
Mortgage Research Center, LLC	Ind. mort. co.	10	1.6	.0	7.3	12.1	62.9	20.6	99.9
Top 25 institutions	…	1,453	74.1	.6	17.3	12.4	60.1	18.5	88.9
All institutions	…	**3,338**	**75.7**	**1.5**	**16.9**	**12.0**	**65.2**	**17.6**	**84.0**

Finally, the composition of borrowers varied across the top 25 institutions, both within and across lender types. For some institutions, more than 30 percent of home-purchase borrowers were LMI, while at other institutions, fewer than 20 percent of borrowers were in that category.[52] Although it is difficult to know precisely why such variation exists, these differences could reflect different business strategies or different customer demands in the markets and geographic regions the institutions serve, among other possibilities.

[52] 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.

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:[53]

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

[53] Changes to Regulation C passed in 2015 will affect the information that covered institutions are required to report beginning with the 2018 data. For a description of these changes, see Consumer Financial Protection Bureau, "New Rule Summary," in note 46 of the main text.

- 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

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Changes in U.S. Family Finances from 2013 to 2016: Evidence from the Survey of Consumer Finances

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The Federal Reserve Board's triennial Survey of Consumer Finances (SCF) collects information about family incomes, net worth, balance sheet components, credit use, and other financial outcomes.[1] The 2016 SCF reveals broad-based gains in income and net worth since the previous time the survey was conducted, in 2013.[2]

During the three years between the beginning of the 2013 and 2016 surveys, real gross domestic product grew at an annual rate of 2.2 percent, the civilian unemployment rate fell from 7.5 percent to 5 percent, and the annual rate of change in the consumer price index averaged 0.8 percent.[3] These changes in aggregate economic performance led to broad-based income gains across many different types of families. Several observations from the SCF about family incomes stand out:[4]

- Between 2013 and 2016, median family income grew 10 percent, and mean family income grew 14 percent (figure 1).
- Families throughout the income distribution experienced gains in average real incomes between 2013 and 2016, reversing the trend from 2010 to 2013, when real incomes fell or remained stagnant for all but the top of the income distribution.
- Families at the top of the income distribution saw larger gains in income between 2013 and 2016 than other families, consistent with widening income inequality.
- Families without a high school diploma and nonwhite and Hispanic families experienced larger proportional gains in incomes than other families between 2013 and 2016, although more-educated families and white non-Hispanic families continue to have higher incomes than other families.

The improvements in economic activity along with rising house and corporate equity prices combined to support increases in average and median family net worth (wealth) between 2013 and 2016 after both measures remained stagnant between 2010 and 2013. The national CoreLogic Home Price Index increased at an annual rate of 6.5 percent between

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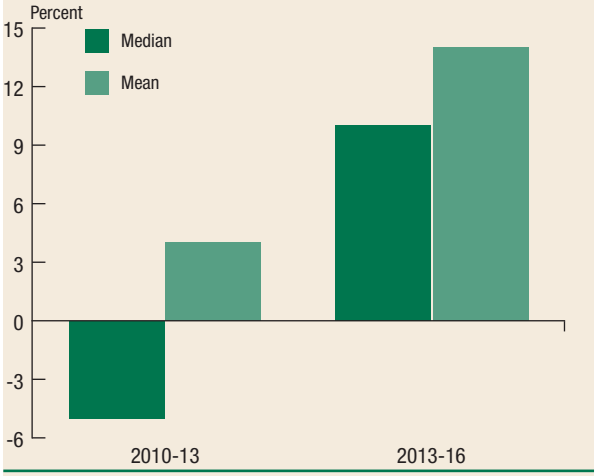
1 See box 1, "The Data Used in This Article," for a general description of the SCF data. The appendix to this article provides a summary of key technical aspects of the survey.

2 For a detailed discussion of the 2013 survey as well as references to earlier surveys, see Jesse Bricker, Lisa J. Dettling, Alice Henriques, Joanne W. Hsu, Kevin B. Moore, John Sabelhaus, Jeffrey Thompson, and Richard Windle (2014), "Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances," *Federal Reserve Bulletin,* vol. 100 (September), https://www.federalreserve.gov/pubs/bulletin/2014/pdf/scf14.pdf.

3 Changes in aggregate statistics reported here are measured from March to March or first quarter to first quarter of the respective survey years, just prior to the beginning of the field period for each survey.

4 Income is measured for the year before the survey.

Figure 1. Change in median and mean family incomes, 2010–16 surveys



Note: Changes are based on inflation-adjusted dollars.
Source: Here and in subsequent figures and tables, Federal Reserve Board, Survey of Consumer Finances.

early 2013 and early 2016, greatly surpassing the rate of consumer price inflation. The value of corporate equity holdings, as measured by major stock price indexes, grew at around a 9 percent annual rate between the two surveys, leading to large inflation-adjusted increases in equity holdings.[5] These price trends contributed to the following changes in the distribution of net worth across the population:

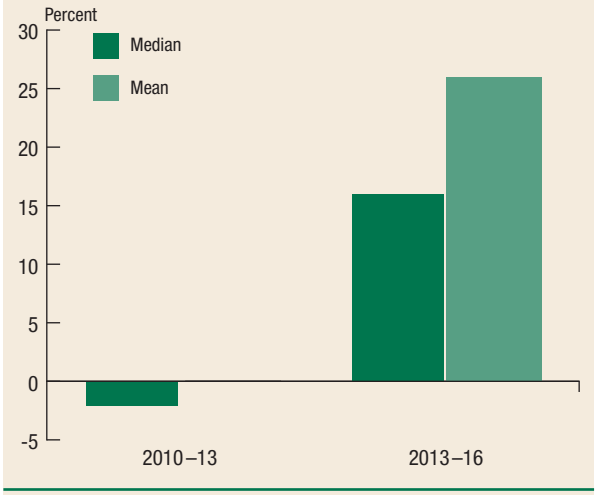
- Overall, between 2013 and 2016, median net worth grew 16 percent, and mean net worth grew 26 percent (figure 2).
- Families at the top of the income and wealth distributions experienced large gains in mean and median net worth after experiencing modest gains between 2010 and 2013.
- Families near the bottom of the income and wealth distribution experienced large gains in mean and median net worth after experiencing large declines between 2010 and 2013.
- Families without a college education and nonwhite and Hispanic families experienced larger proportional increases in net worth than other types of families, although more-educated families and white non-Hispanic families continue to have higher wealth than other families.
- Homeownership rates decreased between 2013 and 2016 to 63.7 percent, continuing a decline from their peak of 69.1 percent in 2004. For families that own a home, mean net housing values (value of a home minus outstanding mortgages) rose.
- Retirement plan participation and retirement account asset values rose between 2013 and 2016 for families across the income distribution, with the largest proportional increases in participation occurring among families in the bottom half of the income distribution.
- Ownership rates and the value of direct and indirect holdings of corporate equities increased between 2013 and 2016, with the largest proportional increase in ownership among families in the bottom and upper-middle parts of the income distribution.
- Business ownership increased from 2013 to 2016 to 13.0 percent, nearing its 2010 level. These gains were broad based, occurring throughout the income distribution, with the largest proportional gains occurring among the highest earners.

The consumer loan interest rate environment was about the same in 2013 and 2016: Typical fixed-rate 30-year mortgage interest rates rose slightly from 3.6 percent to 3.7 percent, new vehicle loan interest rates fell from 4.7 percent to 4.2 percent, and credit card interest rates rose from 11.9 percent to 12.3 percent. At the same time, while the proportion of families with any debt increased, debt burdens of families mostly decreased:

[5] Between March 2016 and March 2017, roughly the 2016 SCF field period, the national CoreLogic Home Price Index grew an additional 5.8 percent and the Standard and Poor's S&P 500 stock price index increased an additional 17 percent. These price changes emphasize the need to evaluate SCF findings in the appropriate time frame.

- Overall, debt obligations fell between 2013 and 2016: Median debt declined 4 percent, and mean debt decreased 2 percent, for families with debt.
- For the median family with debt, debt burdens also fell between 2013 and 2016: Leverage ratios, debt-to-income ratios, and payment-to-income ratios all fell. The fraction of families with payment-to-income ratios greater than 40 percent declined to 7.0 percent, the lowest level seen since 2001.
- Some of the decline in debt can be explained by the decline in the fraction of families with home-secured debt, which fell from 42.9 percent to 41.9 percent, a decline that is comparable to the size of the drop in homeownership.

Figure 2. Change in median and mean family net worth, 2010–16 surveys



Note: Changes are based on inflation-adjusted dollars.

- Between 2013 and 2016, the fraction of families with credit card debt increased. Although median and mean balances for families with credit card debt both fell 3 percent, the fraction of families that pay off credit cards every month decreased.
- Although many measures of debt and debt obligations indicate that debt has fallen, education debt increased substantially between 2013 and 2016.
- In 2016, 20.8 percent of families were considered credit constrained—those who reported being denied credit in the past year, as well as those who did not apply for credit for fear of being denied in the past year.

Income

Median and mean inflation-adjusted before-tax family incomes increased between 2013 and 2016.[6] Overall, median income rose 10 percent between 2013 and 2016, from $48,100 to $52,700 (table 1). Mean income increased 14 percent, from $89,900 to $102,700. The relatively larger rise in mean income relative to median income is consistent with a widening income distribution during this period.[7]

Over the preceding three-year period, from 2010 to 2013, median income fell 5 percent, while mean income rose 4 percent, after both median and mean income fell sharply between 2007 and 2010. The patterns seen in the 2007–10 and 2010–13 periods stood in stark contrast to preceding surveys, and the recent growth in mean and median incomes

[6] To measure income, the interviewers request information on the family's cash income, before taxes, for the full calendar year preceding the survey. The components of income in the SCF are wages, self-employment and business income, taxable and tax-exempt interest, dividends, realized capital gains, food stamps and other related support programs provided by government, pensions and withdrawals from retirement accounts, Social Security, alimony and other support payments, and miscellaneous sources of income for all members of the primary economic unit in the household.

[7] Box 3, "Recent Trends in the Distribution of Income and Wealth," discusses trends in income and wealth shares, as measured by the SCF, since 1989.

Table 1. Before-tax median and mean family income, by selected characteristics of families, 2013 and 2016 surveys

Thousands of 2016 dollars, except as noted

Family characteristic	Median income			Mean income		
	2013	2016	Percent change 2013–16	2013	2016	Percent change 2013–16
All families	**48.1**	**52.7**	**10**	**89.9**	**102.7**	**14**
	(.6)	(.7)		(1.6)	(2.0)	
Percentile of usual income						
Less than 20	15.7	16.2	3	15.7	17.1	9
20–39.9	31.4	33.1	5	31.4	34.2	9
40–59.9	50.2	54.1	8	51.1	54.8	7
60–79.9	80.3	86.1	7	82.5	94.1	14
80–89.9	125.5	135.3	8	127.3	139.4	10
90–100	230.1	251.5	9	409.9	487.5	19
Age of head (years)						
Less than 35	36.4	40.5	11	50.2	56.4	12
35–44	62.8	65.8	5	105.2	97.1	-8
45–54	62.8	69.5	11	107.1	131.4	23
55–64	56.8	61.0	7	113.5	141.3	24
65–74	47.4	50.1	6	101.9	106.6	5
75 or more	29.4	40.0	36	54.8	77.1	41
Education of head						
No high school diploma	23.1	26.5	15	31.0	38.8	25
High school diploma	38.1	40.5	6	52.3	57.2	9
Some college	45.0	47.7	6	67.2	67.4	0
College degree	90.2	92.1	2	165.1	189.7	15
Race or ethnicity of respondent						
White non-Hispanic	57.5	61.2	6	107.8	123.4	14
Black or African-American non-Hispanic	32.2	35.4	10	44.3	54.0	22
Hispanic or Latino	33.5	38.5	15	45.4	57.3	26
Other or multiple race	42.5	50.6	19	72.7	86.9	20
Housing status						
Owner	65.3	71.2	9	115.9	134.0	16
Renter or other	28.7	31.6	10	41.3	47.8	16
Urbanicity						
Metropolitan statistical area (MSA)	50.2	55.2	10	95.2	109.7	15
Non-MSA	37.8	38.7	2	54.3	54.1	0
Percentile of net worth						
Less than 25	24.5	25.3	3	32.4	34.2	6
25–49.9	39.8	42.0	6	48.3	50.9	5
50–74.9	57.5	64.8	13	67.9	74.9	10
75–89.9	90.2	90.8	1	103.1	113.4	10
90–100	189.1	215.9	14	372.4	456.9	23

Note: Income is measured for the year prior to the survey. See the appendix for details on standard errors (shown in parentheses below the first row of data for the means and medians).

Box 1. The Data Used in This Article

Data from the Survey of Consumer Finances (SCF) are the basis of the analysis presented in this article. The SCF is a triennial interview survey of U.S. families sponsored by the Board of Governors of the Federal Reserve System with the cooperation of the U.S. Department of the Treasury. Since 1992, data for the SCF have been collected by NORC, a research organization at the University of Chicago. The majority of the data are collected between May and December of each survey year.

The majority of statistics included in this article are related to characteristics of "families." As used here, this term is more comparable with the U.S. Census Bureau definition of "households" than with its use of "families," which excludes the possibility of one-person families. The appendix provides full definitions of "family" for the SCF and the associated family "head," along with how demographic and economic groups are constructed for this article.

The survey collects information on families' total income before taxes for the calendar year preceding the survey. But the bulk of the data cover the status of families as of the time of the interview, including detailed information on their balance sheets and use of financial services as well as on their pensions, labor force participation, and demographic characteristics. Most of the core survey questionnaire has changed in only minor ways relevant to this article since 1989. For 2016, the survey underwent a substantial redesign that updated and added new questions to the interview (see box 2, "New Questions from the 2016 Survey of Consumer Finances Redesign"); however, every effort was made to ensure the maximum degree of comparability of the data over time.

The need to measure financial characteristics imposes special requirements on the sample design for the survey. The SCF is expected to provide reliable information both on attributes that are broadly distributed in the population (such as homeownership) and on those that are highly concentrated in a relatively small part of the population (such as closely held businesses). To address this requirement, the SCF employs a sample design consisting of two parts: a standard, geographically based random sample and a special oversample of relatively wealthy families. Weights are used to combine information from the two samples to make estimates for the full population. In the 2016 survey, 6,254 families were interviewed, and in the 2013 survey, 6,026 were interviewed.

This article draws principally upon the final data from the 2016 and 2013 surveys. To provide a larger context, some information is also included from the final versions of earlier surveys.[1] Differences between estimates from earlier surveys as reported here and as reported in earlier *Federal Reserve Bulletin* articles are attributable to additional statistical processing, correction of minor data errors, revisions to the survey weights, conceptual changes in the definitions of variables used in the articles, and adjustments for inflation. In this article, all dollar amounts from the SCF are adjusted to 2016 dollars using the "current methods" version of the consumer price index for all urban consumers (CPI-U-RS). The appendix provides additional detail on the adjustments.

The principal detailed tables (tables 1 through 4) describing income, net worth, and asset and debt holdings focus on the percentage of various groups that have such items and/or the median and mean holding for those who have them.[2] Generally, when one deals with data that exhibit very large values for a relatively small part of the population—as is the case for many of the items considered in this article—estimates of the median are often statistically less sensitive to such outliers than are estimates of the mean. At the same time, means are generally more useful for comparing across population subgroups because every member of the group contributes equally to the overall average.

One liability of using the median as a descriptive device is that medians are not additive—that is, the sum of the medians of two items for the same population is not generally equal to the median of the sum (for example, median assets less median liabilities does not equal median net worth). In contrast, means for a common population are additive. In the context of this article, where a comparable median and mean are given, the gain or loss of the mean relative to the median may usually be taken as indicative of the relative change at the top of the distribution; for example, when the mean decreases more rapidly than the

continued on next page

Box 1. The Data Used in This Article—*continued*

median, it is typically taken to indicate that the values in the upper part of the distribution fell more than those in the lower part of the distribution.

To provide a measure of the statistical significance of the developments discussed in this article, standard errors caused by sampling and imputation for missing data are given for selected estimates. Space limits prevent the inclusion of the standard errors for all estimates. Although the statistical significance of the results is not directly addressed, the article highlights findings that are significant or are interesting in a broader context.

[1] Additional information about the survey is available on the Board's website at https://www.federalreserve.gov/econresdata/scf/scfindex.htm.

[2] The median of a distribution is defined as the value at which equal parts of the population considered have values that are larger or smaller.

between 2013 and 2016 represents a return to a general pattern of substantial increases in both the median and the mean between surveys dating back to the early 1990s.[8]

Some predictable patterns in income levels across demographic groups are observed in the 2016 SCF, and those patterns are largely consistent with prior surveys.[9] Across age groups, median and mean incomes show a life-cycle pattern, rising to a peak in the middle age groups and then declining for groups that are older and increasingly more likely to be retired. Income also shows a strong positive association with education; in particular, incomes for families headed by a person who has a college degree tend to be substantially higher than for those with lower levels of schooling. Incomes of white non-Hispanic families are substantially higher than those of all three nonwhite and Hispanic groups: black or African-American non-Hispanic, Hispanic or Latino, and other or multiple race families.[10] Income is also higher for homeowners and for families living in urban areas than for other families, and income is systematically higher for groups with greater net worth.[11]

Changes in Income by Family Characteristics

Median and mean incomes displayed broad-based gains between 2013 and 2016 across different types of families, whether grouped by economic characteristics such as income, wealth, urbanicity, and homeowner status, or by purely demographic variables such as age, education, or race and ethnicity.

For a given family, income at a particular time may not be indicative of its "usual" income. Unemployment, a bonus, a capital loss or gain, or other factors may cause income to deviate temporarily from the usual amount.[12] Across the distribution of families grouped by usual income, all quintiles saw increases in median income between 2013 and 2016, with

[8] Between 1992 and 2007, mean and median income generally increased between survey waves. Mean income increased, on average, 8.0 percent between survey waves, and median income increased, on average, 4.2 percent between survey waves. The period from 2001 to 2004 is the only exception, when mean income fell modestly.

[9] Tabulated data from the survey beyond that presented in this article are available at https://www.federalreserve.gov/econres/scfindex.htm. This information includes some alternative versions of the tables in this article, including tables that match the structure used in earlier versions of this publication. For those who wish to make further alternative calculations, this website provides a variety of data files as well as access to online tabulation software that may be used to create customized tables based on the variables analyzed in this article.

[10] The appendix to this article provides information on racial and ethnic identification in the SCF.

[11] In this article, a family is considered a homeowner if at least one person in the family owns at least some part of the family's primary residence.

[12] Box 4, "Usual versus Actual Income," discusses income variability and the implications of categorizing families by the two income measures.

Box 2. New Questions from the 2016 Survey of Consumer Finances Redesign

In order to stay up-to-date with new developments in family finances, the Survey of Consumer Finances (SCF) underwent a substantial redesign in 2016. Despite these changes, the core questionnaire remains comparable with earlier surveys. The goals of the redesign were to improve the collection of data on new developments key to family finances, improve coordination and integration with other household surveys and administrative data sources, reduce respondent burden, and generally improve upon the quality of data collected. As a part of the redesign, the questionnaire underwent changes in several areas, including streamlining of existing modules and the introduction of new questions.[1] This discussion briefly highlights three new topics that were added to the survey in 2016: financial literacy, families' response to hypothetical income shortfalls, and parental educational attainment.

Financial Literacy

Financial literacy and financial knowledge provide context for understanding a family's responses to their interview questions, financial decisions, and overall economic circumstances. The 2016 survey included four new questions designed to capture the respondent's level of financial literacy and self-assessed financial knowledge.[2]

The first question asks respondents to rate their own level of knowledge about personal finance on a 0 to 10 scale, where a response of 0 indicates that the respondent is "not knowledgeable at all" and a response of 10 indicates that the respondent is "very knowledgeable." This question is designed to elicit respondents' subjective opinions on their own knowledge, based on their own conceptualization of what financial knowledge entails.

Figure A. Objective financial literacy by self-rated financial knowledge, 2016 survey

Three additional questions were designed to measure concepts fundamental to many financial decisions, including saving, borrowing, and investing. One question jointly measures a respondent's knowledge of the concept of stocks and of stock mutual funds, along with risk diversification. The second question measures numeracy in the context of interest rate compounding. A third question measures understanding of inflation, also in the context of saving.[3] The questions employ a multiple-choice format that is intended to focus on the basic concepts without requiring respondents to perform precise calculations. Respondents also have the option of responding that they "don't know" or skipping any question without expla-

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Box 2. New Questions from the 2016 Survey of Consumer Finances Redesign—*continued*

nation. Overall, 43 percent of respondents provided correct answers to all three questions, 36 percent had two correct answers, and 16 percent had one correct answer.

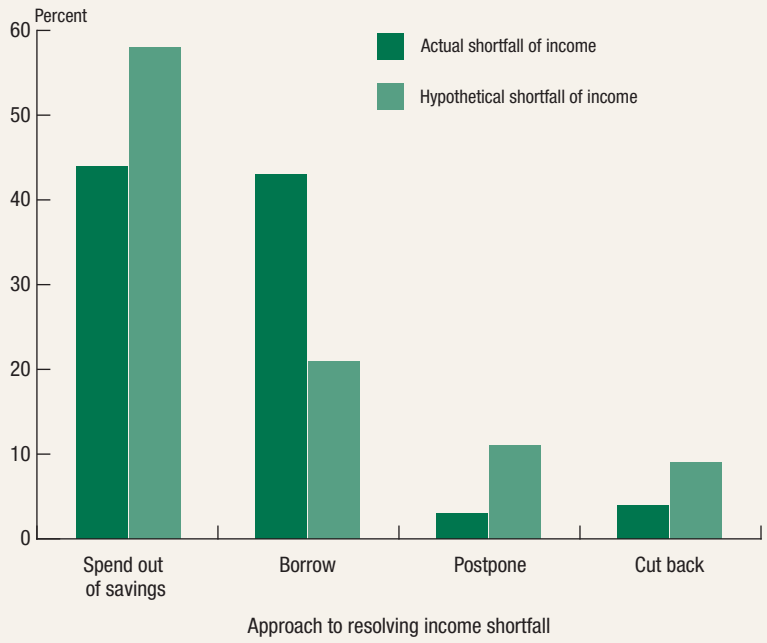
Respondents who rate their own knowledge of personal finance more highly tend to provide more correct answers to objective financial literacy questions (figure A). For respondents who rated their knowledge of personal finance as 1 out of 10, the average number of correct answers was just over 1.5 out of 3. For those with a self-rating of 9 out of 10, the average number of correct answers was about 2.4. However, respondents who gave themselves the maximum self-rating of 10 provided fewer correct answers than those with a self-rating of 9, and those with a self-rating of 0 gave more correct answers, on average, than those with a self-rating of 1.

Responses to Hypothetical Income Shortfalls

Understanding how families respond to income shortfalls is important for understanding borrowing and spending behavior in the presence of financial constraints. Since 1992, the SCF has included questions identifying families that spent more than they earned in income over the previous calendar year and, for those families, the primary way that they resolved the shortfall. A new question was added to the 2016 survey that asked respondents whose income was equal to or greater than their spending how they would resolve a *hypothetical* shortfall.

In 2016, 15 percent of families report spending more than they received in income. The most common approaches for resolving income shortfalls for families that experienced a shortfall were spending out of savings or investments (44 percent) and borrowing, including the use of credit cards (43 percent) (figure B).[4]

Figure B. Main approaches to resolving income shortfall by whether a family actually experienced an income shortfall, 2016 survey



The new question on the 2016 survey asks, "If tomorrow you experienced a financial emergency that left you unable to pay all of your bills, how would you deal with it?" Approaches to dealing with shortfalls are broadly similar across families who actually did spend more

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Box 2. New Questions from the 2016 Survey of Consumer Finances Redesign—*continued*

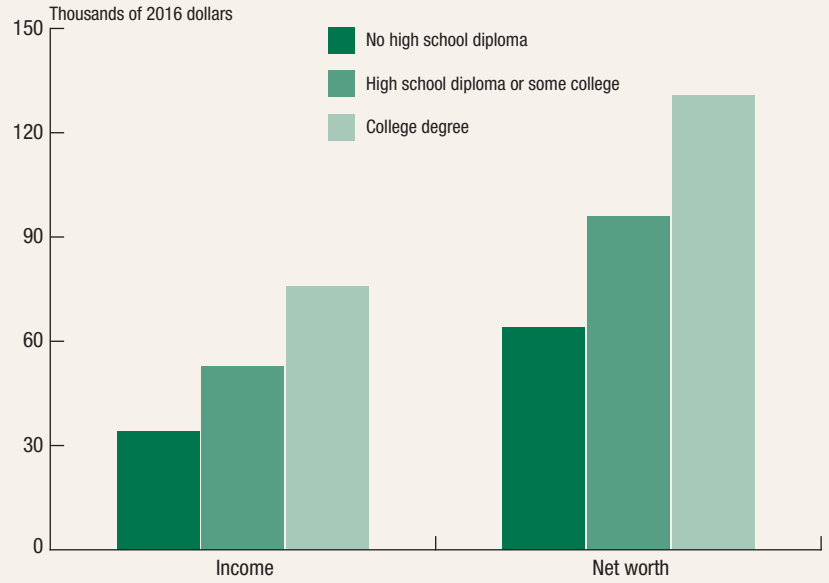
than their income and those who did not. The most common proposed way of dealing with a hypothetical shortfall is to spend out of savings and investments, chosen by 58 percent of respondents, followed by borrowing, which was chosen by 21 percent of respondents.

Parental Educational Attainment

The level of education obtained by one's parents is one measure of socioeconomic status that can be used to investigate economic mobility across generations and the intergenerational persistence of economic resources. In 2016, the SCF began asking families about the highest level of education obtained by their parents.

Higher levels of parental education are associated with higher incomes and wealth-holding (figure C). The typical family in which at least one of the respondent's parents has a four-year college degree had a little more than double the income and wealth of families in which neither of the respondent's parents had a high school diploma. However, the relationship between parental education and income and wealth is not as strong as the relationship between a respondent's own education and income and wealth. In 2016, the typical family headed by respondents with a college degree had over 3 times more income and almost 13 times more wealth than families headed by respondents without a high school diploma (tables 1 and 2 of the main text).

Figure C. Median income and net worth by parental educational attainment, 2016 survey



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[1] A complete list of all of the changes to the 2016 SCF, including the wording of all new and revised questions, can be found at https://www.federalreserve.gov/econres/scfindex.htm.

[2] These questions are asked only of the respondent of the survey (who is not necessarily the household head) and as such reflect an *individual respondent's* financial literacy, rather than the family as a whole.

[3] The three questions, designed by Annamaria Lusardi and Olivia Mitchell, have been fielded in identical or similar form on surveys both in the United States, including the Health and Retirement Study, the National Longitudinal Study of Youth, and the National Financial Capabilities Study, and internationally, including the Bank of Italy's Survey on Household Income and Wealth and the Dutch Central Bank's Household Survey. For more information about these questions, see Annamaria Lusardi and Olivia S. Mitchell (2011), "Financial Literacy and Retirement Planning in the United States," *Journal of Pension Economics and Finance,* vol. 10 (October), pp. 509–25.

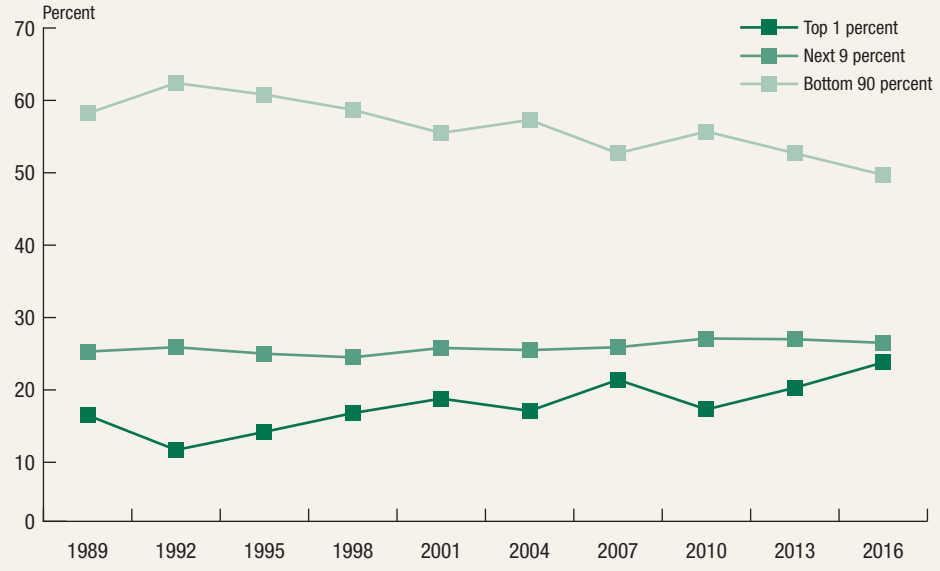
[4] Spent out of savings includes spent out of savings/investments and sold assets. Families could also respond that they did one of the following: got help from others, got additional income, bankruptcy, renegotiated payments, and nothing. Because these options are not included in figure B, the categories listed do not sum to 100.

Box 3. Recent Trends in the Distribution of Income and Wealth

The distribution of income and wealth has grown increasingly unequal in recent years. The Survey of Consumer Finances (SCF) has played a crucial role in our understanding of these trends because the survey collects data on net worth in addition to income, and it pays particular attention to sampling affluent families.[1]

Data from the 2016 SCF indicate that the shares of income and wealth held by affluent families have reached historically high levels since the modern SCF began in 1989. The share of income received by the top 1 percent of families was 20.3 percent in 2013 and rose to 23.8 percent in 2016 (figure A). The top 1 percent of families now receives nearly as large a share of total income as the next highest 9 percent of families combined (percentiles 91 through 99), who received 26.5 percent of all income. This share has remained fairly stable over the past quarter of a century. Correspondingly, the rising income share of the top 1 percent mirrors the declining income share of the bottom 90 percent of the distribution, which fell to 49.7 percent in 2016.

Figure A. Income shares by income percentile, 1989–2016 surveys



The wealth share of the top 1 percent climbed from 36.3 percent in 2013 to 38.6 percent in 2016, slightly surpassing the wealth share of the next highest 9 percent of families combined (figure B). After rising over the second half of the 1990s and most of the 2000s, the wealth share of the next highest 9 percent of families has been falling since 2010, reaching 38.5 percent in 2016. Similar to the situation with income, the wealth share of the bottom 90 percent of families has been falling over most of the past 25 years, dropping from 33.2 percent in 1989 to 22.8 percent in 2016. Although the SCF measure of wealth is fairly comprehensive, some assets that may be widely held, such as defined-benefit

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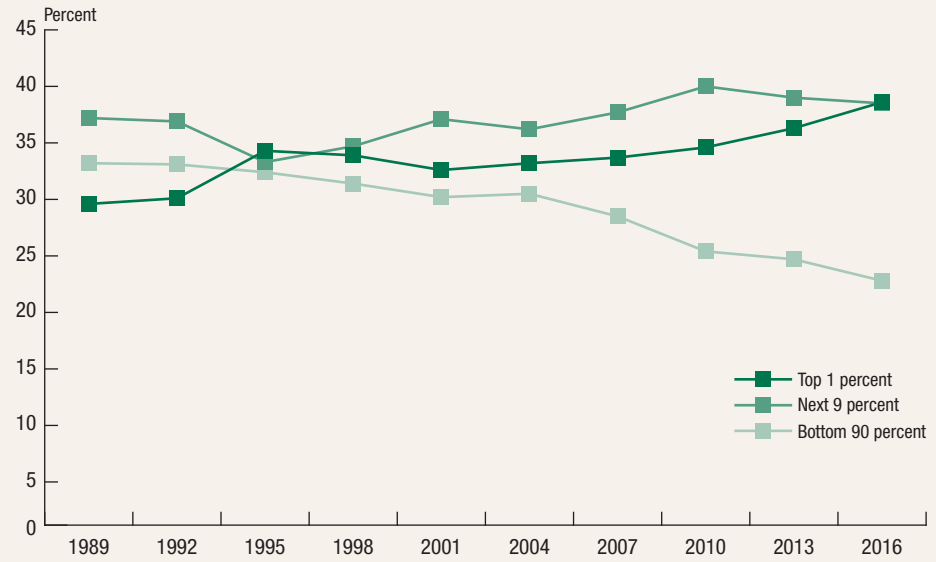
families in higher quintiles generally seeing larger gains.[13] Median income increased 9 percent for the top income decile, between 5 and 8 percent for the middle three quintiles, and 3 percent for the bottom income quintile. Mean income also increased for all quintiles, with gains between 7 and 14 percent for the bottom four quintiles. The top decile's mean income rose 19 percent. These patterns are consistent with a widening of the income distribution between 2013 and 2016.

[13] Each quintile represents 20 percent of the population. See the appendix for information about distribution group cutoffs.

Box 3. Recent Trends in the Distribution of Income and Wealth—*continued*

pension and Social Security wealth, are not included in net worth definitions because of the many assumptions required to estimate their values.[2]

Figure B. Wealth shares by wealth percentile, 1989–2016 surveys



[1] See the sampling techniques section of the appendix for further discussion of the SCF's ability to capture affluent families. A more detailed discussion can be found in Jesse Bricker, Alice Henriques, Jacob Krimmel, and John Sabelhaus (2016), "Measuring Income and Wealth at the Top Using Administrative and Survey Data," *Brookings Papers on Economic Activity,* Spring, pp. 261–321, https://www.brookings.edu/wp-content/uploads/2016/03/brickertextspring16bpea.pdf.

[2] For examples of what the distribution of wealth would look like with these assets included, see Sebastian Devlin-Foltz, Alice Henriques, and John Sabelhaus (2016), "Is the U.S. Retirement System Contributing to Rising Wealth Inequality?" *Russell Sage Foundation Journal of the Social Sciences,* vol. 2 (October), pp. 59–85, and Sebastian Devlin-Foltz, Alice Henriques, and John Sabelhaus (2016), "The Role of Social Security in Overall Retirement Resources: A Distributional Perspective," FEDS Notes (Washington: Board of Governors of the Federal Reserve System, July 29), https://www.federalreserve.gov/econresdata/notes/feds-notes/2016/role-of-social-security-in-overall-retirement-resources-a-distributional-perspective-20160729.html.

All age groups experienced increases in median income between 2013 and 2016. Mean incomes also increased for nearly all age groups, with the exception of families headed by those aged 35 to 44. Both median and mean incomes increased most for the oldest families, whose median and mean incomes rose 36 percent and 41 percent, respectively.

Between 2013 and 2016, both median and mean income grew for all families grouped by educational attainment. The highest growth rates occurred among families without a high school diploma, whose median and mean income grew 15 percent and 25 percent, respectively. Median income among families with a college degree grew only a modest 2 percent, while mean income among those families grew 15 percent. These patterns differ from the 2010–13 period, when mean and median incomes fell for families without a college degree and rose for families with a college degree.[14] However, despite experiencing relatively large

[14] Between 2010 and 2013, median and mean incomes fell 9 percent and 17 percent, respectively, for families without a high school diploma, 6 percent and 2 percent, respectively, for families with a high school diploma, and 11 percent and 3 percent, respectively, for families with some college. Median and mean income rose 1 percent and 5 percent, respectively, for families with a college degree between 2010 and 2013.

proportional gains, disparities in income by education persist: Median incomes for college-educated families are more than twice those of families without a high school diploma.

Over the 2013–16 period, mean and median incomes grew for all families grouped by race or ethnicity.[15] Large income gains occurred among nonwhite and Hispanic groups: black or African-American non-Hispanic and Hispanic or Latino families' median incomes grew 10 percent and 15 percent, respectively, and mean income grew 22 percent and 26 percent, respectively. Large gains (19 to 20 percent) also occurred for families identified as other or multiple races. White non-Hispanic families experienced smaller gains in median and mean income, of 6 percent and 14 percent, respectively. These patterns differ from the 2010–13 period, when mean and median incomes fell for all race or ethnicity groups except white non-Hispanic families.[16] Despite nonwhite and Hispanic families experiencing relatively larger proportional gains, disparities between white non-Hispanic families and nonwhite and Hispanic families persist: Median incomes for white non-Hispanic families are between 20 and 75 percent higher than for families in all nonwhite and Hispanic groups.

Both homeowners and renters and other non-homeowners experienced income growth between 2013 and 2016. Median incomes increased between 9 and 10 percent, respectively. Mean incomes increased 16 percent during this period to $134,000 for homeowners and $47,800 for renters and other non-owners.

The income gap between families living in metropolitan statistical areas (MSAs) and non-MSAs widened between 2013 and 2016. Families living in MSAs experienced gains in median and mean income (10 percent and 15 percent, respectively), while families in other areas experienced a modest 2 percent increase in median income and almost no change in mean income. In 2016, mean incomes for families in MSAs were more than double those of families in non-MSAs.

Grouping families by percentile of net worth (measured concurrently in the SCF), both mean and median income grew across the distribution. For families in the lowest quartile of net worth, median income grew 3 percent and mean income grew 6 percent, to $25,300 and $34,200, respectively. Families in the second and third quartiles also saw growth in mean and median incomes, rising between 5 and 13 percent. In 2016, median income reached $42,000 for those in the second quartile of net worth and $64,800 for those in the third quartile. The top decile of net worth experienced a 14 percent increase in median income and a 23 percent increase in mean income.

Net Worth

Median and mean inflation-adjusted net worth—the difference between families' gross assets and their liabilities—rose between 2013 and 2016 (table 2). Overall, the median net worth of all families rose 16 percent to $97,300, and mean net worth rose 26 percent to $692,100. These patterns differed from the past two intervals recorded by the SCF, as there was little change in median or mean net worth in the 2010–13 period and declines in the 2007–10 period.[17] These patterns in net worth over the past several surveys were largely driven by the Great Recession and subsequent recovery in house and other asset prices.

[15] An upcoming FEDS Note discusses differences in income and wealth-holding by race and ethnicity in more detail and can be found at https://www.federalreserve.gov/econres/notes/feds-notes/default.htm.

[16] See the appendix for more on the racial/ethnic categories used in this article. In versions of this article for earlier years of the SCF, nonwhite and Hispanic families were not separately tabulated by race/ethnicity.

[17] Between the 2010 and 2013 surveys, median net worth decreased 2 percent and mean net worth was unchanged. Between 2007 and 2010, median net worth declined 40 percent and mean net worth declined 15 percent.

Table 2. Family median and mean net worth, by selected characteristics of families, 2013 and 2016 surveys

Thousands of 2016 dollars, except as noted

Family characteristic	Median net worth			Mean net worth		
	2013	2016	Percent change 2013–16	2013	2016	Percent change 2013–16
All families	**83.7**	**97.3**	**16**	**551.3**	**692.1**	**26**
	(3.0)	(2.8)		(10.6)	(12.9)	
Percentile of usual income						
Less than 20	6.6	7.0	6	66.6	77.5	16
20–39.9	28.8	30.0	4	116.7	120.5	3
40–59.9	57.1	88.6	55	169.9	227.8	34
60–79.9	166.3	170.6	3	361.8	370.7	2
80–89.9	296.9	396.5	34	651.1	800.5	23
90–100	1,161.0	1,629.0	40	3,430.7	4,526.6	32
Age of head (years)						
Less than 35	10.7	11.1	4	77.8	76.2	-2
35–44	48.2	59.8	24	358.0	288.7	-19
45–54	108.6	124.2	14	546.6	727.5	33
55–64	171.1	187.3	9	823.3	1,167.4	42
65–74	239.3	224.1	-6	1,089.8	1,066.0	-2
75 or more	200.8	264.8	32	665.3	1,067.0	60
Education of head						
No high school diploma	17.7	22.8	29	112.2	157.2	40
High school diploma	54.1	67.1	24	205.8	249.6	21
Some college	52.3	66.1	26	328.3	340.6	4
College degree	285.6	292.1	2	1,219.7	1,511.1	24
Race or ethnicity of respondent						
White non-Hispanic	146.4	171.0	17	727.8	933.7	28
Black or African-American non-Hispanic	13.6	17.6	29	102.1	138.2	35
Hispanic or Latino	14.2	20.7	46	111.0	191.2	72
Other or multiple race	42.5	64.8	52	383.6	457.8	19
Housing status						
Owner	201.5	231.4	15	807.3	1,034.2	28
Renter or other	5.5	5.2	-5	72.5	91.1	26
Urbanicity						
Metropolitan statistical area (MSA)	87.3	99.0	13	593.2	751.3	27
Non-MSA	70.1	87.9	25	269.4	276.3	3
Percentile of net worth						
Less than 25	†	.2	…	–13.8	–12.1	12
25–49.9	32.3	39.8	23	37.0	44.7	21
50–74.9	173.3	192.0	11	183.2	204.1	11
75–89.9	521.6	605.0	16	563.2	659.3	17
90–100	1,930.0	2,387.5	24	4,150.0	5,336.0	29

Note: Net worth is the difference between families' gross assets and their liabilities. See appendix for definitions of asset and liability categories used in the SCF, as well as details on standard errors (shown in parentheses below the first row of data for the means and medians).

† Less than 0.05 ($50).

... Not applicable.

Declines in house prices in particular had a disproportionate effect on families in the middle of the net worth distribution, whose wealth portfolio is dominated by housing. Divergent trends in median and mean net worth over the past few surveys suggest substantial heterogeneity in wealth changes across families.[18]

The median and mean values of wealth rise systematically with usual income, a relationship reflecting a higher level of saving among higher-income families, and the feedback effect of higher incomes from the accumulated assets.[19] Median and mean family net worth generally increase with age, with a plateau or modest decreases for the oldest age groups relative to the near-retirement age groups, a pattern reflecting life-cycle saving behavior. Wealth shows strong differentials across groups defined in terms of education, racial or ethnic background, urbanicity, and housing status; these differentials generally mirror those for income, but the wealth differences are larger.

Changes in Net Worth by Family Characteristics

Families with higher levels of usual income reported greater levels of net worth, but changes in net worth varied substantially across the usual income distribution. Median net worth rose between 2013 and 2016 for most usual income groups, rising between 3 and 55 percent. Those in the lowest usual income quintile saw a modest gain in median net worth (6 percent, from $6,600 to $7,000) but a larger proportional increase in mean net worth (16 percent, from $66,600 to $77,500). Families in the third quintile of usual income saw a large increase in both median and mean net worth (55 percent and 34 percent, respectively). Families in the fourth quintile experienced only modest gains between 2013 and 2016. However, this quintile was the only one to experience gains between 2010 and 2013.[20] Those at the top of the usual income distribution experienced large increases in median and mean net worth, which rose 40 percent and 32 percent, respectively.

Nearly all age groups experienced increases in median net worth between 2013 and 2016, with the exception of families between ages 65 and 74, who experienced a modest decline. Mean net worth grew for about half of the age groups. Families under 45 and families between ages 65 and 74 experienced declines in mean net worth between 2013 and 2016. The largest gains in both median and mean net worth occurred among the oldest families, who experienced a 32 percent increase in median net worth and a 60 percent increase in mean net worth. These patterns by age group were generally the opposite of the 2010–13 period, when mean and median net worth increased for families under age 45, decreased for those between ages 45 and 64, increased for those between ages 65 and 74, and decreased for the oldest group.

From 2013 to 2016, median and mean net worth increased for all types of households grouped by educational attainment. The largest gains in median net worth occurred among families without a college degree, whose median net worth increased between 24 and 29 percent. For mean net worth, the largest gains occurred among families without a high school diploma, who experienced a 40 percent increase in mean net worth. In contrast, families with a college degree saw a modest 2 percent gain in median net worth and a 24 percent gain in mean net worth. Although families without a college degree experienced strong gains in median and mean net worth over the recent period, the differences in the level of net worth for families with and without a college degree was little changed.

[18] Box 3, "Recent Trends in the Distribution of Income and Wealth," discusses shares of income and wealth, as measured by the SCF, since 1989.

[19] See box 5, "Saving Behavior," for a discussion of patterns of saving by usual income.

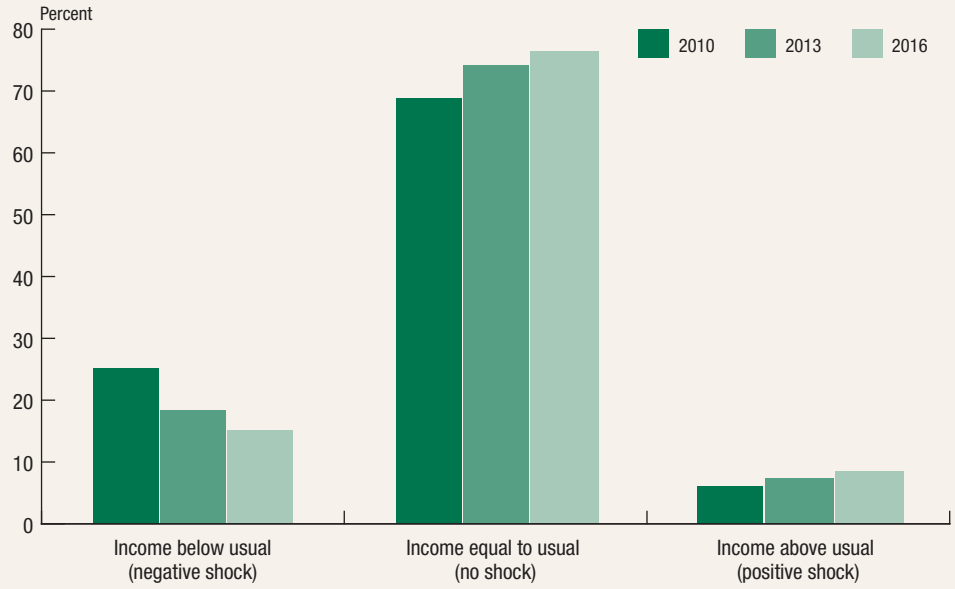
[20] Median net worth increased 16 percent and mean net worth increased 6 percent for the fourth quintile between 2010 and 2013 and either fell or was unchanged for all other quintiles.

Box 4. Usual versus Actual Income

The income classifier used throughout this report is the Survey of Consumer Finances respondent-reported measure of "usual" income. This classifier is designed to capture a version of household income with transitory fluctuations smoothed away in order to approximate the economic concept of "permanent" income. Usual income differs from actual income when the respondent reports that the family experienced a negative or positive income "shock" that is unlikely to persist, say from a temporary unemployment spell or an unexpected salary bonus. Usual income is measured in the survey after actual income has been reported, when respondents are given the option to report their usual income if they believe they experienced a temporary deviation.[1]

The fraction of families with actual income deviating from usual income varies over the business cycle, and grouping families by actual income can bias estimates of changes in economic outcomes—such as net wealth—across groups, particularly in volatile periods. In 2010, 25 percent of families reported that their actual income was temporarily below their usual income (figure A). The fraction reporting unusually low income dropped to 18 percent in 2013, falling further to 15 percent in 2016.

Figure A. Families with positive and negative income shocks, 2010-16 surveys



The distinction between usual and actual income is important, as measures of average net worth, portfolio composition, borrowing, and spending behavior of, for instance, wealthy families with only temporarily low incomes are very different from families whose income is usually lower. Consider, for example, the lowest quintile of families sorted by actual income. This actual income group includes some families whose income is usually low and also some families whose income is only temporarily low. In 2010, 38.8 percent of families in the bottom actual income quintile reported a usual income that would put them in a higher group (table B). This percentage was particularly high in 2010; it decreased to 31.2 percent in 2013 and 30.0 percent in the most recent survey, 2016. Generally, when this fraction is high, more wealthy families would be temporarily classified in the lowest income group.

If families had been grouped by actual income, instead of usual income, estimates of average net worth for that quintile would have been biased. Among all families in the bottom 20 percent by actual income, average net worth decreased between 2010 and 2013, from $129,100 to $88,800, before increasing only slightly to $89,600 in 2016. In

continued on next page

Box 4. Usual versus Actual Income—*continued*

grouping families by usual income instead of actual income, the measures of average net worth are lower, the decline between 2010 and 2013 is smaller, and the gain between 2013 and 2016 is greater. Among those families whose income is usually in the bottom 20 percent, average net worth fell from $84,400 to $66,600 between 2010 and 2013, increasing to $77,500 in 2016. Grouping families by usual income can provide a more accurate representation of the levels and changes in net worth experienced across income groups.

Table B. Effect of grouping by actual income on average net worth for bottom 20 percent, 2010–16 surveys

Thousands of 2016 dollars, except as noted

Usual or actual income measure	2010	2013	2016
Percent of families in "usually higher" income group	38.8	31.2	30.0
Average net worth of families in the bottom 20 percent…			
By actual income	129.1	88.8	89.6
By usual income	84.4	66.6	77.5

[1] Specifically, after the data on actual income on the year prior to the survey are collected, respondents are asked, "Is this income unusually high or low compared to what you would expect in a 'normal' year, or is it normal?" If the respondent answers that income was unusually high or low, the follow-up question is, "About what would your total income have been if it had been a normal year?"

From 2013 to 2016, median and mean net worth increased for all types of families grouped by race or ethnicity. Large gains in mean and median net worth occurred among nonwhite and Hispanic groups: black or African-American non-Hispanic and Hispanic or Latino families experienced increases in median net worth of 29 percent and 46 percent, respectively, and increases in mean net worth of 35 percent and 72 percent, respectively. Large gains (19 to 52 percent) also occurred for families identified as other or multiple races.[21] White non-Hispanic families also experienced sizable gains in median and mean net worth, of 17 percent and 28 percent, respectively. Despite nonwhite and Hispanic groups experiencing larger proportional growth rates during the 2013–16 period, families in nonwhite and Hispanic groups still have only 10 to 40 percent the level of median net worth as white non-Hispanic families in 2016.

The median net worth of homeowners increased 15 percent between 2013 and 2016, whereas that of renters or other non-homeowners fell 5 percent. Much of this differential growth is explained by growing house prices over the 2013–16 period, which improves the balance sheets of owners whose homes appreciate in value. However, mean net worth of both homeowners and non-homeowners rose substantially over this period; the increase in mean net worth for non-homeowners is partially attributable to other asset prices rising during the 2013–16 period.

Median and mean net worth grew for families in both urban and rural areas between 2013 and 2016. Families living in MSAs experienced a 13 percent increase in median net worth and a 27 percent increase in mean net worth, while families in other areas experienced a 25 percent rise in median net worth and a modest 3 percent rise in mean net worth.

Median net worth rose for all percentile groups of the distribution of net worth, with the largest increases in proportional terms being for the second quartile (23 percent) and the

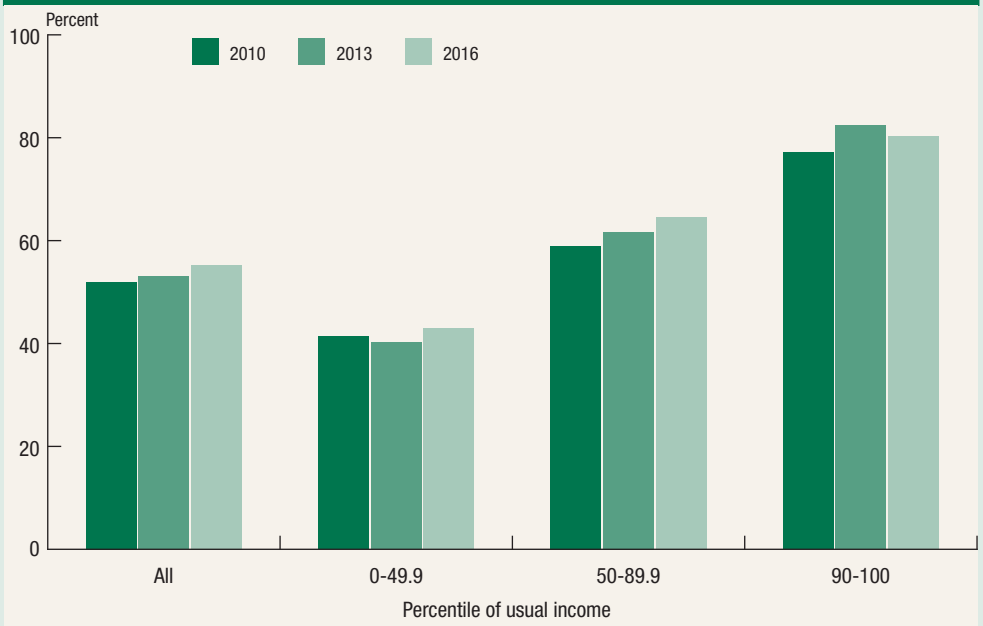
[21] See the appendix for more on the racial/ethnic categories used in this article.

Box 5. Saving Behavior

Because saving out of current income is an important determinant of family net worth, the Survey of Consumer Finances (SCF) asks respondents whether, over the preceding year, the family's spending was less than, more than, or about equal to its income. Though only qualitative, the answers are a useful indicator of whether families are saving.

The fraction of families who reported saving has slowly increased over the past three surveys (figure A). Between 2013 and 2016, the proportion of all families that saved increased from 53.0 percent to 55.4 percent.

Figure A. Families that saved, 2010–16 surveys



Within a given year, the fraction of families that save increases with usual income (figure A).[1] In 2016, for example, the fraction of families in the top income group that saved was 80.2 percent, almost double the 42.9 percent that saved from the lowest income group.

Between 2013 and 2016, the fraction of families that saved increased in the bottom 50 percent and in the next 40 percent of the income distribution, and fell slightly for families in the top 10 percent. The increase in reported saving for the bottom 50 percent and the next 40 percent is consistent with other SCF data. For example, table 3 in the main text shows an increase in the fraction of families with a retirement account—a key asset for middle-class families.

[1] For a description of the usual income measure, see box 4, "Usual versus Actual Income."

top decile (24 percent) of the net worth distribution. For the lowest quartile, median net worth was less than $50 in 2013 and about $200 in 2016, while mean net worth increased 13 percent from negative $13,800 to negative $12,100. The third quartile also experienced gains in median and mean net worth, with both rising 11 percent between 2013 and 2016. For the 75th to 90th percentile, median net worth rose 16 percent and mean net worth rose 17 percent over the recent period; mean net worth for the top decile rose 29 percent between 2013 and 2016. The level of median and mean net worth for the top decile is 4 to 8 times the level of the next highest percentile group, further evidence of the concentration of wealth at the top of the distribution.

Table 3. Holding and values of assets, 2013 and 2016 surveys
Thousands of 2016 dollars, except as noted

Balance sheet item	Percent holding		Conditional median value			Conditional mean value		
	2013	2016	2013	2016	Percent change 2013–16	2013	2016	Percent change 2013–16
Any Asset	**97.9**	**99.4**	**183.4**	**189.9**	**4**	**658.8**	**792.0**	**20**
Types of financial asset								
Any financial asset	**94.5**	**98.5**	**21.9**	**23.5**	**8**	**278.5**	**340.0**	**22**
Transaction accounts	93.2	98.0	4.2	4.5	6	37.4	40.2	7
Certificates of deposit	7.8	6.5	16.5	20.0	21	66.5	75.7	14
Savings bonds	10.0	8.6	1.0	1.0	-3	6.6	9.5	44
Bonds	1.4	1.2	97.5	100.0	3	599.8	771.0	29
Stocks	13.8	13.9	27.8	25.0	-10	303.5	327.8	8
Pooled investment funds	8.2	10.0	82.5	114.0	38	477.3	776.0	63
Retirement accounts	49.2	52.1	60.8	60.0	-1	207.5	228.9	10
Cash value life insurance	19.2	19.4	8.2	8.5	3	36.4	37.5	3
Other managed assets	5.2	5.5	103.1	110.0	7	382.1	473.6	24
Other	6.9	8.1	4.1	5.5	33	56.8	53.7	-6
Types of nonfinancial asset								
Any nonfinancial asset	**91.0**	**90.8**	**153.0**	**158.9**	**4**	**419.8**	**498.1**	**19**
Vehicles	86.3	85.2	16.3	17.3	6	23.3	25.3	9
Primary residence	65.2	63.7	175.3	185.0	6	270.8	301.2	11
Other residential property	13.2	13.8	127.6	145.7	14	326.1	358.2	10
Equity in nonresidential property	7.2	6.2	61.9	70.0	13	276.3	475.2	72
Business equity	11.7	13.0	69.6	79.9	15	1,004.2	1,190.7	19
Other	7.3	6.5	13.4	13.0	-3	74.5	81.4	9

Note: See the appendix for definitions of asset categories used in the SCF.

Assets

Between 2013 and 2016, ownership of any type of asset rose slightly from 97.9 percent to 99.4 percent in 2016 (table 3). At the same time, the mix of assets held by families has changed, with ownership rates on some categories of assets falling and others rising between 2013 and 2016.

Conditional on holding any assets, the median family's total asset holdings rose 4 percent, from $183,400 in 2013 to $189,900 in 2016. The conditional mean value of total assets rose substantially, by 20 percent. The larger increase in mean—versus median—asset holdings indicates that gains in asset values were spread unequally across families and asset types.

Financial Assets

Overall, ownership of any financial assets—which includes transaction accounts, certificates of deposit, savings bonds, other bonds, stocks, pooled investment funds, retirement accounts, cash value life insurance, and other managed assets—rose to 98.5 percent in 2016.[22] The conditional median value of all financial assets held by families also rose 8 percent, from $21,900 in 2013 to $23,500 in 2016. Conditional mean values rose 22 percent, from $278,500 to $340,000. These increases are indicative of broad-based gains but also indicate that some families experienced particularly large gains in the values of their financial assets.

[22] See the appendix for detailed definitions of SCF asset and liability categories.

Transaction accounts—which include checking, savings, money market, call accounts, and prepaid debit cards—remained the most commonly held type of financial asset in 2016, with an ownership rate of 98 percent, an increase over the 93.2 percent of families that held a transaction account in 2013. The increase in ownership was primarily due to the inclusion of prepaid debit cards with transaction accounts, which were collected in the survey for the first time in 2016.[23] If those cards are excluded, the ownership of transaction accounts was flat between 2013 and 2016. The conditional median and mean values of those accounts also rose between 2013 and 2016, by 6 percent and 7 percent, respectively. In 2016, median transaction account holdings were $4,500, and mean holdings were $40,200. If prepaid debit cards are excluded, the median and mean holdings are little changed.

Rates of ownership of certificates of deposits continued to fall between 2013 and 2016, to 6.5 percent, following a decline since 2007, when 16.1 percent of families held certificates of deposit. These declines are, at least in part, attributable to the low interest rate environment, which has reduced the advantage of certificates of deposit over transaction accounts. Conditional on ownership, the amount held in those accounts rose, however, with the median increasing 21 percent and the mean increasing 14 percent.

Ownership of savings bonds, other bonds, and directly held stocks generally fell or remained similar between 2013 and 2016, although none of the three types of assets are commonly held, with ownership rates in 2016 varying between 1.2 percent (other bonds) and 13.9 percent (directly held stocks). The conditional median value of most of these assets also either fell or remained similar between 2013 and 2016, but mean values increased for all three types of assets.[24]

Ownership rates of pooled investment funds rose between 2013 and 2016, from 8.2 percent to 10 percent. Conditional median and mean values also rose substantially, exhibiting 38 percent and 63 percent growth rates, respectively.

Ownership of retirement accounts—including individual retirement accounts (IRAs), Keogh accounts, and certain employer-sponsored accounts, such as 401(k), 403(b), and thrift savings accounts—rose to 52 percent in 2016, following a period of decline between the 2007 and 2013 surveys. Median values of retirement accounts, however, were little changed, remaining at about $60,000 in 2016. The conditional mean value rose 10 percent to $228,900 in 2016.[25]

The percent of families owning the remaining financial asset categories—cash value of life insurance, other managed assets, and the catch-all "other" category—generally rose or remained similar between 2013 and 2016. The median and mean values of these types of asset generally also rose.

Nonfinancial Assets

Ownership of nonfinancial assets—including vehicles, residential and nonresidential property, and business equity—remained high in 2016 at 90.8 percent, falling only slightly from 2013. For most categories of nonfinancial assets (except business equity and other residential property), however, ownership rates fell.

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[23] In 2016, the SCF added questions about the ownership of reloadable prepaid debit cards and government benefit cards. A question about the combined balance on these type of cards was also added. For more details on these and other new questions, see https://www.federalreserve.gov/econres/scfindex.htm.

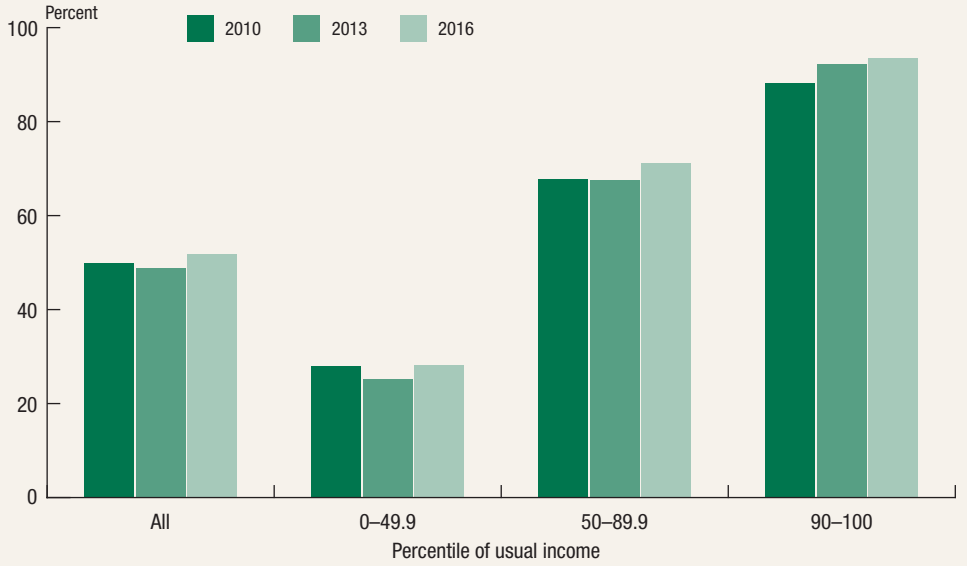
[24] See box 6, "Direct and Indirect Holdings of Publicly Traded Stock," for more details on patterns in stock holding.

[25] See box 7, "Retirement Accounts and Plan Participation," for more details.

Box 6. Direct and Indirect Holdings of Publicly Traded Stock

Families may hold stocks in publicly traded companies directly or indirectly, and information about each of these forms of stock holding is collected separately in the Survey of Consumer Finances.[1] When direct and indirect forms of stock holdings are combined, the 2016 data show a rebound in stock ownership over the most recent period. In 2016, 51.9 percent of families owned stocks, increasing from 48.8 percent in 2013 and also exceeding what was seen in the 2010 survey (figure A). Grouping families by their location in the usual income distribution reveals that the lowest and upper-middle income groups experienced strong increases in stock ownership from 2013 to 2016; stock ownership for these two groups is now above the level in the 2010 survey.[2] For the top income group, the rate of ownership increased over the most recent period, continuing the trend from the 2010 survey. Stock ownership for this group was 93.6 percent in 2016.

Figure A. Families with direct and indirect holdings of stock, 2010–16 surveys



In addition to the increase in stock ownership, the mean value of stock holdings for families with holdings increased dramatically from $278,300 in 2013 to $344,500 in 2016 (table B). Across the usual income distribution, the mean value of stock holdings increased from 2013 to 2016 for the upper-middle and top income groups, with the mean value rising substantially. For the lowest income group, the mean value in 2016 was only slightly below the level attained in 2013. The value of stock holdings varies substantially across usual income groups, with mean holdings for the top group about nine times the size of mean holdings of the upper-middle income group.

Table B. Mean levels for direct and indirect holdings of stock, 2010–16 surveys

Thousands of 2016 dollars

Family characteristic	Conditional mean value		
	2010	2013	2016
All	**235.4**	**278.3**	**344.5**
Percentile of usual income			
0–49.9	37.2	55.3	52.3
50–89.9	116.5	136.4	153.0
90–100	913.7	999.4	1,365.5

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Box 6. Direct and Indirect Holdings of Publicly Traded Stock—*continued*

Among families that held stock, either directly or indirectly, in 2016, ownership through a tax-deferred retirement account was the most common (87.8 percent), followed by direct stock (26.9 percent), direct holdings of pooled investment funds (18.9 percent), and managed investment accounts or an equity interest in a trust or annuity (7.3 percent). From 2013 to 2016, ownership of stock through a tax-deferred retirement account and direct holding of pooled investment funds increased slightly, and ownership through all other types declined. The fraction of families that owned stock through multiple types increased to 32.8 percent in 2016, up from 31.6 percent in 2013.

[1] Indirect holdings are those in pooled investment funds, retirement accounts, and other managed assets.
[2] For a description of the usual income measure, see box 4, "Usual versus Actual Income."

The most commonly held type of nonfinancial asset in 2016 was vehicles, a very broad category that includes cars, vans, sport utility vehicles, trucks, motor homes, recreational vehicles, motorcycles, boats, airplanes, and helicopters. Between 2013 and 2016, the fraction of families owning a vehicle declined slightly from 86.3 percent to 85.2 percent. The median and mean value of vehicles owned by families rose, however, between 2013 and 2016. The median value rose from $16,300 to $17,300, and the mean rose from $23,300 to $25,300 between 2013 and 2016.[26]

Ownership of primary residences also fell, from 65.2 percent of families owning a primary residence in 2013 to 63.7 percent in 2016.[27] This decrease represents a continued decline since the 2004 SCF, when the homeownership rate was 69.1 percent. The conditional median and mean value of primary residences rose, however, by 6 percent and 11 percent, respectively. Among families who are homeowners, the median family's home was worth $185,000 in 2016, up from $175,300 in 2013. This increase reflects widespread increases in home prices between the two surveys, although the drop in homeownership rates indicates fewer families are sharing in those house price gains. Ownership rates and median and mean values of other residential property, which includes residences such as second homes and time shares, rose between 2013 and 2016.

Ownership of business equity increased between 2013 and 2016, from 11.7 percent to 13 percent, nearly rebounding to its 2010 level (13.3 percent).[28] The median family with business equity also experienced a 15 percent rise in value, with median business equity rising from $69,600 to $79,900 between 2013 and 2016. The mean value of business equity rose 19 percent.

Ownership of equity in nonresidential property fell from 7.2 percent to 6.2 percent, and conditional median and mean values of equity in nonresidential property rose 13 percent and 72 percent, respectively.

[26] Survey respondents are asked to provide the year, make, and model of each of their cars, vans, sport utility vehicles, and trucks. This information is used to obtain market prices from data collected by the National Automobile Dealers Association and a variety of other sources. For other types of vehicles, the respondent is asked to provide a best estimate of the current value.
[27] See box 8, "Homeownership and Net Housing Wealth," for more details.
[28] See box 9, "Holdings of Business Equity," for more details.

Table 4. Holding and values of debt items, 2013 and 2016 surveys
Thousands of 2016 dollars, except as noted

Types of debts	Percent holding		Conditional median value			Conditional mean value		
	2013	2016	2013	2016	Percent change 2013–16	2013	2016	Percent change 2013–16
Any debt	**74.5**	**77.1**	**62.3**	**59.8**	**-4**	**126.1**	**123.4**	**-2**
Secured by residential property								
Primary residence	42.9	41.9	118.6	111.0	-6	161.6	157.7	-2
Other	5.2	5.6	92.8	100.0	8	160.9	160.6	0
Lines of credit not secured by residential property	1.9	1.8	4.5	3.0	-33	36.3	55.7	54
Installment loans								
Education loans	20.0	22.4	16.5	19.0	15	29.8	34.2	15
Vehicle loans	30.9	33.8	12.3	12.8	5	15.0	17.2	14
Other installment loans	10.1	11.2	3.4	3.4	0	16.4	15.4	-6
Credit card balances	38.1	43.9	2.4	2.3	-3	5.9	5.7	-3
Other	6.6	5.4	4.1	5.0	21	15.1	26.8	78

Note: See the appendix for definitions of liability categories used in the SCF.

Debt, Debt Burden, and Credit Market Experiences

The fractions of families holding any type of debt rose between 2013 and 2016, from 74.5 percent to 77.1 percent, returning to a level similar to 2007, when 77.0 percent of families had any debt (table 4).[29] In contrast, the conditional median and mean value of debt held fell slightly between 2013 and 2016. The conditional median fell 4 percent, from $62,300 in 2013 to $59,800 in 2016. The conditional mean also fell, from $126,100 in 2013 to $123,400 in 2016, a decline of 2 percent.

Debt Holdings by Type

Between 2013 and 2016, the mix of debt held by families changed. Slightly fewer families held debt secured by a primary residence, and those that did have such types of debt owed smaller amounts. However, more families held education loans in 2016 than in 2013, and those with education loans owed larger amounts on the loans. Credit card balances have become the form of debt most widely held by families, edging out debt secured by a primary residence (hereafter, home-secured debt) for the first time since the 1998 SCF.

Paralleling the drop in homeownership, rates of holding of home-secured debt fell between 2013 and 2016. The fraction of families with mortgages and other home-secured debt fell from 42.9 percent in 2013 to 41.9 percent in 2016. This decline was slightly smaller than the 1.5 percentage point fall in homeownership observed in table 3. Home-secured debt, however, continued to be one of the most common types of debt held by families.

The conditional median and mean values of home-secured debt also fell between 2013 and 2016. The conditional median value of home-secured debt fell 6 percent, from $118,600 to $111,000, and the conditional mean value of home-secured debt fell 2 percent, from $161,600 to $157,700. The declines in holding and the conditional mean and median values of home-secured debt represented a continuation of declines seen between 2007 and

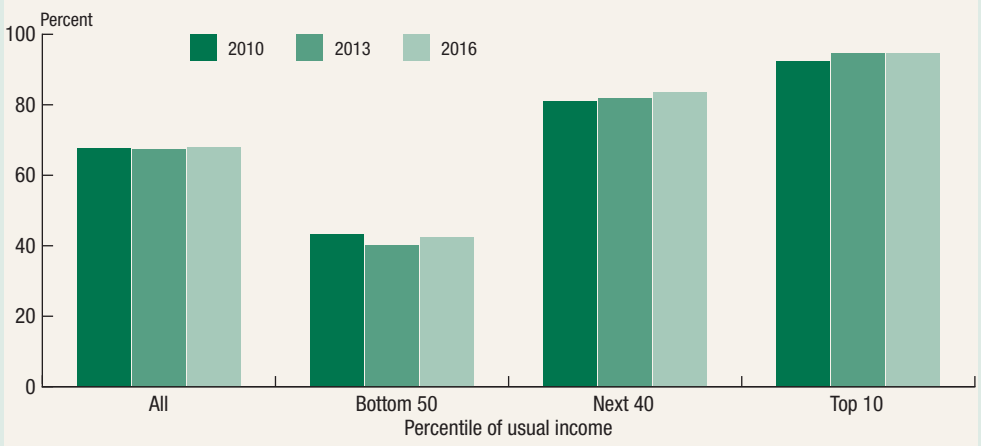
[29] See the appendix for a detailed definition of SCF liability categories.

Box 7. Retirement Accounts and Plan Participation

Ownership of retirement accounts and participation in retirement plans can both increase families' net worth and provide security to families nearing retirement age. A family is considered a participant in retirement plans if it has any of the following: an individual retirement account (IRA); an account-type job pension (defined contribution plan, or DC), including 401(k)s; or a defined benefit (DB) pension. The following discussion focuses on prime-age families—those with a head between ages 35 and 64—as these families typically have finished their education but have not fully retired.

Grouping families by usual income indicates that those in the bottom half of the usual income distribution saw increases in retirement plan participation between 2013 and 2016, in contrast to the decline observed between 2010 and 2013 (figure A).[1] This recent increase is a combination of increases in both IRA and DC coverage, although there was a decline in the fraction of families with a DB plan. Those in the upper-middle part of the usual income distribution also saw an increase in overall retirement coverage between 2013 and 2016, continuing growth observed between 2010 and 2013. This group also experienced a decline in the share of families with a DB plan, implying that overall, more families are relying on account-type plans alone. Families in the top 10 percent of the usual income distribution had basically unchanged retirement plan participation, at almost 95 percent in both 2013 and 2016. This group experienced increases in DB and DC coverage between 2013 and 2016, with small declines in IRA participation.

Figure A. Participation in any retirement plan for families ages 35–64, 2010–16 surveys



For many families, the amount of assets held within IRAs and DC plans (typically associated either with a current job or a past job) are among the most important components of their balance sheets and are a significant determinant of their future retirement security. Among families that have those assets, the average combined IRA and DC pension account balance increased since 2013 to $237,600 in 2016, and those gains occurred throughout the income distribution (table B). For families in the bottom half of the usual income distribution, average balances increased about one-third from 2013, reaching almost $54,000, which is slightly above the previous peak in 2007. Those in the next 40 percent of the usual income distribution saw a smaller average balance increase of about $4,000, or 2.8 percent, between 2013 and 2016. Average balances increased dramatically for those in the top of the usual income distribution, reaching $641,400 in 2016.

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2013.[30] These declines occurred in tandem with the increases in home values seen between 2013 and 2016 (table 3).

Box 7. Retirement Accounts and Plan Participation—*continued*

Table B. Mean retirement savings among those with an individual retirement account or an account-type job pension, families ages 35–64, 2010–16 surveys

Thousands of 2016 dollars

Family characteristic	Conditional mean value		
	2010	2013	2016
All	**204.6**	**200.8**	**237.6**
Percentile of usual income			
0–49.9	41.8	40.3	53.5
50–89.9	130.9	151.9	156.9
90–100	556.3	460.0	641.4

[1] For a description of the usual income measure, see box 4, "Usual versus Actual Income."

Lines of credit not secured by residential property were not widely held by families in either the 2013 or 2016 surveys, at around 2 percent of families. The conditional debt outstanding among those with such debts changed quite substantially, with median values falling about one-third and mean values rising about 54 percent between 2013 and 2016.

The fraction of families with education loans, and the conditional median and mean value of education loans, increased between 2013 and 2016, representing a continuation of the long-term trend of rising education debt. In 2013, 20.0 percent of families had an education loan. This share rose to 22.4 percent of families in 2016. The conditional median value of education loans rose 15 percent, from $16,500 in 2013 to $19,000 in 2016. The mean also rose 15 percent, from $29,800 to $34,200.[31]

As discussed earlier, the fraction of families owning a vehicle fell slightly between 2013 and 2016, to 85.2 percent. At the same time, the fraction of families with vehicle loans increased from 30.9 percent in 2013 to 33.8 percent in 2016. This finding represented a continuation of the trend between 2010 and 2013, when the fraction of families with a vehicle loan rose slightly. Between 2013 and 2016, the conditional median value of vehicle loans rose 5 percent and the conditional mean rose 14 percent. This movement indicates that although fewer families have vehicles overall, families are continuing to borrow more using loans on vehicles.

Other installment loans, often associated with purchases of furniture, appliances, and other durable goods, were held by 10.1 percent of families in 2013, rising to 11.2 percent of families in 2016. The conditional median balance on such loans was effectively unchanged between the two surveys, and the mean decreased 6 percent.

The fraction of families with outstanding balances on their credit cards rose between 2013 and 2016, making credit card debt the form of debt most widely held by families. This increase reversed declines seen between 2010 and 2013. In 2013, 38.1 percent of families held credit card debt, while in 2016, 43.9 percent of families held credit card debt. The

[30] Between 2007 and 2013, the fraction holding debt secured by a primary residence fell from 48.7 percent in 2007 to 47.0 percent in 2010 and 42.9 percent in 2013. Between 2007 and 2010, the conditional median value of home-secured debt fell 2.2 percent, and the conditional mean fell 1.2 percent. Between 2010 and 2013, the conditional median value of home-secured debt fell 2.1 percent, and the conditional mean fell 5.3 percent.

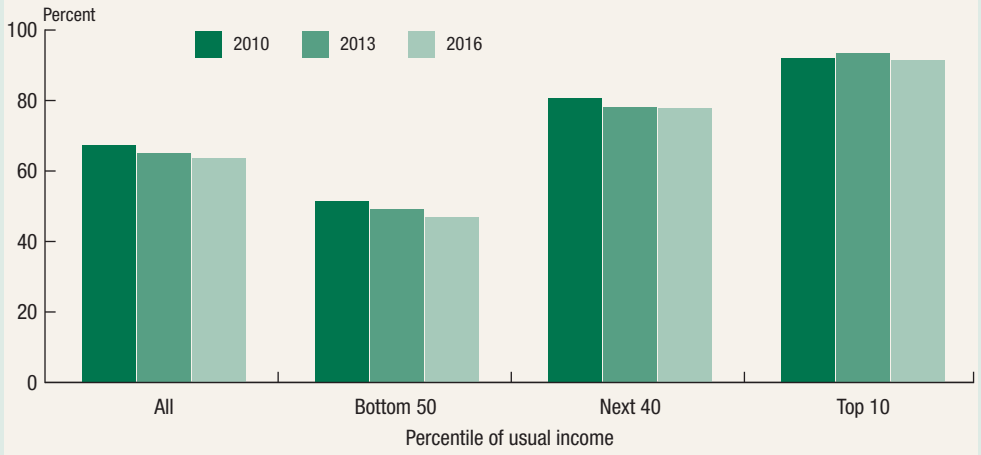
[31] See box 10, "Education Debt," for more details.

Box 8. Homeownership and Net Housing Wealth

The percentage of families that owned their primary residence fell from 65.2 percent in 2013 to 63.7 percent in 2016 (figure A). The last time the Survey of Consumer Finances recorded a homeownership rate this low was 1989.[1] Across families grouped by percentile of usual income, there are large differences in homeownership rates, which tend to increase with usual income.[2] For families in the bottom half of the income distribution, the homeownership rate was 46.9 percent in 2016, while for those in the top 10 percent by income, the homeownership rate was 91.4 percent.

Between 2013 and 2016, the home ownership rate fell across all usual income groups, representing a continuation of a trend of declining home ownership since 2007 for the bottom two usual income groups. In contrast, for the top income group, the homeownership rate rose slightly between 2010 and 2013.

Figure A. Homeownership rate, 2010–16 surveys



For families that own their primary residence, mean net housing value—defined as the home's value less any debts on the home—increased 20 percent between 2013 and 2016 after slightly declining between 2010 and 2013 (table B).[3] In 2016, among home-owning families, the average net housing wealth was $197,500.

Across usual income groups, the mean net value of housing increases as usual income rises. In 2016, the mean value of net housing wealth among homeowners in the bottom half of the income distribution was $107,100. For the top decile, the mean net value of housing was roughly five times larger, at $576,400.

Between 2013 and 2016, mean net housing value increased for all three groups, but the magnitudes of the increases differed, with higher-income families gaining more. For the bottom income group, net housing value rose the least, by 13 percent, between 2013 and 2016. For the upper-middle income group, mean net housing increased more than 18 percent between 2013 and 2016, while the top income group saw net homeownership housing value grow 25 percent.

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median family with a credit card balance carried $2,300 in 2016, down 3 percent from $2,400 in 2013. The mean balance fell from $5,900 in 2013 to $5,700 in 2016, also a 3 percent drop.

Debt Burden

The ability of individual families to service their loans is a function of many factors, including the level of their loan payments and the income and assets they have available to

Box 8. Homeownership and Net Housing Wealth—*continued*

Table B. Mean net housing value for homeowners, 2010–16 surveys

Thousands of 2016 dollars

Family characteristic	Conditional mean value		
	2010	2013	2016
All	**169.7**	**164.3**	**197.5**
Percentile of usual income			
0–49.9	107.1	95.2	107.7
50–89.9	130.7	130.0	153.9
90–100	481.6	460.4	576.4

[1] The home ownership rate in 1989 was 63.9 percent. It rose to a peak of 69.1 percent in 2004.
[2] For a description of the usual income measure, see box 4, "Usual versus Actual Income."
[3] Survey of Consumer Finances respondents are asked to report the value of their home. Only primary residences are included. Debts on the home include any mortgages or home equity loans against the primary residence.

meet those payments. In planning their borrowing, families make assumptions about their future ability to repay their loans. Problems may occur when events turn out to be contrary to those assumptions. If such misjudgments are sufficiently large and prevalent, a broad pattern of default, restraint in spending, and financial distress in the wider economy might ensue (such as was seen in the period after the 2007 survey).

The SCF data can be used to construct three measures of debt burdens: leverage ratios, debt-to-income ratios, and payment-to-income ratios. Leverage ratios compare debts to assets, debt-to-income ratios compare total debt to income, and payment-to-income ratios compare total payments made on debt to income. All three ratios can be constructed either in aggregate or as a median for debtors.[32]

Leverage ratios, debt-to-income ratios, and payment-to-income ratios all generally rose between 2004 and 2010 and then fell between 2010 and 2016 (table 5).[33] The aggregate leverage ratio, debt-to-income ratios, and payment-to-income ratios in 2016 are all below the 2004 levels.

In 2016, the median leverage ratio for debtors was 36.2 percent, down from 38.6 percent in 2013. The ratio remains just higher than the median of 34.7 percent in 2004 and 34.8 percent in 2007. In aggregate, the leverage ratio declined from 14.6 percent in 2013 to 12.1 percent in 2016.

In 2016, the median debt-to-income ratio for debtors was 95.1 percent, down from the level seen in 2013 (107.4 percent). The level in 2016 is lower than that witnessed in 2004, and similar trends can be seen for the aggregate.

[32] The aggregate is defined as the total amount of debt held/payments divided by the total assets held or income among all survey respondents. The median for debtors is defined as the median of each individual family's ratio among those carrying debt only.
[33] For definitions of the components of table 5, see the appendix.

Table 5. Debt burdens and credit market experiences, 2004-16 surveys
Percent or thousands of 2016 dollars

Measure of debt burden/interaction with credit markets	2004	2007	2010	2013	2016
Debt burden					
Leverage ratio					
Aggregate	15.0	14.8	16.4	14.6	12.1
Median for debtors	34.7	34.8	41.3	38.6	36.2
Debt to income ratio					
Aggregate	111.6	115.2	124.8	104.6	92.6
Median for debtors	107.0	111.1	118.8	107.4	95.1
Payment to income ratio					
Aggregate	14.4	14.6	14.7	12.0	10.8
Median for debtors	18.1	18.7	18.2	15.9	14.7
Fraction with payment to income ratio greater than 40%	9.4	11.4	10.4	8.2	7.0
Credit market experiences					
Credit constrained					
Turned down for credit (past year)	n.a.	n.a.	n.a.	n.a.	10.8
Did not apply for credit for fear of being turned down (past year)	n.a.	n.a.	n.a.	n.a.	14.4
Either turned down for credit or feared denial (past year)	n.a.	n.a.	n.a.	n.a.	20.8
Either turned down for credit or feared denial (past 5 years)	25.6	24.5	28.3	27.6	n.a.
Late on payments					
Late on payments	16.3	20.8	17.3	14.9	13.5
Late on payments 60 days or more	6.9	5.5	8.1	6.9	5.8
Took out a payday loan in past year	n.a.	2.4	3.9	4.2	3.4
Declared bankruptcy in past 5 years	4.4	3.8	3.6	4.1	3.0
Had foreclosure start in past 5 years	n.a.	n.a.	n.a.	n.a.	2.1
Use credit cards for convenience only/do not carry a balance	56.6	56.2	63.0	64.0	57.5

Note: See the appendix for a description of measures of debt burden and credit market experiences.
n.a. Not available (relevant data not collected).

Payment-to-income ratios for the median debtor fell from 15.9 percent to 14.7 percent between 2013 and 2016.[34] The 2016 level is lower than at any time between 2004 and 2013. Similar trends held for the aggregate payment-to-income ratios.

A limitation of using measures of debt burdens for the median debtor is that they may not be indicative of distress because they reflect the situation of a typical family. Unless errors of judgment by both families and lenders are pervasive, one would not expect to see signs of financial distress at the median. Thus, a more compelling indicator of distress is the proportion of families with unusually large debt burdens. In 2016, 7.0 percent of debtors had payment-to-income ratios greater than 40 percent. This value represents a decrease from 2013, when 8.2 percent of debtors had payment-to-income ratios greater than 40 percent. The levels in 2016 are lower than those witnessed at any time between 2004 and 2013.

[34] An alternative aggregate version of payment-to-income ratios is the debt service ratio. See Karen Dynan, Kathleen Johnson, and Karen Pence (2003), "Recent Changes to a Measure of U.S. Household Debt Service," *Federal Reserve Bulletin,* vol. 89 (October), pp. 417–26, https://www.federalreserve.gov/pubs/bulletin/2003/1003lead.pdf. A discussion of how this measure compares with the one presented here can be found in the appendix.

Box 9. Holdings of Business Equity

The fraction of families that owned a privately held business increased 1.3 percentage points between 2013 and 2016, to 13.0 percent (figure A).[1] The level in 2016 is only slightly below the level in the 2010 survey, rebounding from the decline between 2010 and 2013. Ownership of business equity also increased across all usual income groups over the recent period.[2] For the top two income groups, the levels are still slightly below levels in the 2010 survey. Families in the top income group saw the largest percentage point increase in business ownership, and the ownership level for this group, 38.7 percent, remains substantially higher than for other groups.

Figure A. Families with holdings of business equity, 2010–16 surveys

For families with business equity, the mean value increased substantially, rising from $1,004,200 in 2013 to $1,190,700 in 2016, well above the 2010 level (table B). All usual income groups experienced an increase in the mean value of business equity over the recent period, and in 2016, the mean value of business equity was higher than the 2010 value for all groups. The value of business equity varies substantially across usual income groups, with mean holdings for the top group about 10 times the size of mean holdings of the upper-middle income group.

Table B. Family holdings of business equity, 2010–16 surveys

Thousands of 2016 dollars

Family characteristic	Conditional mean value		
	2010	2013	2016
All	**871.3**	**1,004.2**	**1,190.7**
Percentile of usual income			
0–49.9	204.2	157.5	208.0
50–89.9	285.5	283.2	330.2
90–100	2,265.0	2,685.0	3,307.0

[1] The forms of business in this category are sole proprietorships, limited partnerships, other types of partnerships, subchapter S corporations and other types of corporations that are not publicly traded, limited liability companies, and other types of private businesses. If the family surveyed lived on a farm or ranch that was used at least in part for agricultural business, the value of that part, net of the corresponding share of associated debts, is included with other business assets.

[2] For a description of the usual income measure, see box 4, "Usual versus Actual Income."

Box 10. Education Debt

Education loan debt is the largest source, in dollar terms, of nonmortgage debt owed by families in the 2016 Survey of Consumer Finances (SCF) (see table 4 in the main text). The analysis presented here will focus on the growth of education loans between the 2013 and 2016 surveys by income for "young families," defined as those with a head of household younger than age 40 at the time of the survey.[1]

The fraction of young families with education debt increased from 38.8 percent to 43.3 percent between 2013 and 2016 (table A). Conditional on having education debt, the mean and median levels of education debt also increased between 2013 and 2016.

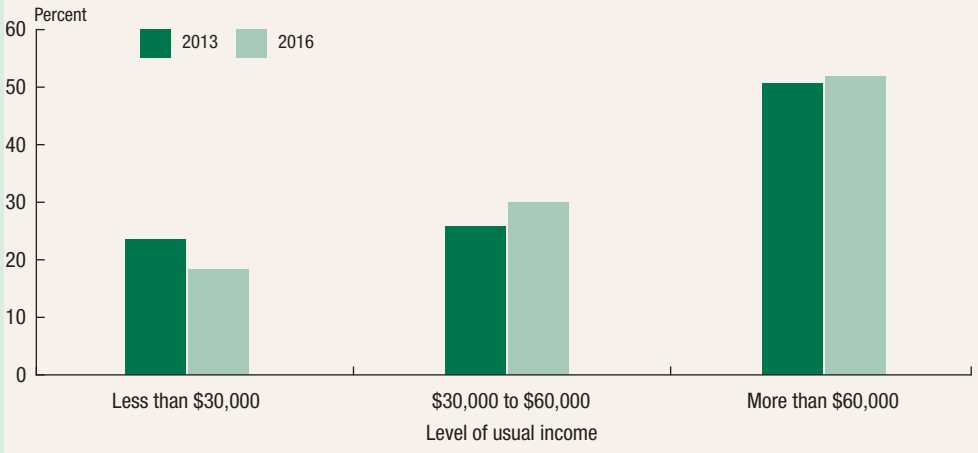
Table A. Education debt outstanding among young families, 2013 and 2016 surveys

Thousands of 2016 dollars, except as noted

Measure of education debt	2013	2016
Percent with education debt	38.8	43.3
Mean education debt	30.7	33.3
Median education debt	17.3	19.0

Similar to the 2013 SCF, about 50 percent of the education debt of young 2016 SCF families was owed by families earning more than $60,000 (figure B). Between 2013 and 2016, the share of education debt held by families with incomes less than $30,000 declined: About 18 percent of young families' education debt is owed by those making less than $30,000, about 5 percentage points less than in 2013.[2] This indicates more education debt is held by families who are likely to have income levels that can support their loan payments.

Figure B. Share of young families' education loan debt, by income group, 2013 and 2016 surveys



[1] Note that the SCF does not sample institutional populations, such as college dorms. The statistics reported here also do not include education debt held by individuals in the household who are not members of the primary economic unit and solely responsible for the education debt (such as financially independent roommates and adult children living with a parent).

[2] Young families with education debt in this income group generally have no college degree, though about one-fourth of these families held a bachelor's degree or higher in both the 2013 and 2016 SCF.

Credit Market Experiences

The SCF also collects various measures of respondents' recent experiences with credit markets, such as information on credit applications and payment behavior. Overall, SCF

families' capacity to stay current on their financial obligations increased between 2013 and 2016. The fraction of families who were late on payments and the fraction who took out a payday loan both fell.

The SCF asks two questions intended to capture whether families are likely credit constrained: first, if the family was turned down for credit over the past 12 months, and, second, if the family decided not to apply for credit during the past 12 months for fear of being turned down.[35] In 2016, 20.8 percent of families responded "yes" to one or both of these questions.

The SCF also collects information on families' debt payment behavior. Families that have any debt at the time of their interview are asked whether they were behind on any of their loan payments in the preceding year. In 2016, 13.5 percent of families reported being late on payments, a lower fraction than at any time between 2004 and 2013. The percent of families who reported being late on payments 60 or more days declined from 6.9 percent in 2013 to 5.8 percent in 2016, substantially below the recent peak of 8.1 percent in 2010.

The SCF asks respondents if they have taken out a payday loan in the past year. Payday loans are unsecured loans that are typically small and short-term. Because these loans generally carry interest rates that far exceed those for conventional forms of credit, usage of payday loans is often a signal that an individual cannot obtain credit by other means.[36] In 2016, 3.4 percent of families reported taking out a payday loan, down from 4.2 percent in 2013 and 3.9 percent in 2010.

An additional measure of financial distress and problems managing debt is bankruptcy. The SCF asks respondents if they have declared bankruptcy in the past five years. In 2016, 3.0 percent of families reported having declared bankruptcy in the past five years, down from 4.1 percent in 2013 and lower than all years since 2004.

In the 2016 survey, the SCF began collecting information about another measure of financial distress, families' experiences with foreclosures.[37] In 2016, 2.1 percent of families reported having foreclosure proceedings brought against properties they owned in the past five years. Of these families, 68 percent eventually lost their property as a result of the foreclosure process.

A final measure of debt payment behavior covered in the SCF is whether a family uses credit cards for convenience only or carries a balance month to month. In 2016, 58 percent of families reported using credit cards for convenience only (not carrying a balance), down from 64 percent in 2013 and 63 percent in 2010.

[35] This 12-month time frame is different from analogous questions in earlier surveys, which had asked families about their experiences with credit constraints over the past 5 years. Consequently, table 5 does not report historical data on the current questions on credit constraints in the past 12 months.

[36] Research indicates payday borrowers apply for payday loans when they have limited access to mainstream credit. See Neil Bhutta, Paige Marta Skiba, and Jeremy Tobacman (2015), "Payday Loan Choices and Consequences," *Journal of Money, Credit, and Banking,* vol. 47 (March–April), pp. 223–60.

[37] See box 2, "New Questions from the 2016 Survey of Consumer Finances Redesign," and the appendix for more on changes to the 2016 survey.

Appendix: Survey Procedures and Statistical Measures

The 2016 data used here are derived from the final internal version of the survey information. Data from this survey, suitably altered to protect the privacy of respondents, along with additional tabulations of data from the surveys beginning with 1989, are expected to be available in September 2017 on the Federal Reserve Board's website.[38]

As part of the general reconciliations required for this article, the survey data were compared with many external estimates. One particularly important comparison is between the Survey of Consumer Finances (SCF) and the Federal Reserve's Statistical Release Z.1, Financial Accounts of the United States, for the household sector.[39] This comparison suggests that when the definitions of the variables in the two sources are adjusted to a common conceptual basis, the estimates of totals in the two systems tend to be close. The data series in the SCF and in Statistical Release Z.1 usually show very similar growth rates.[40] In general, the income and net worth data from the SCF can be compared with those of other household surveys only in terms of the medians because of the special design of the SCF sample.[41]

Adjustment for Inflation

In this article, all dollar amounts from the SCF are adjusted to 2016 dollars using the "current methods" version of the consumer price index (CPI) for all urban consumers. In an ongoing effort to improve accuracy, the Bureau of Labor Statistics has introduced several revisions to its CPI methodology. The current-methods index attempts to extend these changes to earlier years to obtain a series as consistent as possible with current practices in the official CPI.[42] To adjust assets and liabilities to 2016 dollars and to adjust

[38] Data from the 2016 SCF as well as links to the data used in this article for earlier periods and links to working papers describing statistical methodologies are available on the Board's public website at https://www.federalreserve.gov/econresdata/scf/scfindex.htm. Results reported in this article for earlier surveys may differ from the results reported in earlier articles because of additional statistical processing, correction of data errors, revisions to the survey weights, conceptual changes in the definitions of variables used in the articles, and adjustments for inflation.

[39] See Board of Governors of the Federal Reserve System (2017), Statistical Release Z.1, "Financial Accounts of the United States" (June 8), https://www.federalreserve.gov/releases/z1.

[40] For details on how these comparisons are structured and the results of comparisons for earlier surveys, see Alice M. Henriques, and Joanne W. Hsu (2013), "Analysis of Wealth Using Micro and Macro Data: A Comparison of the Survey of Consumer Finances and Flow of Funds Accounts," Finance and Economics Discussion Series 2013-46 (Washington: Board of Governors of the Federal Reserve System, May), https://www.federalreserve.gov/pubs/feds/2013/201346/201346pap.pdf, and Lisa J. Dettling, Sebastian J. Devlin-Foltz, Jacob Krimmel, Sarah J. Pack, and Jeffrey P. Thompson (2015), "Comparing Micro and Macro Sources for Household Accounts in the United States: Evidence from the Survey of Consumer Finances," Finance and Economics Discussion Series 2015-086 (Washington: Board of Governors of the Federal Reserve System, June), http://dx.doi.org/10.17016/FEDS.2015.086.

[41] Family incomes are a good example of issues that arise when comparing SCF means and medians against other survey estimates. Over the 2013–16 period, estimates of inflation-adjusted household income for the previous year from the Current Population Survey (CPS) of the U.S. Census Bureau show an increase in both the median (7.8 percent) and the mean (7.6 percent). The changes in both the median and the mean are slightly smaller in absolute terms than the corresponding increases in the SCF. The medians for 2016 are similar in the SCF ($52,700) and the CPS ($56,700). Typically, the SCF shows a higher level of mean income than does the CPS; for 2016, the SCF yields an estimate of $102,700, while the CPS yields an estimate of $74,500. The two surveys differ in their definitions of the units of observation and in other aspects of their methodologies. Most relevant is the fact that a CPS household can contain more people than a corresponding SCF family. If the SCF measure is expanded to include the income of household members not included in the SCF definition of a family, the median rises 10.2 percent over the period (from $51,500 in 2013 to $56,700 in 2016), while the mean rises 14.4 percent (from $92,600 in 2013 to $105,900 in 2016). The substantial difference in mean levels is likely the result of the truncation of large values in the CPS data above a certain amount, which is done with the intent of minimizing the possibility that participants in that survey might be identifiable.

[42] For technical information about the construction of this index, see Kenneth J. Stewart and Stephen B. Reed (1999), "Consumer Price Index Research Series Using Current Methods, 1978–98," *Monthly Labor Review,* vol. 122 (June), pp. 29–38.

family income for the preceding calendar year to 2016, the figures given in the following table were applied:

Survey year	Adjustment factor for assets and debts in the survey year	Adjustment factor for income in the calendar year before the survey year
2004	1.2718	1.3061
2007	1.1580	1.1909
2010	1.1053	1.1232
2013	1.0311	1.0461
2016	1.0000	1.0126

Definition of "Family" in the Survey of Consumer Finances

The definition of "family" used throughout this article differs from that typically used in other government studies. In the SCF, a household unit is divided into a primary economic unit (PEU)—the family—and everyone else in the household. The PEU is intended to be the economically dominant single person or couple (whether married or living together as partners) and all other persons in the household who are financially interdependent with that economically dominant person or couple.

This report also designates a head of the PEU, not to convey a judgment about how an individual family is structured but as a means of organizing the data consistently. If a couple is economically dominant in the PEU, the head is the male in a mixed-sex couple or the older person in a same-sex couple. If a single person is economically dominant, that person is designated as the family head in this report.

Asset and Liability Categories in the Survey of Consumer Finances

The specific concepts of asset and liability categories in the SCF are necessarily tied to the survey question wording and associated field interviewer instructions, both of which can be found in the SCF codebook for the year(s) in question.[43] What follows is a general exposition of the asset and liability categories reported in the tables.

Transaction accounts include checking, savings, and money market deposit accounts; money market funds; and call or cash accounts at brokerages and prepaid debit cards. Call accounts include those that hold money received from the sale of securities until the money is reinvested. The savings account category includes a relatively small number of tax-preferred accounts such as medical or health savings accounts and Coverdell or 529 education accounts. Prepaid debit cards include reloadable prepaid debit cards and government benefit cards, and were collected in the SCF for the first time in 2016.

Certificates of deposit are accounts that are held for a set period of time that must be cashed or renewed at the maturity date. Savings bonds include only U.S. government issues; recent series include EE, HH, and I, and older bonds may be series E and H. Other bonds include only those held directly (not part of a managed investment account or bond fund) and include corporate and mortgage-backed bonds; federal, state, and local government bonds; and foreign bonds. Stocks include publicly traded stocks that are directly held—that is, corporate equities not held as part of a managed investment account or mutual fund.

Pooled investment funds include stock funds, tax-free bond funds, government bond funds, other bond funds, and any combinations thereof, but exclude money market funds and

[43] Codebooks for each SCF wave can be found at https://www.federalreserve.gov/econresdata/scf/scfindex.htm.

indirectly held mutual funds. These funds include all other types of directly held pooled investments, such as traditional open-end and closed-end mutual funds, exchange-traded funds (ETFs), real estate investment trusts, and hedge funds.

Retirement accounts include individual retirement accounts (IRAs), Keogh accounts, and certain employer-sponsored accounts, such as 401(k), 403(b), and thrift savings accounts from current or past jobs; other current job plans from which loans or withdrawals can be made; and accounts from past jobs from which the family expects to receive the account balance in the future. This definition of employer-sponsored plans is intended to confine the analysis to accounts that are portable across jobs and for which families will ultimately have the option to withdraw the balance. Usually, such accounts may be invested in virtually any asset, including stocks, bonds, pooled investment funds, options, and real estate. In principle, employer-sponsored plans may be invested in a similarly broad way, but, in practice, a person's choices for investment are sometimes limited to a narrower set of assets.[44]

Cash value life insurance is the current (nonzero) value of any life insurance policies with a cash value that can be withdrawn. The survey measures the value of such policies according to their current cash value, not their death benefit. In this article, the cash value is included as an asset only when the cash value at the time of the interview was nonzero. This designation excludes term life insurance policies, which only provide a death benefit.

Other managed assets include personal annuities and trusts with an equity interest and managed investment accounts. Annuities may be those in which the family has an equity interest in the asset or in which the family possesses an entitlement only to a stream of income. The wealth figures in this article include only the annuities in which the family has an equity interest.[45] The trusts or managed investment accounts included in other managed assets are those in which families have an equity interest and for which components were not separately reported. Typically, such accounts are those in which the ownership is complicated or the management is undertaken by a professional.[46]

Other financial assets include oil and gas leases, futures contracts, royalties, proceeds from lawsuits or estates in settlement, and loans made to others. One specific financial asset excluded from this category and any other is employment-related stock options. Because such options are typically not publicly traded, or their execution is otherwise constrained,

[44] Although tax-deferred retirement assets are clearly an important element in retirement planning, families may hold a variety of other assets that are intended, at least in part, to finance retirement. Two common and often particularly important types of retirement plans are not included in the assets described in this section: Social Security (the federally funded Old-Age and Survivors' Insurance program (OASI)) and employer-sponsored defined-benefit plans. OASI is well described elsewhere, and it covers the great majority of the population. (See Social Security Administration, "Online Social Security Handbook: Your Basic Guide to the Social Security Programs," Publication 65-008, https://www.ssa.gov/OP_Home/handbook/handbook.html.) The retirement income provided by defined-benefit plans is typically based on workers' salaries and years of work with an employer, a group of employers, or a union. Unfortunately, future income streams from OASI and defined-benefit plans cannot be translated directly into a current value because valuation depends critically on assumptions about future events and conditions—work decisions, earnings, inflation rates, discount rates, mortality, and so on—and no widely agreed-upon standards exist for making these assumptions.

[45] In 2016, 5.3 percent of families reported having any type of annuity, and of these families, 75 percent reported having an equity interest.

[46] In 2016, 87.3 percent of families with trusts or managed investment accounts had an equity interest in such an account. The survey encourages respondents who have trusts or managed investment accounts that are held in relatively common investments to report the components separately. Of the 4.2 percent of families that reported having any kind of trust or managed investment account in 2016, 53.3 percent of them reported at least one of the component assets separately. Of families that detailed the components in 2016, 86.9 percent reported some type of financial asset, 15.4 percent reported a primary residence, 16.0 percent reported other real estate, 5.6 percent reported a business, and 1.2 percent reported another type of asset.

their value is uncertain until the exercise date; until then, meaningful valuation would require complex assumptions about the future behavior of stock prices.

Vehicles include cars, vans, sport utility vehicles, trucks, motor homes, recreational vehicles, motorcycles, boats, airplanes, and helicopters.[47] Primary residences include mobile homes and their sites, the parts of farms and ranches not used for farming or ranching business, condominiums, cooperatives, townhouses, other single-family homes, and other permanent dwellings. Other residential property includes second homes, time-shares, one- to four-family rental properties, and other types of residential properties. It also includes outstanding balances on loans that the family may have made to finance the sale of properties they previously owned and which are still owed to the family.

Nonresidential real estate includes the following types of properties unless they are owned through a business: commercial property, rental property with five or more units, farm and ranch land, undeveloped land, and all other types of nonresidential real estate. Most often, nonresidential real estate properties are functionally more like a business than a residential property. They may have several owners, they are typically worth a considerable amount, and they often carry large mortgages, which appear to be paid from the revenues from the property, not the family's other income. As in the case of privately owned businesses, the value of the property in this analysis is taken to be the net value.

Business equity includes net worth in the following forms of business: sole proprietorships, limited partnerships, other types of partnerships, S corporations and other types of corporations that are not publicly traded, limited liability companies, and other types of private businesses. If the family lived on a farm or ranch that was used at least in part for agricultural business, the value of that part, net of the corresponding share of associated debts, is included with other business assets. In the survey, self-employment status and business ownership are independently determined.[48]

Debt secured by residential property consists of first-lien and junior-lien mortgages and home equity lines of credit (HELOCs) secured by the primary residence. For purposes of this article, first- and junior-lien mortgages consist only of closed-end loans—that is, loans typically with a one-time extension of credit, a set frequency of repayments, and a required repayment size that may be fixed or vary over time in accordance with a pre-specified agreement or with changes in a given market interest rate.[49] As a type of open-ended credit, HELOCs typically allow credit extensions at the borrower's discretion subject to a prearranged limit and allow repayments at the borrower's discretion subject to a prearranged minimum size and frequency.

Lines of credit not secured by residential property are any lines of credit except HELOCs and borrowing on credit cards.

The term "installment loan" describes closed-end consumer loans—that is, loans that typically have fixed payments and a fixed term. The most common examples are education loans; automobile loans; and loans for furniture, appliances, and other durable goods. Other installment loans include all closed-end consumer loans that are not for education or

[47] Of families owning any type of vehicle in 2016, 99.7 percent had a car, van, sport utility vehicle, motorcycle, or truck. The remaining types of vehicles were held by 12.8 percent of families.

[48] Among the 13.0 percent of families with a business in 2016, 66.0 percent had a family head or the spouse or partner of the head who was self-employed; among the 12.4 percent of families in which either the head or the spouse or partner of the head was self-employed, 68.8 percent owned a business.

[49] Of all families, 39.4 percent had a first-lien mortgage in 2016 (41.0 percent in 2013), 2.3 percent had a junior-lien mortgage (2.7 percent in 2013), 6.7 percent had a home equity line of credit (7.5 percent in 2013), and 4.4 percent had a home equity line of credit with an outstanding balance (5.0 percent in 2013).

a vehicle—that is, loans that typically have fixed payments and a fixed term. Examples include loans for furniture, appliances, and other durable goods.

Credit card balances consist of balances on bank-type cards (such as Visa, MasterCard, and Discover as well as Optima and other American Express cards that routinely allow holders to carry a balance), store cards or charge accounts, gasoline company cards, so-called travel and entertainment cards (such as American Express cards that do not routinely allow holders to carry a balance and Diners Club), other credit cards, and revolving store accounts that are not tied to a credit card. Balances exclude purchases made after the most recent bill was paid.

The "other" debt category comprises loans on cash value life insurance policies, loans against pension accounts, borrowing on margin accounts, and a miscellaneous category largely comprising personal loans not explicitly categorized elsewhere.

Finally, the SCF measure of liabilities excludes debt owed by family-owned businesses and debt owed on nonresidential real estate; in this article, such debt is netted against the corresponding assets.

Measures of Debt Burden and Credit Market Experiences in the Survey of Consumer Finances

The SCF includes several questions designed to capture information about respondents' debt burdens and interactions with credit markets. The specific concepts addressed in the SCF are necessarily tied to the survey question wording and associated field interviewer instructions, which can be found in the SCF codebook for the year(s) in question.[50] What follows is a general exposition of the debt burden and credit market experience measures reported in the tables.

Leverage ratios compare the total of all debts to the total of all assets. The aggregate version of this measure is the sum of all debts for all SCF respondents, divided by the sum of all assets for SCF respondents. The median for debtors is the median of each individual family's leverage ratio and is calculated for those with positive values of total debt only.

The aggregate debt-to-income ratio is the sum of liabilities for all SCF respondents, divided by the total income for all SCF respondents. The median for debtors is the 50th percentile of an individual family's debt-to-income ratios and is calculated for those with positive values of total debt only.

Payment-to-income ratios measure total debt payments relative to total income.[51] The aggregate version of this measure is the sum of all debt payments for all SCF respondents, divided by total income for all SCF respondents. The median for debtors is the 50th percentile of an individual family's payment-to-income ratios and is calculated for those with positive values of total debt only.

It should be recognized that the aggregate measure of payment-to-income ratios that is referenced in this article can differ from aggregate measures constructed from other sources

[50] Codebooks for each SCF wave can be found at https://www.federalreserve.gov/econresdata/scf/scfindex.htm.

[51] The definition of debt payments in the SCF does not include payments on leases or rental payments. The survey collects information on vehicle lease payments and rent on primary residences, and, thus, in principle a broader measure of debt payments could be constructed, one that would be similar to the "financial obligations ratio" estimated by the Federal Reserve staff.

such as the debt service ratio.[52] The survey measure of payments relative to income can differ from the aggregate-level measure for several reasons. First, the debt payments included in each measure are different. The aggregate-level measure includes only debts originated by depositories, finance companies, and other financial institutions, whereas the survey includes, in principle, debts from all sources. Second, the aggregate-level measure uses an estimate of disposable personal income from the national income and product accounts for the period concurrent with the estimated payments as the denominator of the ratio, whereas the survey measure uses total before-tax income reported by survey families for the preceding year; the differences in these two income measures are complex. Third, the payments in the aggregate-level measure are estimated using a formula that entails many assumptions about minimum payments and the distribution of loan terms at any given time; the survey measure of payments is directly asked of the survey respondents but may also include payments of taxes and insurance on real estate loans. Fourth, because the survey measures of payments and income are based on the responses of a sample of respondents, they may be affected both by sampling error and by various types of response errors. As mentioned earlier in this article, the survey income measure tracks the most comparable measure of income in the Census Bureau's Current Population Survey (CPS).

The SCF asks two questions that are intended to capture whether families are credit constrained, which is broadly defined as having difficulty accessing credit. The first question asks the respondent if the family was turned down for credit at any point in the past year. The second asks if the family decided not to apply for credit at some time within the past year for fear of being turned down.[53] A combination of these two questions is used to measure overall credit constraints.

Delinquency on debt obligations is captured by asking families that have any debt at the time of their interview whether they have been behind in any of their loan payments in the preceding year. The survey asks if respondents have been behind at all and if they have been behind in payments for 60 or more days.

Payday loans are defined as loans that are meant to be repaid in full out of the respondent's next paycheck; they are unsecured loans that are typically small, short-term, and carry above-average interest rates.

Bankruptcy behavior is a retrospective question in which the respondent reports whether he had declared bankruptcy at any time in the past five years.

Foreclosure experience is a retrospective question in which the respondent reports whether he has had foreclosure proceedings brought against a property owned by the family at any time in the past five years.

Finally, convenience use of credit cards is determined using questions on whether a respondent had positive balances after the most recent payment for bank-type cards (such as Visa, MasterCard, and Discover as well as Optima and other American Express cards that routinely allow holders to carry a balance), store cards, gasoline company cards, and other credit cards.

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[52] See Karen Dynan, Kathleen Johnson, and Karen Pence (2003), "Recent Changes to a Measure of U.S. Household Debt Service," *Federal Reserve Bulletin,* vol. 89 (October), pp. 417–26, https://www.federalreserve.gov/pubs/bulletin/2003/1003lead.pdf.

[53] The time frame for the two questions is different than analogous questions from earlier surveys, which had asked families about their experiences with credit constraints over the past five years.

Percentiles of the Distributions of Income and Net Worth

Throughout this article, references are made to various percentile groups of the distributions of income or net worth. For a given characteristic, a percentile can be used to define a family's rank relative to other families. For example, the 10th percentile of the distribution of usual income is the amount of income received by a family for whom less than 10 percent of other families have lower incomes and 90 percent have higher incomes. The percentiles of the distributions of income and net worth used to define the income and net worth groups in tables 1 and 2 in the article are given in the following table:

Family Characteristic	Survey year				
	2004	2007	2010	2013	2016
Percentile of usual income					
20	26,600	26,000	27,000	24,100	25,300
40	45,700	44,700	44,900	41,800	43,500
60	71,800	71,500	69,600	65,100	69,500
80	116,200	113,700	112,300	107,700	111,400
90	169,800	160,800	168,500	159,400	177,100
Percentile of net worth					
25	16,900	16,400	9,200	9,000	10,300
50	118,400	139,700	85,400	83,700	97,300
75	418,600	431,700	333,500	327,100	369,100
90	1,060,600	1,054,200	1,052,800	971,000	1,186,300

The groups that are created when a distribution is divided at every 10th percentile are commonly referred to as deciles. Similarly, when a distribution is divided at every 20th (25th) percentile, the groups are known as quintiles (quartiles). Families in the first income decile, for example, are those with income below the 10th percentile.

Racial and Ethnic Identification

In this article, the race and ethnicity of a family in the SCF are classified according to the self-identification of that family's original respondent to the SCF interview. For greater comparability with earlier SCF data, the data reported in this article group respondents into four classifications based on their responses to the racial identification question: white non-Hispanic, black or African-American non-Hispanic, Hispanic or Latino, and other or multiple race. The "other or multiple race" classification includes respondents identifying as Asian, American Indian, Alaska Native, Native Hawaiian, Pacific Islander, other race, and all respondents reporting more than one racial identification.[54]

The questions underlying the method of classification used in the survey were changed in both 1998 and 2004. Starting in 1998, SCF respondents were allowed to report more than one racial identification; in surveys before then, only one response was recorded. For maximum comparability with earlier data, respondents reporting multiple racial identifications were asked to report their strongest racial identification first. In data reported in this article, respondents reporting multiple racial identifications in the surveys starting with 1998 are classified as "other or multiple race." In the 2016 SCF, 6.4 percent of respondents reported more than one racial identification, up from 6.1 percent in 2013, 5.4 percent in

[54] Articles for earlier years of the SCF reported data that classified all families into two groups: white non-Hispanic and nonwhite or Hispanic. The definition for white non-Hispanic in this article is consistent with that used in earlier years, while the nonwhite or Hispanic group has been split into three classifications (black or African-American non-Hispanic, Hispanic or Latino, and other or multiple race) in data reported in this article.

2007, and 2.3 percent in 2004. The public release data set includes the ethnic identification and racial identification variables, enabling the construction of alternative classifications.

Beginning with the 2004 survey, the question on racial identification is preceded by a question on whether respondents consider themselves to be Hispanic or Latino in culture or origin; previously, such ethnic identification was captured only to the extent that it was reported as a response to the question on racial identification. The classifications in this article ignore the information on ethnic identification available in the surveys since 2004, again for greater comparability with earlier SCF data. Of those who responded affirmatively to the question on Hispanic or Latino identification in 2016, 91.6 percent also reported "Hispanic or Latino" as one of their racial identifications, and 82.5 percent reported it as their primary racial identification. Because the question on Hispanic or Latino ethnicity precedes the one on racial identification in the surveys from 2004 through 2016, the answer to the second of these two questions may have been influenced by the answer to the first.[55]

Classifications of Educational Attainment

In this article, the educational attainment of a family refers to the highest degree obtained by the household head. The groups are as follows: no high school diploma, high school diploma (includes individuals with a high school diploma or GED or other equivalency program), some college (includes individuals with some college but no degree or an associate's degree), and college degree (includes individuals with a bachelor's degree or higher). Beginning with the 2016 survey, the SCF modified its educational attainment question to more closely align the SCF with other household surveys, including the Census and CPS. For surveys before 2016, respondents were asked to list the highest grade of school or year of college completed, and follow-up questions asked the respondent about the type of degree obtained. Starting with the 2016 survey, the first educational attainment question asks about the highest degree obtained, and follow-up questions ask respondents who report a high school diploma whether it was obtained by getting a GED or other equivalency program, and respondents who report some college the number of years of college. It is possible this change may have prompted changes in reporting, although the educational attainment of SCF families was similar to CPS families in both 2013 and 2016.[56] A difference between the way the data are reported in this article compared with previous versions of this article is that families where the household head has an associate's degree could have been classified in the college degree group, whereas in 2016 those families are all classified in the some college group.

The Sampling Techniques

The survey is expected to provide a core set of data on family income, assets, and liabilities. The major aspects of the sample design that address this requirement have been largely constant since 1989. The SCF combines two techniques for random sampling. First, a standard multistage area-probability sample (a geographically based random sample) is selected

[55] For a comprehensive discussion of standards for defining race and ethnicity, see Executive Office of the President, Office of Management and Budget (2002), "Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race And Ethnicity," guidance document (Washington: Executive Office of the President, December 15).

[56] In 2013, the educational attainment of SCF (CPS) household heads was the following: 11 percent (11.3 percent) had no high school diploma, 31.3 percent (27.9 percent) had a high school diploma, 25.7 percent (29 percent) had some college, and 32 percent (31.8 percent) had a college degree. In 2016, the educational attainment of SCF (CPS) household heads was the following: 12.7 percent (10.4 percent) had no high school diploma, 26 percent (27.2 percent) had a high school diploma, 27.3 percent (28.9 percent) had some college, and 34 percent (33.5 percent) had a college degree.

to provide good coverage of characteristics, such as homeownership, that are broadly distributed in the population.

Second, a supplemental sample is selected to disproportionately include wealthy families, which hold a relatively large share of such thinly held assets as noncorporate businesses and tax-exempt bonds. Called the "list sample," this group is drawn from a list of statistical records derived from tax returns. These records are used under strict rules governing confidentiality, the rights of potential respondents to refuse participation in the survey, and the types of information that can be made available. Persons listed by *Forbes* magazine as being among the wealthiest 400 people in the United States are excluded from sampling.

Of the 6,254 interviews completed for the 2016 SCF, 4,754 were from the area-probability sample, and 1,500 were from the list sample; for 2013, 4,568 were from the area-probability sample, and 1,458 were from the list sample. The number of families represented in the surveys considered in this article is given by the following table:

Year	Number of families represented (millions)
2001	106.5
2004	112.1
2007	116.1
2010	117.6
2013	122.5
2016	126.0

Overall population growth between 2013 and 2016 was 2.7 percent, according to figures from the Census Bureau, up slightly from the 2.2 percent growth rate between 2010 and 2013. Also according to Census Bureau estimates, the number of households increased 2.7 percent between 2013 and 2016—well below the rate of household formation between 2010 and 2013, which was 4.2 percent. With the population growing at a comparable rate to household formation, the average number of persons per household barely changed, from 2.54 people in 2013 to 2.53 in 2016.

The Interviews

Although questions have been modified and new questions added over time, the core of the survey questionnaire has changed in only minor ways since 1989. Changes to the questionnaire generally include instances in which the structure was altered to accommodate changes in financial behaviors, in types of financial arrangements available to families including those with businesses that are not publicly traded, and in regulations covering data collection. In 2016, interview sections on educational attainment, education loans, payment methods, and financial institutions were revised, and additional questions addressing financial literacy among respondents, parental educational attainment, and decisions under hypothetical financial situations have also been included (see box 2, "New Questions from the 2016 Survey of Consumer Finances Redesign").[57] For all changes, every effort has been made to ensure the maximum degree of comparability of the data over time. Except where noted in the article, the data are highly comparable over time.

The generosity of families in giving their time for interviews has been crucial to the ongoing success of the SCF. In the 2016 SCF, the median interview length was about 90 minutes. However, in some particularly complicated cases, the amount of time needed was substan-

[57] For a detailed list of all changes to the questionnaire in 2016, see https://www.federalreserve.gov/econres/scfindex.htm.

tially more than three hours. The role of the interviewers in this effort is also critical. Without their dedication and perseverance, the survey would not be possible.

The SCF interviews were conducted largely between the months of May and December in each survey year by NORC, a social science and survey research organization at the University of Chicago. The majority of interviews were obtained in person, although interviewers were allowed to conduct telephone interviews if that was more convenient for the respondent. Each interviewer used a program running on a laptop computer to administer the survey and collect the data.

The use of computer-assisted personal interviewing has the great advantage of enforcing systematic collection of data across all cases. The computer program developed to collect the data for the SCF was tailored to allow the collection of partial information in the form of ranges whenever a respondent either did not know or did not want to reveal an exact dollar figure.

The response rate in the area-probability sample is more than double that in the list sample. In both 2013 and 2016, about 65 percent of households selected for the area-probability sample actually completed interviews. The overall response rate in the list sample was about one-third; in the part of the list sample likely containing the wealthiest families, the response rate was only about one-half that level.

Weighting

To provide a measure of the frequency with which families similar to the sample families could be expected to be found in the population of all families, an analysis weight is computed for each case, accounting both for the systematic properties of the sample design and for differential patterns of nonresponse. The SCF response rates are low by the standards of some other major government surveys, and analysis of the data confirms that the tendency to refuse participation is highly correlated with net worth. However, unlike other surveys, which almost certainly also have differential nonresponse by wealthy households, the SCF has the means to adjust for such nonresponse. A major part of SCF research is devoted to the evaluation of nonresponse and adjustments for nonresponse in the analysis weights of the survey.[58]

Sources of Error

Errors may be introduced into survey results at many stages. Sampling error—the variability expected in estimates based on a sample instead of a census—is a particularly important source of error. Such error can be reduced either by increasing the size of a sample or, as is done in the SCF, by designing the sample to reduce important sources of variability. Sampling error can be estimated, and for this article we use replication methods to do so.

Replication methods draw samples, called replicates, from the set of actual respondents in a way that incorporates the important dimensions of the original sample design. In the SCF, weights were computed for all of the cases in each of the replicates.[59] Every value for which standard errors are reported in this article is a weighted statistic estimated using the

[58] The weights used in this article are adjusted for differential rates of nonresponse across groups. See Arthur B. Kennickell (1999), "Revisions to the SCF Weighting Methodology: Accounting for Race/Ethnicity and Homeownership" (Washington: Board of Governors of the Federal Reserve System, January), https://www.federalreserve.gov/econresdata/scf/scf_workingpapers.htm.

[59] See Arthur B. Kennickell (2000), "Revisions to the Variance Estimation Procedure for the SCF" (Washington:

replicate samples. To estimate the overall standard error, a measure of the variability of these estimates is combined with a measure of the variability because of imputation for missing data.

Other errors include those that interviewers may introduce by failing to follow the survey protocol or misunderstanding a respondent's answers. SCF interviewers are given lengthy, project-specific training and ongoing coaching to minimize such problems. Respondents may introduce error by interpreting a question in a sense different from that intended by the survey. For the SCF, extensive pretesting of questions and thorough review of the data tend to reduce this source of error.

Nonresponse—either complete nonresponse to the survey or nonresponse to selected items within the survey—may be another important source of error. As noted in more detail previously, the SCF uses weighting to adjust for differential nonresponse to the survey. To address missing information on individual questions within the interview, the SCF uses statistical methods to impute missing data; the technique makes multiple estimates of missing data to allow for an estimate of the uncertainty attributable to this type of nonresponse.

Board of Governors of the Federal Reserve System, October), https://www.federalreserve.gov/econresdata/scf/scf_workingpapers.htm.

Errata

The authors revised this article on October 10, 2017, to correct the following:

- On p. 3, in the final bullet point, the share of families that "were considered credit constrained" in 2016 was corrected to 20.8 percent.
- On p. 27, in table 5, the 2016 value for the row label "Did not apply for credit for fear of being turned down (past year)" was corrected to 14.4 percent.
- On p. 27, in table 5, the 2016 value for the row label "Either turned down for credit or feared denial (past year)" was corrected to 20.8 percent.
- On p. 30, in the final sentence of the first full paragraph, the share of families that "responded 'yes' to one or both of these questions" in 2016 was corrected to 20.8 percent.

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Legal Developments: Fourth Quarter, 2016

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

BNC Bancorp
High Point, North Carolina

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2016–12 (October 14, 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 merge with High Point Bank Corporation ("HPBC"), and thereby indirectly acquire High Point Bank and Trust Company ("High Point Bank"), both of High Point, North Carolina. Following the proposed acquisition, High Point Bank would be merged into BNC's sole 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 (81 *Federal Register* 44610 (July 8, 2016)).[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 $6.5 billion, is the 176th largest insured depository organization in the United States,[4] controlling approximately $5.4 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] BNC controls BNC Bank, which operates in North Carolina, South Carolina, and Virginia. BNC Bank is the 10th largest insured depository institution in North Carolina, controlling approximately $3.0 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

HPBC, with consolidated assets of approximately $779.6 million, is the 951st largest insured depository organization in the United States, controlling approximately $634.0 million in consolidated deposits, which represent less than 1 percent of nationwide

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1 12 U.S.C. § 1842.

2 The merger of High Point 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 September 30, 2016.

3 12 CFR 262.3(b).

4 National asset data, market share, and ranking data are as June 30, 2016, unless otherwise noted. State asset data, market share, and ranking data are as of June 30, 2015, unless otherwise noted.

5 In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

deposits. HPBC controls High Point Bank, which operates only in North Carolina. High Point Bank is the 29th largest insured depository institution in North Carolina, controlling deposits of approximately $646.2 million, 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 167th largest depository organization in the United States, with consolidated assets of approximately $7.3 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. BNC would control consolidated deposits of approximately $6.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In North Carolina, BNC Bank would become the 7th largest depository institution, controlling deposits of approximately $3.6 billion, which represent approximately 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[6] The 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.[7]

BNC and HPBC have subsidiary depository institutions that compete directly in the Greensboro-High Point, North Carolina banking market ("Greensboro market") and the Winston-Salem, North Carolina banking market ("Winston-Salem market").[8] The Board has considered the competitive effects of the proposal in each of the relevant markets in light of all the facts of record. 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 BNC;[9] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[10] and other characteristics of the markets.

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6 12 U.S.C. § 1842(c)(1).

7 12 U.S.C. § 1842(c)(1)(B).

8 The Greensboro market is defined as Davidson, Guilford, Randolph, and Rockingham Counties, all of North Carolina. The Winston-Salem market is defined as Davie, Forsyth, Stokes, and Yadkin Counties, all of North Carolina.

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

10 Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines 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.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Greensboro and Winston-Salem markets. On consummation of the proposal, the Greensboro market would remain moderately concentrated, as measured by the HHI. The HHI in this market would increase 101 points, from 1050 to 1151, and numerous competitors would remain in the market.[11] On consummation of the proposal, the Winston-Salem market would remain highly concentrated, as measured by the HHI; however, market concentration would increase by less than one point as measured by the HHI. Numerous competitors would also remain in the market.[12]

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

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Greensboro and Winston-Salem 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 a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[13] 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 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.

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[11] BNC operates the 3rd largest depository institution in the Greensboro market, controlling approximately $1.7 billion in deposits, which represent approximately 11.7 percent of market deposits. HPBC operates the 8th largest depository institution in the same market, controlling deposits of approximately $623.4 million, which represent 4.3 percent of market deposits. On consummation of the proposed transaction, BNC would become the 2nd largest depository organization in the market, controlling deposits of approximately $2.3 billion, which would represent approximately 16.0 percent of market deposits. Twenty-one other competitors would remain in the market.

[12] BNC operates the 9th largest depository institution in the Winston-Salem market, controlling approximately $124 million in deposits, which represent approximately 0.4 percent of market deposits. HPBC operates the 15th largest depository institution in the same market, controlling deposits of approximately $22.9 million, which represent 0.07 percent of market deposits. On consummation of the proposed transaction, BNC would remain the 9th largest depository organization in the market, controlling deposits of approximately $146.9 million, which would represent approximately 0.5 percent of market deposits. The HHI for the Winston-Salem market would increase by less than 1 point to 6740 on consummation, and 17 other competitors would remain in the market.

[13] 12 U.S.C. § 1842(c)(2), (5), and (6).

BNC and HPBC 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.[14] The asset quality, earnings, and liquidity of BNC Bank and High Point 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, HPBC, 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 HPBC 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.

BNC and its subsidiary depository institution are both considered to be well managed. BNC has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. BNC'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 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 management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and BNC plans to integrate HPBC's existing management and personnel in a manner that augments BNC's management.[15]

Based on all the facts of record, including BNC's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and the 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 BNC and HPBC 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.[16] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be

[14] To effect the holding company merger, each share of HPBC common stock would be converted into a right to receive BNC common stock and cash, based on a certain exchange ratio. BNC has the financial resources to fund the transaction.

[15] On consummation of the proposal, one of High Point Bank's directors will be added to the boards of directors of BNC and BNC Bank.

[16] 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,[17] 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.[18]

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 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 High Point Bank; the fair lending and compliance records of both banks, the supervisory views of the Federal Deposit Insurance Corporation ("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 objected to the proposal on the basis of alleged disparities by BNC Bank 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"), the number of refinance loans made to African Americans, as compared to whites, in the Charleston MSA, as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[19] for 2014, and the number of conventional home purchase loans made to African Americans, compared to whites, in the Charleston MSA, as reported under HMDA for 2015. The commenter also objected 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, and the number of refinance loans and home improvement loans made to African Americans, as compared to whites, by High Point Bank in the Greensboro-High Point, North Carolina MSA ("Greensboro MSA"), as reported under HMDA for 2014. In addition, the commenter alleged disparities in the number of home purchase loans made to African Americans, as compared to whites, by High Point Bank in the Winston-Salem, North Carolina MSA ("Winston-Salem MSA"). The commenter also criticized the rate at which BNC Bank denied refinance loan applications from African Americans, as compared to whites, in the Charleston MSA, and the rate at which High Point Bank denied refinance loan

[17] 12 U.S.C. § 2901(b).
[18] 12 U.S.C. § 2903.
[19] 12 U.S.C. § 2801 *et seq*.

applications from African Americans, as compared to whites, in the Greensboro MSA, as reported under HMDA for 2014.

Businesses of the Involved Institutions and Response to the Comments

BNC Bank is a state-chartered commercial bank, headquartered in Thomasville, North Carolina. It offers a full range of banking and financial services, including 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.

High Point Bank is a state-chartered commercial bank that offers a broad range of consumer and commercial banking products and services through its branch network in North Carolina and its wholly-owned subsidiaries. The products and services that it offers include checking, savings, money market, and certificate of deposit accounts; and mortgages, consumer installment, and loan products. In addition, High Point Bank offers the following services through its wholly-owned subsidiaries: home, health, life, automotive, and other insurance products; trust and estate planning; investment management; and retirement services.

BNC asserted that BNC Bank's lending record to minorities in the Charleston MSA, as reflected in 2014 HMDA data, was attributable to the bank's recent entry into the MSA in mid-2012. BNC represented that although the bank did not receive many mortgage applications in the Charleston MSA, the bank's approval rates for minorities were very favorable. BNC also asserted that BNC Bank has increased its lending to African Americans and Hispanics since its entry into the Charleston MSA, as reflected in the bank's HMDA lending data reported in 2014, as compared to its 2013 HMDA lending data. Also, BNC asserted that the Charleston MSA is a very competitive market, and the bank is making progress in expanding its Charleston branch network. BNC expects that the larger branch network will allow BNC Bank to better serve the community.

BNC maintained that High Point Bank approved all home purchase applications received from African Americans in the Greensboro and Winston-Salem MSAs. BNC attributes the low approval rate by High Point Bank for home refinance loans to African Americans to the low volume of applications received from African Americans by High Point Bank. BNC asserted that High Point Bank's low mortgage application volume was attributable to the highly competitive banking markets, the bank's limited number of locations, the bank's small overall staffing levels, and the bank's recent entry and lack of name recognition in the Greensboro and Winston-Salem MSAs.

BNC pointed to the "Satisfactory" CRA performance ratings of BNC Bank and High Point Bank as an indication that these banks are meeting the credit needs of their communities. BNC further asserted that BNC Bank is committed to ensuring that the credit needs of its communities are being met and is developing initiatives and programs focused on lending, investment, and service activities in its communities, with emphasis on developing programs for LMI individuals.

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.[20] 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.[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 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;[22] (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.[23] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

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[20] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[21] 12 U.S.C. § 2906.

[22] Examiners also consider the number and amounts 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).

[23] 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.

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.[24] 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.[25] 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 the geographic distribution of 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 LMI students, and basic human services to LMI individuals.

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 consid-

[24] 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.

[25] 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.

ered 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.

Examiners noted that the bank's "Low Satisfactory" rating under the Investment Test was based primarily on the dollar amount of the bank's qualified investments. Examiners also noted that the bank rarely used innovative and/or complex investments to support community development initiatives. However, examiners found that the bank had an adequate level of qualified community development investments and grants, and the bank exhibited adequate responsiveness to credit and community economic development needs through its investments and contributions.

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 of the communities in which the bank operates. For example, BNC represents that BNC Bank has created two new products that should allow the bank to better serve the needs of the unbanked and underbanked in the communities served by the bank. The first new product is a deposit account titled "BNC Beginnings," which is 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 as well as the unbanked or underbanked populations in the communities that the bank serves. The second new product is an affordable mortgage product that is designed for potential homeowners with income of 80 percent or less of the area's median income. BNC Bank asserts that the features and benefits of this product are very attractive to the market and the bank has received tremendous interest across its footprint.

BNC represents that BNC Bank is developing initiatives to expand outreach and increase lending activities, focusing on LMI individuals within its communities. 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 hired a director of community relations who is directly responsible for helping to increase interaction with the communities the bank serves.

CRA Performance of High Point Bank

High Point Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation ("High Point Bank Evaluation"), as of September 8, 2014.[26] High Point Bank received a "Satisfactory" rating for both the Lending Test [27] and the Community Development Test.

[26] The High Point 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 and small business loans from 2012 and 2013. As part of

Examiners found that High Point Bank's loan-to-deposit ratio was reasonable, given the institution's size and financial condition and the credit needs of its assessment areas. Examiners noted that a majority of the bank's loans were originated within its assessment areas. Examiners also found that the bank had an excellent distribution of loans among geographies of different income levels within its assessment areas. Examiners noted that the bank had a reasonable borrower distribution among businesses of different sizes and individuals of different income levels.

Examiners found that the bank's community development performance demonstrated an adequate responsiveness to the community development needs of the bank's assessment areas through community development loans, qualified investments, and community development services considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment areas.

Views of Other Regulator, and FDIC Approval of Bank Merger

The Board has consulted with the FDIC, the primary federal supervisor of both BNC Bank and High Point Bank, regarding the FDIC's review of the proposed merger of these two institutions. After a full review of the proposal, including review of the HMDA data cited by the commenter in the public comments opposing the application before the Board, the FDIC determined that the proposal met the standards of the Bank Merger Act and approved the proposal without conditions. In addition, the FDIC has indicated its non-objection to approval of this application.

The commenter filed similar CRA and fair lending comments with respect to BNC Bank's lending in the Charleston MSA as had been previously filed in connection with BNC's acquisition of Southcoast Financial Corporation, Mount Pleasant, South Carolina, which was approved in June 2016.[28] In that case, the Board noted that BNC Bank was previously required by the FDIC to develop and submit a supplement to its existing compliance plan to strengthen the bank's fair lending compliance program. The FDIC has indicated that BNC Bank has developed an acceptable supplemental plan and continues to operate in accordance with its compliance plan and the supplement to that plan.

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. BNC represents that, upon consummation of the proposal, customers will find enhanced convenience with a larger, more robust branch network within the Greensboro and Winston-Salem MSAs. BNC also asserts that the convenience and needs of the communities in which High Point Bank currently operates will be better served by increased access to capital and the economies of scale High Point Bank will have as a result of being a part of the resulting institution. Moreover, BNC maintains that its two new product offerings, the "New Beginnings" deposit account and

the Community Development Test, qualified community development loans, investments, and services from October 3, 2011, to September 8, 2014, were reviewed. The High Point Bank Evaluation included full-scope evaluations of Guilford and Randolph Counties in the Greensboro MSA and Forsythe County in the Winston-Salem MSA.

[27] 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).

[28] *See BNC Bancorp*, FRB Order 2016-06 (June 2, 2016).

the affordable mortgage product, should allow BNC Bank to better serve the needs of the unbanked and underbanked in the communities served by the combined bank. Finally, BNC Bank notes that the bank's staff is currently working with the City of High Point to build, remodel, and resell homes in certain struggling neighborhoods currently served by High Point Bank.

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 FDIC, including regarding BNC Bank's progress in implementing its compliance plan and the supplement to that plan; 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 a proposal's "risk to the stability of the United States banking or financial system."[29]

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.[30] 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.[31]

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 $7.3 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 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.

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[29] 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).

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

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

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 proposal should be, and hereby is, approved.[32] 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. Approval of this proposal is specifically conditioned on compliance by BNC 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.

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 October 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

[32] The commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact that are 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.

River Holding Company
Stoddard, Wisconsin

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2016–16 (October 24, 2016)

River Holding Company ("RHC"), Stoddard, 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 Act[2] to merge with Sparta Union Bancshares, Inc. ("Sparta"), and thereby acquire its subsidiary bank, Union National Bank & Trust Company ("Union Bank"), both of Sparta, Wisconsin.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 54,085 (2016)).[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.

RHC, with consolidated assets of approximately $556.1 million, is the 1,281st largest depository organization in the United States, controlling deposits of approximately $469.3 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[4] RHC controls River Bank and Wisconsin River Bank, both of which operate only in Wisconsin. RHC is the 40th largest insured depository organization in Wisconsin, controlling deposits of approximately $460.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[5]

Sparta, with consolidated assets of approximately $119.1 million, is the 4,089th largest depository organization in the United States. Sparta controls Union Bank, a national bank that operates only in Wisconsin. Sparta is the 172nd largest insured depository organization in Wisconsin, controlling approximately $96.9 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, RHC would become the 1,078th largest depository organization in the United States, with consolidated assets of approximately $675.2 million, which represent less than 1 percent of the total assets of insured depository institutions in the United States. RHC would control deposits of approximately $568.8 million, which represent less than 1 percent of the total amount of deposits in insured depository institutions in the United States. In Wisconsin, RHC would become the 34th largest depository institution, controlling deposits of approximately $557.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 12 CFR 262.3(b).

4 Nationwide deposit, asset, and ranking data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, savings banks, savings associations, and nondeposit trust companies.

5 State deposit, market share, and ranking data are as of June 30, 2015.

banking in any relevant market.[6] 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.[7]

RHC and Sparta have subsidiary depository institutions that compete directly in the Black River Falls, Wisconsin, banking market (the "Black River Falls market").[8] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market; the relative share of the total deposits in insured depository institutions in the market ("market deposits") that RHC would control;[9] 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");[10] and other characteristics of the market.

Using the initial competitive screening data, in the Black River Falls market, RHC is the fourth largest depository organization, controlling deposits of approximately $54.3 million, which represent approximately 10.5 percent of market deposits. Sparta is the second largest depository organization in the market, controlling deposits of approximately $96.9 million, which represent approximately 18.7 percent of market deposits. On consummation of the proposal, the combined entity would be the second largest depository organization in the Black River Falls market, controlling deposits of approximately $151.2 million, which would represent approximately 29.1 percent of market deposits. The HHI in the market would increase by 390 points, from 1801 to 2191.

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 Black River Falls market.[11] Factors indicate that the increase in concentration in the Black River Falls market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, two community credit unions exert a competitive influence in the Black River Falls market. The institutions offer a wide range of consumer banking products, operate street-level branches, and have broad membership criteria that include almost all of the residents in the

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6 12 U.S.C. § 1842(c)(1)(A).

7 12 U.S.C. §§ 1842(c)(1)(B).

8 The Black River Falls market is defined as Western Monroe County, Wisconsin, and City Point, Bear Bluff, Knapp, Komensky, Millston, Brockaway, Manchester, Adams, Hixton, Albion, and Irving townships in Jackson County, Wisconsin.

9 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.

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

11 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).

relevant banking market.[12] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50 percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration of the proposed transaction in the Black River Falls 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 by the credit unions, the market concentration level in the Black River Falls market as measured by the HHI would increase by 309, from a level of 1492 to 1801, and the market share of RHC resulting from the transaction would be 25.9 percent. After consummation of the proposal, eleven depository institutions would remain in the Black River Falls market, including one depository institution with a higher market share than RHC's market share. This depository institution would control 28.1 percent of market deposits. The presence of these viable competitors suggests that RHC would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on RHC in the Black River Falls 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 Black River Falls 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 Black River Falls 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.[13] 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 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 the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The

[12] 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).

[13] 12 U.S.C. §§ 1842(c)(2), (5), and (6).

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.

River Bank, Wisconsin River Bank, and Union Bank are all 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 cash for shares.[14] The asset quality, earnings, and liquidity of RHC and Sparta are consistent with approval, and RHC 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 RHC, Sparta, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by RHC; 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.

RHC and its subsidiary depository institutions are considered to be well managed. RHC's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and RHC's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered RHC's plans for implementing the proposal. RHC 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. RHC would operate Union Bank as a standalone depository institution following consummation of the proposal. RHC has represented that Union Bank has adequate risk- management systems that will remain in place following consummation of the proposal, pending ongoing review and analysis of where improvements and efficiencies can be gained. These risk-management systems are considered to be acceptable from a supervisory perspective. In addition, RHC's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and RHC plans to integrate Union Bank's existing management and personnel in a manner that augments RHC's management.[15]

Based on all the facts of record, including RHC'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 RHC and Sparta in combatting money-laundering activities, are consistent with approval.

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[14] To effect the holding company merger, all outstanding shares of Sparta will be converted into the right to receive cash from RHC. RHC expects to fund the exchange by a dividend from River Bank to RHC and through financing from RHC's president and chairman and from a third-party lender. RHC has the financial resources to support this obligation.

[15] On consummation, the existing senior management of Union Bank is expected to remain unchanged. In addition, three existing members of Union Bank's board of directors will continue to serve on the board of Union Bank following the transaction. The president and chairman of RHC and the vice president of RHC will also serve on the board of Union Bank.

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.[16] 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,[17] 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.[18]

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 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 River Bank, Wisconsin River Bank, and Union Bank; the fair lending and compliance records of each of the involved banks; the supervisory views of the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC"); confidential supervisory information; and information provided by RHC.

Records of Performance under the CRA

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, as well as information and views provided by the appropriate federal supervisors.[19]

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.[20] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

[16] 12 U.S.C. § 1842(c)(2).

[17] 12 U.S.C. § 2901(b).

[18] 12 U.S.C. § 2903.

[19] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48,506, 48,548 (July 25, 2016).

[20] 12 U.S.C. § 2906.

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 in order 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 its (1) loan-to-deposit ratio, (2) loan originations for sale to the secondary market, (3) lending-related activities in its assessment areas, (4) record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, (5) geographic distribution of loans, and (6) record of taking action in response to written complaints about its performance. In addition to the lending test, intermediate small institutions such as River Bank are 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.[21]

CRA Performance of River Bank and Wisconsin River Bank

River Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC, as of June 8, 2015 ("River Bank Evaluation").[22] River Bank received "Satisfactory" ratings for both the lending test and the community development test.[23]

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 also noted that a majority of River Bank's loans and other lending-related activities were in its assessment areas. Although examiners found that the geographic distribution of River Bank's residential real estate loans reflected excellent dispersion throughout La Crosse County, the bank's geographic distribution of loans was otherwise found to be poor. Examiners noted that River Bank's distribution of borrowers reflected reasonable penetration among individuals of different income levels (including LMI individuals) and businesses of different sizes.

Examiners found that River Bank's community development performance demonstrated an adequate level of responsiveness to the community development needs of its assessment areas through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the availability of opportunities for community development within the bank's assessment area.

[21] *See* 12 CFR 228.26.

[22] The River Bank Evaluation was conducted using Intermediate Small-Bank CRA Examination Procedures, consisting of the lending and community development tests described above. The River Bank Evaluation reviewed a sample of small business loans originated during the period from July 1, 2014 through December 31, 2014, and all home mortgage loans reported on the bank's 2013 and 2014 HMDA Loan Application Registers. Examiners reviewed community development loans, qualified investments, and community development services since February 25, 2013.

[23] The River Bank Evaluation reviewed the bank's activities in La Crosse County, Wisconsin and portions of Crawford, Monroe, Trempealeau, and Vernon Counties, Wisconsin.

River Bank's Efforts Since the River Bank Evaluation

RHC represents that, since the River Bank Evaluation, River Bank has made a number of community development loans to support its assessment areas. RHC represents that these have included loans to local small businesses and to organizations devoted to assisting low-income families. RHC also represents that River Bank's employees have continued to engage in community development services to support the communities in which the bank operates. RHC represents that River Bank has maintained its existing community development investments since the River Bank Evaluation and continues to seek additional community development investment opportunities.

CRA Performance of Wisconsin River Bank

Wisconsin River Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC, as of September 3, 2013 ("Wisconsin River Bank Evaluation").[24] 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 bank's residential, small business, and small farm loans were in its assessment areas, both by number and dollar volume. Examiners also noted that the bank's distribution of borrowers reflected reasonable penetration among businesses and farms of different sizes and among individuals of different income levels (including LMI individuals). Examiners also found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout its assessment areas.

Wisconsin River Bank's Efforts Since the Wisconsin River Bank Evaluation

RHC represents that Wisconsin River Bank continues to help meet the credit needs of its local communities by offering loan products from the Wisconsin Housing and Economic Development Authority and the United Stated Department of Agriculture's Rural Development Program to borrowers who may not qualify for traditional bank financing. RHC also represents that Wisconsin River Bank has engaged in lending to support local business projects.

CRA Performance of Union Bank

Union Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the OCC, as of May 19, 2014 ("Union Bank Evaluation").[25] Examiners found that the bank's loan-to-deposit ratio was reasonable and comparable to similarly situated banks. Examiners noted that a substantial majority of the bank's loans were originated in its assessment area and that its distribution of borrowers reflected reasonable penetration among individuals of different income levels (including LMI individuals) and businesses of different sizes.

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[24] The Wisconsin River Bank Evaluation was conducted using the Small Bank CRA Examination Procedures, consisting of the lending test described above. The Wisconsin River Bank Evaluation reviewed (1) a sample of small business and small farm lending during 2012 and 2013 and (2) the bank's HMDA-reportable residential mortgage loans from January 1, 2011, though June 30, 2013. The Wisconsin River Bank Evaluation included reviews of the bank's activities in nine census tracts in Dane and Columbia Counties, Wisconsin, and eight non-Metropolitan Statistical Area census tracts in Sauk County, Wisconsin.

[25] The Union Bank Evaluation was conducted using the Small Bank CRA Examination Procedures, consisting of the lending test described above. The Union Bank Evaluation reviewed the bank's commercial and residential real estate loans from January 20, 2009, through May 19, 2014. The Union Bank Evaluation included reviews of the bank's activities in five contiguous census tracts in Monroe County, Wisconsin.

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. RHC represents that it would improve Union Bank customers' access to loans in excess of the bank's legal lending limit by providing existing and future customers of Union Bank with the additional lending resources of River Bank and Wisconsin River Bank. RHC also represents that customers of Union Bank may gain access to nondeposit investment products through RHC and its affiliates. RHC represents that it does not plan to reduce or eliminate any services currently offered by Union Bank.

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 RHC, 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."[26]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[27] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[28]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, RHC would have approximately $675.2 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

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

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.

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 RHC 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.

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 Federal Reserve Bank of Chicago acting pursuant to delegated authority.

By order of the Board of Governors, effective October 24, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Wintrust Financial Corporation
Rosemont, Illinois

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2016–17 (October 28, 2016)

Wintrust Financial Corporation ("Wintrust"), Rosemont, Illinois, 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 Act[2] to merge with First Community Financial Corporation ("First Community"), and thereby indirectly acquire First Community Bank ("First Community Bank"), both of Elgin, Illinois.

In addition, Wintrust's subsidiary state member bank, St. Charles Bank & Trust Company ("St. Charles Bank"), St. Charles, Illinois, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with First Community Bank, with St. Charles Bank as the surviving entity.[3] St. Charles Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate a branch at the main office and at a branch of First Community Bank.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 473940-47395 (July 21, 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").

Wintrust, with consolidated assets of approximately $24.4 billion, is the 68th largest insured depository organization in the United States.[6] Wintrust controls approximately $20.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Wintrust controls 15 insured depository institutions, which operate in Illinois, Indiana, and Wisconsin. Wintrust is the 5th largest insured depository organization in Illinois, controlling deposits of $16.0 billion, which represent 3.46 percent of the total deposits of insured depository institutions in that state.[7]

First Community, with consolidated assets of approximately $179.8 million, is the 3,246th largest insured depository organization in the United States, controlling approximately $153.7 million in consolidated deposits, which represent less than 1 percent of nationwide deposits. First Community controls First Community Bank, which operates only in Illinois. First Community is the 246th largest insured depository organization in Illinois, control-

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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 the appendix.

5 12 CFR 262.3(b).

6 National asset data, market share, and ranking data are as June 30, 2016, unless otherwise noted. State asset data, market share, and ranking data are as of June 30, 2015, unless otherwise noted. State asset, market share, and ranking data does not include acquisitions made by Wintrust since June 30, 2016.

7 In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

ling deposits of approximately $141.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Wintrust would remain the 68th largest depository organization in the United States, with consolidated assets of approximately $24.6 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Wintrust would control consolidated deposits of approximately $20.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, Wintrust would remain the 5th largest depository organization, controlling deposits of approximately $16.2 billion, which represent approximately 3.49 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.[8] 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.[9]

Wintrust and First Community have subsidiary depository institutions that compete directly in the Chicago, Illinois banking market ("Chicago market").[10] 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 market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") that would be controlled by Wintrust;[11] 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");[12] and other characteristics of the market.

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

[9] 12 U.S.C. §§1842(c)(1)(B) and 1828(c)(5)(B).

[10] The Chicago market consists of Cook County, DuPage County, Lake County, Will County, Kane County, McHenry County, Kendall County, DeKalb County, Grundy County, Kankakee County, plus Milks Grove, Chebanse, Papineau, Beaverville, Ashkum, Martinton, and Beaver townships of Iroquois County; plus Roger, Mona, Pella, and Brenton townships in Ford County, all in Illinois; and Pleasant Prairie, Bristol, Salem, and Randall townships in Kenosha County, Wisconsin.

[11] 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); *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).

[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 200points. 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.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Chicago market. On consummation of the proposal, the Chicago market would remain unconcentrated, as measured by the HHI. The HHI in this market would increase by less than 1 point to remain at 985, and numerous competitors would remain in the market.[13]

The DOJ 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 Chicago 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 Chicago 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.[14] 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 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.

Wintrust and First Community 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 purchase, with a subsequent merger of St. Charles Bank and First Community Bank.[15] The asset quality, earnings, and liquidity of St. Charles Bank and First Community Bank are consistent with approval, and Wintrust appears to have adequate resources to absorb the costs of the proposal and to

[13] Wintrust operates the 5th largest depository institution in the Chicago banking market, controlling approximately $16.9 billion in deposits, which represent approximately 4.55 percent of market deposits. First Community operates the 104th largest depository institution in the same market, controlling deposits of approximately $141.0 million, which represent 0.04 percent of market deposits. On consummation of the proposed transaction, Wintrust would remain the 5th largest depository organization in the market, controlling deposits of approximately $17.1 billion, which represent approximately 4.59 percent of market deposits. The HHI for the Chicago market would remain 985, and 186 other competitors would remain in the market.

[14] 12 U.S.C. §§ 1842(c)(2), (5), and (6), and 1828(c)(5) and (11). 5

[15] To effect the holding company merger, each share of First Community common stock would be converted into a right to receive cash, based on a certain exchange ratio. Wintrust has the financial resources to fund the transaction.

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 Wintrust, First Community, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Wintrust; the Board's supervisory experiences with Wintrust and First Community 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.

Wintrust and its subsidiary depository institutions, including St. Charles Bank, are considered to be well managed. Wintrust has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Wintrust'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 Wintrust's plans for implementing the proposal. Wintrust 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. Wintrust would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Wintrust's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner.

Based on all the facts of record, including Wintrust'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 Wintrust and First Community 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.[16] 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,[17] 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

[16] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).
[17] 12 U.S.C. § 2901(b).

community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[18]

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 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 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 First Community Bank and St. Charles Bank; the fair lending compliance records of both banks; the supervisory views of examiners; confidential supervisory information; information provided by Wintrust; and the public comment received on the proposal.[19] The Board also considered the reports of examination of the CRA performance and fair lending compliance records of Wintrust's 14 other insured depository institutions.

Businesses of Involved Institutions

St. Charles Bank is a state-chartered, commercial bank, headquartered in St. Charles, Illinois. It offers a broad range of banking and financial services, including deposit accounts; checking accounts; certificates of deposits; and commercial, real estate, and consumer loan products. The bank's main loan focus is small and medium-sized businesses and loans secured by commercial real estate.

First Community Bank is a state-chartered, commercial bank that offers a broad range of consumer and commercial banking products and services, including checking, savings, money market, and certificate of deposit accounts; mortgages, consumer installment loans, and loan products; and retirement services. The bank's primary loan focus is commercial and commercial real estate lending.

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 responses 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

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[18] 12 U.S.C. § 2903.

[19] One community organization asserted that the proposal should not be approved unless Wintrust develops and agrees to a Community Reinvestment Act Plan ("Plan") and such Plan is included as a condition of the Board's approval. In response to the comment, Wintrust asserts that it is in agreement with the principles raised by the commenter, such as the value of community engagement, the importance of the CRA, and the importance of meeting community needs. Wintrust asserts that St. Charles Bank has a strong record of meeting the credit and other banking needs of LMI individuals and routinely evaluates the credit and deposit needs of unbanked and underbanked individuals. Wintrust further represents that it is strongly committed to compliance with the CRA and that it has a history of strong CRA performance throughout the organization.

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.*, *Huntington Bancshares Incorporated*, FRB Order No. 2016-13 at 32 n. 50 (July 29, 2016); *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.

CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.[20] 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").

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 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 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;[22] (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.

CRA Performance of St. Charles Bank

St. Charles Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of April 22, 2013 ("St. Charles Bank Evaluation").[23] St. Charles Bank received a "Low Satisfactory" rating for the Lending Test and a "High Satisfactory" rating for both the Service Test and the Investment Test.[24]

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[20] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[21] 12 U.S.C. § 2906.

[22] Examiners also consider the number and amounts 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).

[23] The St. Charles Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed HMDA-reportable loans and small business lending from January 1, 2009, to December 31, 2012. The evaluation period for all qualified community development activities, including community development loans, investments and donations, and services was April 20, 2009, through April 22, 2013.

[24] The St. Charles Bank Evaluation included a full-scope evaluation of Kane County, the bank's only assessment area. In September 2011, the bank's assessment area was expanded to include all of Kane County, Illinois, to reflect the acquisition of Elgin State Bank. The assessment area is located entirely within the Chicago-Joliet-Naperville, Illinois-Indiana-Wisconsin Metropolitan Statistical Area ("Chicago MSA").

Examiners found that St. Charles Bank's overall lending levels reflected adequate responsiveness to credit needs in the assessment area. Examiners noted that the bank originated a majority of home mortgage loans and small business loans within its assessment area[25] and that the geographic distribution of loans reflected adequate penetration throughout the assessment area. In particular, examiners found that St. Charles Bank displayed adequate penetration among customers of different income levels and good penetration among businesses of different sizes. Examiners also noted that, overall, the bank originated a relatively high level of community development loans in its assessment area and that the bank made use of innovative and flexible lending practices in order to serve the assessment area's credit needs.

Examiners found that St. Charles Bank had a significant level of qualified community development investments and grants and that the bank occasionally acted in a leadership position for such investments made throughout its assessment area. Examiners noted that St. Charles Bank exhibited good responsiveness to the credit needs of the assessment area. Examiners highlighted the bank's participation in an innovative investment that funded the acquisition and rehabilitation of properties in LMI areas and extended mortgages to qualified LMI individuals for the purchase of those properties. Examiners noted that the bank made qualified community development grants and donations to organizations providing home construction and home repairs, transitional and emergency housing, affordable medical care, and youth programs to LMI individuals. Likewise, examiners noted that qualified investments were distributed for affordable housing, community services, and economic development purposes.

Examiners highlighted that St. Charles Bank's officers and staff provided a relatively high level of community development services in the bank's assessment area. Examiners also considered St. Charles Bank's retail services. Examiners noted that St. Charles Bank's delivery systems were accessible to geographies and individuals of different income levels in the assessment area and that the bank offered services through several delivery channels, including automated teller machines, online banking services, branches, and a telebanking service. In addition, examiners noted that St. Charles Bank's customers had access to automated teller machines operated by any of Wintrust's other subsidiary depository institutions without incurring a transaction fee.

St. Charles Bank's Efforts Since the St. Charles Bank Evaluation

Wintrust asserts that, since the St. Charles Bank Evaluation, St. Charles Bank has initiated a number of efforts to enhance its support of all of the communities in which the bank operates. Wintrust also asserts that the bank has continued to provide a variety of financial products and services designed to meet the credit and banking needs of LMI individuals. Additionally, Wintrust represents that the bank opened a branch in a moderate-income community in recognition of the additional need in that community. Wintrust also represents that the bank has served in a leadership role in supporting a number of community development organizations. According to Wintrust, St. Charles Bank has provided more than 3,300 community service hours since the St. Charles Bank Evaluation.

Wintrust further represents that the bank has continued its initiatives and programs focused on lending, investment, and service activities in its communities, with emphasis on small business lending and affordable housing and on offering products and services aimed at meeting the needs of unbanked and underbanked residents. In particular,

[25] St. Charles Bank is treated, for CRA purposes, as originating some of the loans of its affiliate, Wintrust Mortgage Co., Rosemont, Illinois, a subsidiary of Barrington Bank & Trust Company, National Association, Barrington, Illinois, in determining the level of loans originated in its assessment area.

Wintrust states that the bank offers checking and savings account products that do not require minimum balances, as well as a personal loan product that is an affordable, safe, and accessible alternative to a payday loan. Additionally, the bank participates in a number of programs aimed at first-time homebuyers and LMI homebuyers. According to Wintrust, the bank has made a number of community development loans since the St. Charles Bank Evaluation, with a focus on affordable housing. Further, Wintrust represents that St. Charles Bank has established a CRA Committee consisting of St. Charles Bank executives that meets monthly to oversee CRA-related initiatives, products, and services.

CRA Performance of Other Wintrust Subsidiary Banks

In addition to St. Charles Bank, Wintrust is the parent company of 14 other insured depository institutions. Seven of Wintrust's 14 other wholly owned depository institutions received "Outstanding" CRA performance ratings on their most recent CRA examinations, with the other seven institutions receiving "Satisfactory" CRA ratings. Wintrust further represents that five of its subsidiary banks improved their component CRA performance ratings from "Satisfactory" to either "High Satisfactory" or "Outstanding" in their subsequent CRA performance exams. The largest of these depository institutions, Lake Forest Bank & Trust Company, Lake Forest, Illinois, was among the depository institutions that received an "Outstanding" CRA performance rating by the Reserve Bank at its most recent CRA performance evaluation, dated February 29, 2016. This rating included "Outstanding" ratings on each of the Lending, Service, and Investment Tests. Wintrust further represents that it has set a number of CRA goals, including a goal that each subsidiary bank strive to attain an "Outstanding" CRA performance rating and that lending be aligned with meeting or exceeding peer lending percentages.

CRA Performance of First Community Bank

First Community Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation ("First Community Bank Evaluation"), as of February 11, 2013.[26]

Examiners found that First Community Bank's loan-to-deposit ratio was reasonable, given the institution's size, financial condition, and assessment area's credit needs. Examiners noted that a majority of the bank's loans and other lending-related activities were made within its assessment area. Examiners also found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area. Examiners noted that the bank's borrower distribution reflected reasonable penetration among business of different sizes and individuals of different income levels.

Examiners also noted that First Community Bank was an active small business lender and that the distribution of the bank's small business loans was reasonable. Further, examiners noted that while these loans would not be considered community development initia-

[26] The First Community Bank Evaluation was conducted by the FDIC using the Interagency Evaluation Procedures for Small Institutions. The examination procedures applicable to small banks specifically evaluate (1) 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; (2) the percentage of loans and other lending-related activities located in the bank's assessment areas; (3) 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; (4) the geographic distribution of the bank's loans; and (5) 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). In the First Community Bank Examination, examiners evaluated the bank's home mortgage loans and small business loans in 2011 and 2012. The First Community Evaluation included a full-scope evaluation of the bank's only assessment area, which is composed of geographies in Kane and Cook Counties in Illinois. The assessment area is located entirely in the Chicago MSA.

tives, they supported credit availability for small businesses in the bank's assessment area. Examiners also noted that bank's distribution of home mortgage loans reflected reasonable penetration among individuals of different income levels.

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. Wintrust represents that on consummation of the proposal, existing customers of First Community Bank will find enhanced convenience through greater access to capital, a wider range of products and services, and a larger network of automated teller machines in the Chicago MSA. Wintrust has also indicated that customers of First Community Bank would have access to products currently offered at St. Charles Bank that serve the needs of the unbanked and underbanked in the communities within the bank's assessment area. Wintrust represents that there will be no substantive change in banking operations and no significant changes in product offerings, interest rates, fees, or pricing as a result of the proposal. Wintrust asserts that St. Charles Bank has set a number of CRA goals, including a goal for community development lending to be 20 percent of tier 1 capital and a goal for small business lending to exceed peer-institution percentages for small business lending in the bank's assessment area.

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 provided by Wintrust; 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.

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."[27]

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.[28] 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

[27] Section 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).

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

institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[29]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Wintrust would have approximately $24.6 billion in consolidated assets and, by any of a number of alternative measures of firm size, Wintrust 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.

Establishment of Branches

St. Charles Bank has applied under section 9 of the FRA to establish branches at current locations of First Community Bank.[30] The Board has assessed the factors it is required to consider when reviewing an application under that section.[31] Specifically, the Board has considered St. Charles Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investments in bank premises.[32] 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 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, the Bank Merger Act, the FRA, and other applicable statutes. Approval of this proposal is specifically conditioned on compliance by Wintrust 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.

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

[30] 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). On consummation, all of St. Charles Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. Ann. 5/1 *et seq*.

[31] 12 U.S.C. § 322; 12 CFR 208.6.

[32] On consummation of the proposed transaction, St. Charles Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

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

By order of the Board of Governors, effective October 28, 2016.

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

Robert deV. Frierson
Secretary of the Board

Appendix

Branches to Be Acquired by St. Charles Bank

1. 50 Tyler Creek Plaza, Elgin, Illinois 60123
2. 165 South Randall Road, Elgin, Illinois 60123

First Midwest Bancorp, Inc.
Itasca, Illinois

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2016–18 (November 10, 2016)

First Midwest Bancorp, Inc. ("First Midwest"), Itasca, Illinois, 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 Act[2] to merge with Standard Bancshares, Inc. ("Standard"), and thereby indirectly acquire Standard Bank and Trust Company ("SB&T"), both of Hickory Hills, Illinois.

In addition, First Midwest's subsidiary state member bank, First Midwest Bank, Itasca, Illinois, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with SB&T, with First Midwest Bank as the surviving entity.[3] First Midwest 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 SB&T.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 54577 (August 16, 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").

First Midwest, with consolidated assets of approximately $11.0 billion, is the 115th largest insured depository organization in the United States.[6] First Midwest controls approximately $9.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. First Midwest controls First Midwest Bank, which operates in Illinois, Indiana, and Iowa. First Midwest is the 13th largest insured depository institution in Illinois, controlling deposits of approximately $7.4 billion, which represent 1.6 percent of the total deposits of insured depository institutions in that state. First Midwest is the 25th largest insured depository institution in Indiana, controlling deposits of approximately $803.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Standard, with consolidated assets of approximately $2.5 billion, is the 350th largest insured depository organization in the United States. Standard controls approximately $2.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Standard controls SB&T, which operates in Illinois and Indiana. Standard is the 26th largest insured depository institution in Illinois, controlling deposits of approximately $1.9 billion, which

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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 the Appendix.

5 12 CFR 262.3(b).

6 National asset data, market share, and ranking data are as of June 30, 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.

represent less than 1 percent of the total deposits of insured depository institutions in that state. Standard is the 62nd largest insured depository institution in Indiana, controlling deposits of approximately $241.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, First Midwest would become the 101st largest insured depository organization in the United States, with consolidated assets of approximately $13.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. First Midwest would control consolidated deposits of approximately $11.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. First Midwest would remain the 13th largest insured depository organization in Illinois, controlling deposits of approximately $9.4 billion, which represent 2 percent of the total deposits of insured depository institutions in that state. First Midwest would become the 23rd largest insured depository organization in Indiana, controlling deposits of approximately $1.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank 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[9] 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 First Midwest and SB&T is Illinois.[11] SB&T also is located in Indiana. First Midwest is well capitalized and well managed, and First Midwest Bank has an "Outstanding" Community Reinvestment Act of 1977

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[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 First Midwest Bank and SB&T is Illinois. 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.

("CRA")[12] rating. There are no minimum age requirements under the laws of Indiana that would apply to First Midwest's acquisition of Standard, and SB&T has been in existence for more than five years.[13]

On consummation of the proposed transaction, First Midwest would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Illinois imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[14] The combined organization would control approximately 2 percent of the total amount of deposits of insured depository institutions in Illinois, and approximately 1 percent of the total amount of deposits of insured depository institutions in Indiana, the only states in which First Midwest and Standard have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including First Midwest's record of meeting the credit needs of the communities it serves. In light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.[15]

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.[16] 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.[17]

First Midwest and Standard have subsidiary depository institutions that compete directly in the Chicago, Illinois, banking market ("Chicago market") and the Gary-Hammond, Indiana, banking market ("Gary-Hammond market").[18] 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 markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that First Midwest would control;[19] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive

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[12] 12 U.S.C. § 2901 *et seq*.

[13] *See* Ind. Code § 28-2-17.

[14] 205 Ill. Comp. Stat. 5/21.3(a). Indiana does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

[15] 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 First Midwest Bank and SB&T is Illinois; therefore, section 102 of the Riegle-Neal Act does not apply to the proposed bank merger. *Id.*

[16] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[17] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[18] The Chicago market is defined as Cook, DuPage, Lake, Will, Kane, McHenry, Kendall, DeKalb, Grundy, and Kankakee counties; the Milks Grove, Chebanse, Papineau, Beaverville, Ashkum, Martinton, and Beaver townships in Iroquois County; Roger, Mona, Pella, and Brenton townships in Ford County, all in Illinois; and the Pleasant Prairie, Bristol, Salem, and Randall townships in Kenosha County, Wisconsin. The Gary-Hammond market is defined as Lake, Porter, La Porte, Newton, and Jasper counties, all in Indiana; and the Center, Jackson, California (minus the city of Bass Lake), Wayne, and Railroad townships in Starke County, Indiana.

[19] Local deposit and market share data are as of June 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 Finan-*

Review guidelines ("DOJ Bank Merger Guidelines");[20] 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 Chicago and Gary-Hammond markets. On consummation of the proposal, the Chicago and Gary-Hammond markets would remain unconcentrated. The change in the HHI in these markets would be small, and numerous competitors would remain in the markets.[21]

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 Chicago and Gary-Hammond markets. 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 Chicago or Gary-Hammond banking 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 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.[22] 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

cial 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).

[20] 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.

[21] First Midwest operates the 12th largest depository institution in the Chicago market, controlling approximately $7.4 billion in deposits, which represent approximately 2 percent of market deposits. Standard operates the 20th largest depository institution in the market, controlling approximately $1.9 billion in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, First Midwest would remain the 12th largest depository institution in the market, controlling deposits of approximately $9.3 billion, which represent approximately 2.5 percent of market deposits. The HHI for the Chicago market would increase by 2 points to 987, and 186 competitors would remain in the market. First Midwest operates the 6th largest depository institution in the Gary-Hammond market, controlling approximately $803.6 million in deposits, which represent approximately 6 percent of market deposits. Standard operates the 13th largest depository institution in the market, controlling approximately $241.2 million in deposits, which represent approximately 1.8 percent of market deposits. On consummation of the proposed transaction, First Midwest would become the 4th largest depository institution in the market, controlling deposits of approximately $1 billion, which represent approximately 7.8 percent of market deposits. The HHI for the Gary-Hammond market would increase by 21 points to 955, and 30 competitors would remain in the market.

[22] 12 U.S.C. §§ 1842(c)(2), (5), and (6), and 1828(c)(5) and (11).

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.

First Midwest and First Midwest Bank are both well capitalized, and the combined entity 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.[23] The asset quality, earnings, and liquidity of First Midwest Bank and SB&T are consistent with approval, and First Midwest 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 First Midwest, Standard, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by First Midwest; the Board's supervisory experiences with First Midwest and Standard 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 Midwest, Standard, and their subsidiary depository institutions are considered to be well managed. First Midwest has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. First Midwest's existing risk-management program and its directorate and senior management are considered satisfactory. The directors and senior executive officers of First Midwest have substantial knowledge of and experience in the banking and financial services sectors. First Midwest's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered First Midwest's plans for implementing the proposal. First Midwest 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. First Midwest 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 Midwest's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and First

[23] To effect the holding company merger, Benjamin Acquisition Corporation, a wholly owned subsidiary of First Midwest recently formed to facilitate the transaction, would merge with Standard, with Standard as the surviving entity ("Acquisition Merger"), and immediately thereafter, Standard would merge with First Midwest, with First Midwest as the surviving entity. Upon consummation of the Acquisition Merger, each share of Standard common stock would be converted into the right to receive First Midwest common stock based on an exchange ratio. Following the holding company mergers, SB&T would merge with and into First Midwest Bank, with First Midwest Bank as the resulting entity.

Midwest plans to integrate Standard's existing management and personnel in a manner that augments First Midwest's management.[24]

Based on all the facts of record, including First Midwest's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, in addition to 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 First Midwest and Standard 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.[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, 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,[26] 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.[27]

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 First Midwest Bank and SB&T; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by First Midwest; and the comment received on the proposal.[28]

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[24] On consummation, three individuals serving as senior management officials at Standard or SB&T will serve as senior management officials at the First Midwest banking organization. These individuals include Standard's chief executive officer, who will serve as First Midwest's market president of the South Metro Chicago region and is expected to be appointed as a member of the board of directors of First Midwest Bank.

[25] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[26] 12 U.S.C. § 2901(b).

[27] 12 U.S.C. § 2903.

[28] A community organization requested that the Board condition its approval of the proposal upon First Midwest creating a CRA plan with input from the public. First Midwest has responded that it has a history of strong CRA performance that reflects the effectiveness and consistency of its CRA-related activities, strategies, and community outreach. The Board consistently has 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 organizations. *See*, *e.g.*, *Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve*

Businesses of the Involved Institutions

First Midwest Bank offers a broad range of retail and commercial banking products and services to consumers and businesses. Through its network of approximately 110 branches located in Illinois, Indiana, and Iowa, First Midwest Bank offers a variety of banking products, including commercial, residential, agricultural, and consumer loans; personal checking and savings accounts; money market accounts; certificates of deposit; and capital market and treasury management services.

SB&T offers a more limited range of retail and commercial products through 35 branches located in Illinois and Indiana. Its products include personal checking and savings accounts, debit and credit cards, and certificates of deposit, as well as commercial, real estate, and consumer loans. SB&T also offers trust and wealth management services.

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 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.[29] 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") and 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 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 ("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-,

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.

[29] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548(July 25, 2016).

[30] 12 U.S.C. § 2906.

and upper-income individuals;[31] (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.

CRA Performance of First Midwest Bank

First Midwest Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the Reserve Bank, as of March 2, 2015 ("First Midwest Bank Evaluation").[32] The bank received "Outstanding" ratings for each of the Lending Test, the Investment Test, and the Service Test.[33]

Examiners concluded that the bank's overall lending levels reflected good responsiveness to credit needs in its assessment areas. Examiners noted that a substantial majority of the bank's loans were made to borrowers within its assessment areas. Overall, examiners found that the geographic distribution of the bank's loans reflected excellent penetration throughout its assessment areas. Examiners also found that, given the product lines offered by the bank, the distribution of its borrowers reflected excellent penetration among borrowers of different income levels and businesses and farms of different sizes.

Examiners also determined that First Midwest Bank exhibited an excellent record of serving the credit needs of low-income individuals and areas and of very small businesses and farms. The bank was found to have made extensive use of innovative and flexible lending practices, such as products designed to improve borrowers' credit histories, loan modifications for LMI borrowers and businesses, and lending through federal and state programs that support small businesses and homeownership. In addition, examiners noted that First Midwest Bank was a leader in making community development loans, particularly in the Chicago market. Examiners found that the bank originated loans that resulted in a meaningful impact in its assessment areas and actively sought community development lending opportunities.

Examiners found First Midwest Bank's delivery systems to be readily accessible to all sections of the bank's assessment areas, including to individuals of different income levels. Examiners noted that the bank's business hours and services did not vary in a way that inconvenienced any portion of its assessment areas. Examiners also noted that the bank was a leader in providing community development services and that it conducted a variety of financial literacy and technical assistance programs in its assessment areas.

First Midwest Bank's Efforts since the First Midwest Bank Evaluation

First Midwest represents that, since the First Midwest Bank Evaluation, First Midwest Bank has remained active in marketing products and services specifically designed for LMI individuals and that it regularly participates in federal and state loan programs that are

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[31] 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).

[32] The First Midwest 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 August 27, 2012, through March 2, 2015.

[33] The First Midwest Bank Evaluation included full-scope evaluations of the Chicago-Joliet-Naperville, Illinois-Indiana-Wisconsin Multistate Metropolitan Statistical Area ("MSA"); the Davenport-Moline-Rock Island, Iowa-Illinois MSA; and Non-Metropolitan Illinois (consisting of Knox and La Salle counties). Limited-scope evaluations were performed in the Champaign-Urbana, Illinois, MSA and the Danville, Illinois, MSA.

structured to accommodate community credit needs. Since its last evaluation, First Midwest Bank has made a significant amount of community development loans and substantial qualified community development investments. First Midwest represents that the bank has provided financial educational resources such as classes and direct counseling to individuals within its assessment areas, many of whom have limited financial literacy or credit impediments. First Midwest also represents that the bank has collaborated with community organizations that promote initiatives such as homeownership and financial literacy.

CRA Performance of SB&T

SB&T received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of October 27, 2014 ("SB&T Bank Evaluation"),[34] with a rating of "High Satisfactory" for the Lending Test, "Low Satisfactory" for the Investment Test, and "Outstanding" for the Service Test.[35]

Examiners concluded that SB&T's overall lending levels reflected good responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of the bank's small business and home mortgage loans were made in its assessment area. Examiners found that, given the products offered by the bank, its distribution of borrowers reflected good penetration among businesses of different sizes and retail customers of different income levels. Examiners also found that the geographic distribution of the bank's loans reflected adequate penetration throughout its assessment area. In addition, examiners noted that the bank made use of flexible lending products, including home mortgage loan products designed for LMI individuals. Examiners also noted that the bank made a relatively high level of community development loans. According to examiners, bank employees and management maintained contact with a variety of community-based organizations, which facilitated the bank's awareness of community development opportunities.

Examiners found that SB&T made a reasonable amount of community development investments based on the bank's capacity and the community development needs present in its assessment area. Examiners also found that SB&T was a leader in providing community development services, particularly in support of financial literacy initiatives to LMI individuals. In addition, examiners found the bank's delivery systems to be reasonably accessible to essentially all portions of the institution's assessment areas. Examiners also found that the bank's services, including its business hours, did not vary in a way that inconvenienced any portions of its assessment area.

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. First Midwest represents that it plans to continue its current offering of products and services upon consummation of the proposal. First Midwest represents that customers of Standard would have access to a complement of products and services that are more expansive than those currently available to Standard customers, including broader types of commercial and consumer banking products and services, and a more robust online and mobile banking services platform. First Midwest

[34] The SB&T 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) from January 1, 2012, through June 30, 2014. The evaluation period for community development loans, investments, and services was from August 29, 2011, through October 27, 2014.

[35] The SB&T Bank Evaluation included full-scope evaluations of DuPage, Grundy, and Will counties in the Chicago-Joliet-Naperville, Illinois, Metropolitan Division; and Lake and Porter counties in the Gary, Indiana, Metropolitan Division.

represents that customers of Standard would gain access to capital market and treasury management services. In addition, First Midwest asserts that customers of both institutions would benefit from a more expansive branch network. Following the proposed transaction, First Midwest represents that it will continue its existing CRA programs and initiatives and expand those programs and initiatives to markets currently served by SB&T. First Midwest also represents that it plans to further support the availability of residential loans to LMI individuals by hiring at least five additional community development lending officers who will operate throughout First Midwest Bank's assessment areas.

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 provided by First Midwest, 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 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."[36]

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

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, First Midwest would have approximately $13.4 billion in consolidated assets and, by any of a number of alternative measures of firm size, First Midwest 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

[36] 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).

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

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

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

First Midwest Bank has applied under section 9 of the FRA to establish branches at the current locations of SB&T.[39] The Board has assessed the factors it is required to consider when reviewing an application under that section.[40] Specifically, the Board has considered First Midwest 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 determines 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, the Bank Merger Act, the FRA, and other applicable statutes. Approval of this proposal is specifically conditioned on compliance by First Midwest 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.

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 Reserve Bank acting under delegated authority.

By order of the Board of Governors, effective November 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

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[39] *See* 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 First Midwest Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/5(15)(a); Ind. Code § 28-2-13-19; Iowa Code Ann. § 524.1201.

[40] 12 U.S.C. § 322; 12 CFR 208.6.

Appendix

Illinois Branches to Be Established

1. 7800 West 95th Street, Hickory Hills, Illinois
2. 282 North Weber Road, Bolingbrook, Illinois
3. 1968 Sibley Boulevard, Calumet City, Illinois
4. 10635 South Ewing Avenue, Chicago, Illinois
5. 3747 North Clark Street, Chicago, Illinois
6. 836 West Irving Park Road, Chicago, Illinois
7. 20 South Kankakee Street, Coal City, Illinois
8. 2400 West 95th Street, Evergreen Park, Illinois
9. 128 Depot Street, Gardner, Illinois
10. 19997 South La Grange Road, Frankfort, Illinois
11. 2398 Essington Road, Joliet, Illinois
12. 16545 West 159th Street, Lockport, Illinois
13. 8601 West Ogden Avenue, Lyons, Illinois
14. 515 U.S. Route 6, Minooka, Illinois
15. 1111 West U.S. Route 6, Morris, Illinois
16. 1433 Lisbon Street, Morris, Illinois
17. 1607 North Aurora Road, Naperville, Illinois
18. 456 Nelson Road, New Lenox, Illinois
19. 8380 West Cermak Road, North Riverside, Illinois
20. 15901 South Central Avenue, Oak Forest, Illinois
21. 4001 West 95th Street, Oak Lawn, Illinois
22. 4700 West 111th Street, Oak Lawn, Illinois
23. 15900 South Wolf Road, Orland Park, Illinois
24. 9700 West 131st Street, Palos Park, Illinois
25. 11901 Southwest Highway, Palos Park, Illinois
26. 970 Brook Forest Avenue, Shorewood, Illinois
27. 1 West Roosevelt Road, Villa Park, Illinois
28. 1005 South Water Street, Wilmington, Illinois

Indiana Branches to Be Established

1. 755 Indian Boundary Road, Chesterton, Indiana
2. 4518 Indianapolis Boulevard, East Chicago, Indiana
3. 7007 Calumet Avenue, Hammond, Indiana
4. 2930 Ridge Road, Highland, Indiana
5. 2090 East Commercial Avenue, Lowell, Indiana
6. 579 West Lincoln Highway, Merrillville, Indiana
7. 9321 Wicker Avenue, Saint John, Indiana

BOK Financial Corporation
Tulsa, Oklahoma

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2016–19 (November 15, 2016)

BOK Financial Corporation ("BOK"), Tulsa, Oklahoma, 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 Act[2] to acquire MBT Bancshares, Inc. ("MBT"), and thereby indirectly acquire Missouri Bank and Trust Company of Kansas City ("MBT Bank"), both of Kansas City, Missouri. Following the proposed acquisition, MBT Bank would be merged into BOK's subsidiary bank, BOKF, National Association ("BOK Bank"), Tulsa, Oklahoma.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 25404 (April 28, 2016)).[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.

BOK, with consolidated assets of approximately $32.1 billion, is the 55th largest insured depository organization in the United States. BOK controls approximately $20.8 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] BOK controls BOK Bank, which operates in Arkansas, Arizona, Colorado, Kansas, Maryland, Missouri, New Mexico, Oklahoma, and Texas. BOK Bank is the 303rd largest insured depository institution in Missouri, controlling deposits of approximately $1.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[6] BOK Bank is the 34th largest insured depository institution in Kansas, controlling deposits of approximately $419.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

MBT, with consolidated assets of approximately $601.9 million, is the 1,203rd largest insured depository organization in the United States. MBT controls approximately $555.6 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MBT controls MBT Bank, which operates in Missouri and Kansas. MBT Bank is the 52nd largest insured depository institution in Missouri, controlling deposits of approximately $407.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MBT Bank is the 101st largest insured depository institution in Kansas, controlling deposits of approximately $128.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, BOK would become the 54th largest depository organization in the United States, with consolidated assets of approximately $32.7 billion,

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1 12 U.S.C. § 1841 *et seq*

2 12 U.S.C. § 1842.

3 The merger of MBT Bank into BOK 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). The OCC approved the bank merger on October 19, 2016.

4 12 CFR 262.3(b).

5 Asset data are as of June 30, 2016, and deposit data are as of June 30, 2015, unless otherwise noted.

6 In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

which represent less than 1 percent of the total assets of insured depository organizations in the United States. BOK would control consolidated deposits of approximately $21.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Missouri, BOK Bank would become the 52nd largest depository institution, controlling deposits of approximately $409.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Kansas, BOK Bank would become the 26th largest depository institution, controlling deposits of approximately $547.9 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 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.[9]

For purposes of the BHC Act, the home state of BOK is Oklahoma, and MBT Bank's home state is Missouri.[10] MBT Bank also operates in Kansas. BOK is well capitalized and well managed under applicable law, and BOK Bank has an "Outstanding" Community Reinvestment Act ("CRA")[11] rating. Missouri and Kansas have five-year minimum age requirements, and MBT Bank has been in existence for more than five years.[12]

On consummation of the proposed transaction, BOK 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 Missouri and Kansas, the only states in which BOK and MBT 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.

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7 12 U.S.C. § 1842(d)(1)(A).

8 12 U.S.C. § 1842(d)(1)(B).

9 12 U.S.C. § 1842(d)(2)(A) and (B). 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* RSMo § 362.077(1); K.S.A. 9-541(a).

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.[13] 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 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]

BOK and MBT have subsidiary depository institutions that compete directly in the Kansas City, Missouri, banking market ("Kansas City market").[15] The Board has considered the competitive effects of the proposal in the banking market. 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 BOK 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.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Kansas City market. On consummation of the proposal, the Kansas City market would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in this market would be small, and numerous competitors would remain in the banking market.[18]

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. In addition, the

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[13] 12 U.S.C. § 1842(c)(1).

[14] 12 U.S.C. § 1842(c)(1)(B).

[15] The Kansas City market is defined as Cass, Clay, Jackson, Lafayette, Platte, and Ray counties, all of Missouri, and Franklin, Johnson, Leavenworth, Miami, Wyandotte, and Linn (excluding the towns of Blue Mound and Prescott) counties, all of Kansas. The market also includes select towns in Clinton, Johnson, and Bates counties, all of Missouri.

[16] 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); *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), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[18] BOK operates the 22nd largest depository institution in the Kansas City market, controlling approximately $420.6 million in deposits, which represent 0.9 percent of market deposits. MBT operates the 16th largest depository institution in the same market, controlling deposits of approximately $536.4 million, which represent about 1.2 percent of market deposits. On consummation of the proposed transaction, BOK would become the 10th largest depository organization in the market, controlling deposits of approximately $957.0 million, which represent approximately 2.1 percent of market deposits. The HHI for the Kansas City market would increase by 2 points to 798, and 117 competitors would remain in the market.

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 Kansas City 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 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 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.

BOK and MBT 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 acquisition that is structured as an exchange of shares for cash, with a subsequent merger of the subsidiary depository institutions.[19] The asset quality, earnings, and liquidity of BOK Bank and MBT Bank are consistent with approval, and BOK 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 BOK, MBT, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by BOK; the Board's supervisory experiences with BOK and MBT 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.

BOK, MBT, and their subsidiary depository institutions are each considered to be well managed. BOK has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. BOK's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services

[19] To effect the transaction, each share of MBT common stock would be converted into a right to receive cash, based on an exchange ratio. Following the acquisition of 100 percent of the MBT shares, BOK will cause MBT to dissolve and MBT Bank to merge with and into BOK Bank, with BOK Bank as the surviving entity. BOK has the financial resources to fund the transaction.

sectors, and its risk-management program appears consistent with approval of this expansionary proposal.[20]

The Board also has considered BOK's plans for implementing the proposal. BOK 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. BOK would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, BOK's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and BOK plans to integrate MBT's existing management and personnel in a manner that augments BOK's management.[21]

Based on all the facts of record, including BOK'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 BOK and MBT 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 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, in evaluating bank expansionary proposals.[24]

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-

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[20] On September 9, 2016, the Securities and Exchange Commission ("SEC") announced that it had settled charges against BOK regarding allegations that BOK Bank's Corporate Trust Department, primarily through a senior executive, concealed problems and red flags from investors in certain bond offerings for which BOK Bank served as indenture trustee and dissemination agent between 2007 and 2015. *See BOK Bank*, SEC Order Instituting Cease-and-Desist Proceedings, File No. 3-17533 (September 9, 2016) (the "Order"). According to the announcement, BOK promptly terminated the responsible employee following an internal investigation and reported the matter to the SEC. Further, the Order notes that BOK has cooperated with the SEC in the investigation and has promptly undertaken a number of remedial acts to improve controls within BOK Bank's Corporate Trust Department. The Board has consulted with the OCC, the bank's primary federal supervisor, regarding this matter. The OCC considered the matter in connection with its review of the proposed merger of MBT Bank into BOK Bank, and determined that the proposed merger will not impede BOK Bank's remediation efforts.

[21] On consummation, ten individuals currently serving as senior management officials at MBT or MBT Bank will serve as senior management officials at BOK Bank, including MBT Bank's chief executive officer, who will be retained as BOK Bank's Chairman of the Kansas City market.

[22] 12 U.S.C. § 1842(c)(2).

[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

teristics. 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 BOK Bank and MBT 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 BOK; and the public comment received on the proposal.

Public Comment Regarding the Proposal

In this case, a commenter objected to the proposal on the basis of alleged disparities in the number of residential real estate loans made to minority borrowers, as compared to white borrowers, by BOK Bank in the Kansas City, Missouri-Kansas, Metropolitan Statistical Area ("Kansas City MSA"); the Houston, Texas, MSA ("Houston MSA"); and the Phoenix, Arizona, MSA ("Phoenix MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA") for 2014.[25] The commenter further alleged that BOK Bank confined African American and Hispanic borrowers to government loan programs instead of conventional loan products in the Kansas City MSA. Also, the commenter criticized the rate at which BOK Bank denied applications by African Americans and/or Hispanics, compared to the rate of denials for whites, for home refinance loans in the Houston and Phoenix MSAs, as reported under HMDA for 2014. In addition, the commenter generally alleged that BOK Bank has a weak record of lending to people of color and low-income individuals and a weak record of consumer compliance.[26]

Businesses of the Involved Institutions and Response to the Comment

BOK, through BOK Bank and its nonbanking subsidiaries, provides a broad range of financial products and services to consumers and businesses. Through several geographic banking divisions, BOK serves customers in Arizona, Arkansas, Colorado, Kansas, Maryland, Missouri, New Mexico, Oklahoma, and Texas. Products and services provided by BOK include a variety of loan and deposit products; cash management services; fiduciary services; commercial risk-management products; mortgage banking; brokerage and trading services to middle-market businesses, financial institutions, and consumers; and investment advisory services.

MBT Bank offers a broad range of consumer and commercial banking products and services through four locations in the Kansas City MSA. Its products and services include checking, savings, money market, and certificate of deposit accounts; mortgage and other consumer lending products; business services and lending; and international banking services.

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[25] The commenter's concerns focused on the number of home purchase loans that BOK Bank offered to African Americans and Hispanics compared to whites in the Kansas City MSA, the number of home refinance loans that BOK Bank offered to African Americans compared to whites in the Houston MSA, and the number of home refinance loans offered to African Americans and Hispanics compared to whites in the Phoenix MSA.

[26] The commenter also cited an anonymous customer complaint posted to a public online forum in 2010 regarding alleged problems the customer had closing an account at BOK Bank and overdraft fees charged by the bank on the account. The OCC reviewed the comment as part of its review of BOK Bank's Bank Merger Act application but could not verify the customer complaint due to the lack of information contained in the posting.

In response to the comment, BOK represents that BOK Bank has maintained an excellent record of providing financial services to minority and LMI individuals, is strongly committed to complying with fair lending laws, and actively engages in monitoring, testing, and maintaining internal controls to ensure compliance with such laws. BOK notes that its presence in the Kansas City, Houston, and Phoenix MSAs is limited; however, BOK asserts that its management is committed to ensuring fair lending in all markets and is deploying strategies to increase its lending to minorities and in LMI communities.

With respect to BOK Bank's lending in the Kansas City MSA, BOK represents that BOK Bank outpaced "aggregate peer" performance in home-purchase-application rates and origination rates for African American and Hispanic borrowers, as reflected in 2014 HMDA data, and that BOK Bank's denial rates to such borrowers were comparable to those of its peers. BOK also asserts that no disparities were revealed through its analyses to indicate that African American or Hispanic borrowers were steered by BOK Bank to government loan programs instead of conventional loan products, as alleged by the commenter.

In the Houston MSA, BOK acknowledges that the bank lagged behind peers in percentage of total refinance applications received from African Americans in 2014; however, BOK represents that the bank exceeded the aggregate peer threshold with respect to application rates from Hispanic borrowers. BOK also represents that home- purchase loan origination rates were higher than the aggregate peer data in all demographic categories. Regarding the Phoenix MSA, BOK represents that BOK Bank outperformed aggregate peer data in terms of the percentage of home refinance loans originated to African American and Hispanic borrowers, compared to applications received from such borrowers in 2014. BOK also represents that it originated home purchase loans to African Americans and Hispanics at a higher rate than the peer average. Regarding the allegations of high denial rates for refinance loan applications in the Houston and Phoenix MSAs in 2014, BOK represents that its decisions with respect to the applications received reflected judgments based on credit history, collateral, debt-to-income ratios, and other nondiscriminatory factors.[27]

In each of the Kansas City, Houston, and Phoenix MSAs, BOK represents that BOK Bank engages in a number of outreach activities targeted to minority individuals and communities. For example, in the Kansas City MSA, BOK represents that BOK Bank's employees provide financial literacy classes to Spanish speakers and work with organizations that promote the development and financing of homes in LMI areas and with organizations that provide scholarships to minority students. BOK also represents that it expects additional opportunities to arise in the Kansas City MSA following the proposed transaction due to the increased resource capacity of BOK Bank and the proximity of MBT Bank's branches to LMI and minority communities. In the Phoenix MSA, BOK represents that BOK Bank sponsors and/or provides community service to several community organizations focused on supporting minority communities. In the Houston MSA, BOK asserts that it has appointed an employee as Hispanic Market Coordinator to facilitate identifying and meeting the financial service needs of the Hispanic community, and its employees also provide community service to a number of organizations that serve minority communities.

BOK represents that it is implementing a strategy to expand the bank's lending to minorities and LMI individuals. The strategy includes setting minority and LMI lending goals in all full-scope assessment areas and the targeting of resources to areas that do not

[27] BOK represents that denial rates for white, African American, and Hispanic refinance applicants were all above aggregate peer denial rates in the Houston and Phoenix markets, which BOK argues indicates a consistent underwriting program regardless of race.

meet the goals; hiring and deploying LMI loan officers in various markets;[28] developing an enterprise-wide marketing strategy to target LMI communities; hiring an LMI/CRA Program Manager within the mortgage division to facilitate lending initiatives that benefit LMI and minority borrowers; and creating a Community Development Advisory Committee in major markets.

BOK also represents that BOK Bank offers an extensive suite of residential lending products that benefit LMI individuals and geographies across all markets of the bank. Such products include low-down-payment products, government-sponsored loan programs, down-payment assistance programs, and loan modifications. BOK represents that BOK Bank has deployed marketing strategies to target its products to LMI and minority communities through search engine, direct mail, and e-mail marketing efforts.

Further, BOK asserts that it has policies and procedures to ensure compliance with fair lending laws and to monitor fair lending risk, including an enterprise-wide fair lending risk assessment, which is updated quarterly; ongoing HMDA and fair lending monitoring and testing; comparative analysis to identify specific loans that may exhibit heightened fair lending risk; escalation and reporting of fair lending results to senior management; regular monitoring of customer complaints for potential fair lending concerns; and a third-party due diligence program that evaluates third-party service providers that may present fair lending risk.

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 applicant's response to comments. 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.[29] 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.[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 HMDA, in addition to small business, small farm, and

[28] BOK represents that it deploys LMI loan officers in various markets to assist LMI and minority individuals in obtaining mortgage financing and to conduct outreach in targeted communities. The loan officers also have a specific compensation plan that encourages LMI lending. BOK represents that BOK Bank has employed an LMI loan officer in the Kansas City market and is in the process of hiring such loan officers to serve the Phoenix and Houston MSAs.

[29] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[30] 12 U.S.C. § 2906.

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 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;[31] (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.[32] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of BOK Bank

BOK Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of October 28, 2013 ("BOK Bank Evaluation").[33] The bank received "Outstanding" ratings for both the Lending Test and the Investment Test and a "High Satisfactory" rating for the Service Test.[34] The Board has consulted with the OCC regarding the BOK Bank Evaluation.

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[31] 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).

[32] 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.

[33] The BOK Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans reported, pursuant to HMDA, and small business loans reported under CRA data collection requirements for 2011 and 2012, except for loans in Maryland and Oklahoma, where review periods were January 26, 2009, through December 31, 2012, and January 1, 2009, through December 31, 2012, respectively. The evaluation period start date for community development lending, investments, and services was January 1, 2011, for all areas except Oklahoma and Maryland, which had start dates of September 21, 2009, and February 26, 2009, respectively. The evaluation period end date for community development lending, investments, and services in all rating areas was October 28, 2013.

[34] The BOK Bank Evaluation included full-scope evaluations of the Kansas City, Multi-State MSA (composed of Johnson and Wyandotte counties in Kansas and Jackson County, Missouri); the Phoenix, Arizona, MSA (composed of Maricopa County); the Fayetteville, Arkansas, MSA (composed of Benton and Washington counties); the Denver, Colorado, MSA (composed of Adams, Arapahoe, Broomfield, Denver, Douglas, and Jefferson counties); the Albuquerque, New Mexico, MSA; the Oklahoma City, Oklahoma, MSA (composed of Canadian, Cleveland, and Oklahoma counties); the Tulsa, Oklahoma, MSA (composed of Creek, Rogers, Tulsa and Wagoner counties); the Howard County, Maryland, MSA; the Dallas, Texas, MSA (composed of Collin, Dallas, and Denton counties); the Fort-Worth, Texas, MSA (composed of Tarrant County); and the Houston, Texas, MSA (composed of Fort Bend and Harris counties). Limited scope evaluations were performed in the Bartlesville, Oklahoma, Non-MSA (composed of Washington County); the Enid, Oklahoma, Non-MSA (composed of Garfield County); the Eufaula, Oklahoma, Non-MSA (composed of McIntosh County); the Grove, Oklahoma, Non-MSA (composed of Delaware County); the McAlester, Oklahoma, Non-MSA (composed of Pittsburg County); the Muskogee, Oklahoma, Non-MSA (composed of Muskogee County); the

Examiners found that BOK Bank's overall lending activity was good. Examiners noted that the bank's community development lending was exceptionally strong and positively impacted the Lending Test in all rating areas. According to examiners, the bank's community development loans primarily supported affordable housing initiatives, activities that promoted economic development in the assessment areas, and activities that revitalized or stabilized LMI census tracts. Examiners also found that the bank originated a substantial majority of loans inside of its assessment areas. Overall, examiners found that geographic distribution of the bank's loans was adequate and borrower-income distribution was good, as evidenced by good distribution of home mortgage loans by borrower-income level.

In the Kansas City MSA, an area of concern for the commenter and the area affected by the proposed transaction, examiners found BOK Bank's lending activity to be excellent. Examiners found that geographic distribution of the bank's loans was adequate and that overall borrower-income distribution was excellent in the Kansas City MSA.

In both the Phoenix and Houston MSAs, the other areas of concern for the commenter, examiners found overall lending activity and borrower-income distribution to be adequate. Examiners found geographic distribution of loans to be very poor in the Phoenix MSA and poor in the Houston MSA; however, community development lending in both MSAs was found to be exceptionally strong and beneficial to the communities, including LMI areas and individuals. Further, examiners analyzed the bank's home mortgage and small business lending activity over the evaluation period in the bank's Arizona and Texas assessment areas to identify any gaps in the geographic distribution of loans; no unexplained gaps were found in these areas.

Examiners found that BOK Bank's overall investment performance was excellent, and they noted that the bank's investments primarily supported affordable housing, community services, and economic development in its assessment areas. Examiners also noted that the bank's investments were responsive to the identified needs in the communities served by the bank. Further, examiners found that BOK Bank's delivery systems were accessible to all portions of the bank's assessment areas, including LMI communities.[35] Examiners also found that the bank provided an overall adequate level of community development services in its assessment areas.

BOK Bank's Efforts Since the BOK Bank Evaluation

BOK represents that BOK Bank has continued to demonstrate responsiveness to credit needs in the bank's assessment areas. BOK asserts that BOK Bank has remained active in marketing a wide selection of products and services within its assessment areas, including products and services that benefit LMI and minority communities. BOK also represents that the bank has made a number of community development loans and investments to support affordable housing and small businesses in its assessment areas. BOK notes 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, economic development, and small business development.

Ponca City, Oklahoma, Non-MSA (composed of Kay County); the Stillwater, Oklahoma, Non-MSA (composed of Payne County); the Boulder, Colorado, MSA; the Santa Fe, New Mexico, MSA; and the Sherman-Dennison, Texas, MSA.

[35] Examiners found the bank's branch distribution in the Kansas City MSA to be adequate and found its branch distribution in the Phoenix MSA to be good when considering its limited presence in each MSA. The examiners also noted that the branches were accessible to geographies and individuals of different income levels in both assessment areas. In the Houston MSA, examiners found the bank's branch distribution to be adequate and reasonably accessible to geographies and individuals of different income levels.

BOK represents that BOK Bank continues to develop its CRA program and evaluate CRA performance to determine if there are opportunities for improvement, including through the recent creation of a CRA Committee, which meets quarterly and has senior management participation. BOK represents that the CRA Committee reviews the bank's CRA performance levels and underlying CRA and HMDA data quality and integrity; communicates with key stakeholders; assesses the risk and impact of CRA and HMDA performance levels; and facilitates CRA planning and resources. BOK represents that the CRA Committee will also identify trends and propose recommended changes to strategic initiatives; identify compliance risks; and evaluate results of initiatives, business plans, models, and strategies.

CRA Performance of MBT Bank

MBT Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of July 29, 2013 ("MBT Bank Evaluation").[36] The bank received "Satisfactory" ratings for both the Lending Test and Community Development Test.

Examiners concluded that the bank demonstrated a satisfactory commitment to community reinvestment. Examiners noted that a substantial majority of the bank's small business and home mortgage loans were originated within the bank's assessment area, which reflected an excellent commitment to meeting the credit needs of its assessment area. Examiners also found that the geographic distribution of the bank's loans reflected a reasonable dispersion throughout its assessment area and that the bank's loan-to-deposit ratio reflected a reasonable willingness to provide credit, given the bank's size, financial condition, and the credit needs of its assessment area. Examiners found that the bank's distribution of loans to borrowers of different incomes and businesses of different sizes was poor. However, examiners noted that MBT has a business focus, and MBT management indicated that there was substantial competition for small business loans to financially strong moderate-sized businesses in the assessment area.

Examiners also found that the bank's overall performance in community development activities in its assessment area was reasonable. Examiners concluded that the bank's community development performance demonstrated adequate responsiveness to the community development needs in its assessment area through community development loans, qualified investments, and community development services.

Views of the OCC

The Board has consulted with the OCC, the primary federal supervisor of BOK Bank, regarding the OCC's review of the proposed merger of BOK Bank and MBT Bank. The OCC conducted a review of the same comment that was submitted to the Board, taking into consideration BOK Bank's CRA, consumer compliance, and fair lending records.[37]

The Board consulted with the OCC regarding BOK Bank's record of compliance with fair lending laws and regulations and the bank's policies and procedures relating to fair

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[36] The MBT Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed the bank's lending activity based on the institution's loan trial report and HMDA data for 2011 and 2012. The MBT Bank Evaluation reviewed the bank's Kansas City MSA, which included Johnson and Wyandotte Counties in Kansas and Clay, Jackson, and Platte Counties in Missouri.

[37] The OCC's review did not result in findings related to fair lending that would warrant denial of the bank merger application; however, it will continue to monitor BOK Bank for fair lending issues as part of its ongoing supervisory process. *See* Letter from Stephen A. Lybarger, Deputy Comptroller for Licensing, OCC, to Tamara Wagman, Frederic Dorwart Lawyers (October 19, 2016).

lending and other consumer protection laws and regulations. BOK Bank intends to implement its consumer compliance policies and procedures at the combined organization following consummation of the transaction.

After a full review of the proposal, the OCC determined that the proposal met the standards of the Bank Merger Act and approved the proposal without conditions.

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. BOK represents that upon consummation of the proposal, existing customers of MBT would have access to a more expansive line of consumer products and services, including additional lending products that are beneficial to LMI borrowers. Specifically, BOK represents that it participates in several government-sponsored lending programs, partners with numerous entities to provide down-payment assistance programs and financial support for affordable housing, and offers second-chance checking accounts to customers.

BOK represents that the acquisition will make available expanded resources to the communities currently served by MBT. For example, BOK represents that MBT has applied limited resources to consumer lending to date and that the acquisition would result in additional mortgage lenders serving MBT's communities. Further, BOK represents that it intends to increase current levels of community development activity – both financially and through employee service – from the levels MBT and BOK engaged in as individual entities in the affected market. Moreover, BOK represents that customers of both institutions would benefit from a more expansive branch network. BOK has asserted that it has no plans to close or consolidate existing branches of either depository institution following consummation of the proposed transaction and that branches acquired as a result of the proposed transaction will allow for greater opportunities to serve LMI and minority consumers. Further, BOK represents that MBT customers will have access to a range of options for obtaining financial services, including a 24-hour "ExpressBank" customer phone service and online and mobile banking options.

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 CFPB, confidential supervisory information, information provided by BOK, 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.

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]

[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).

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. The proposal involves the acquisition of approximately $601.9 million in total assets. After consummation, BOK would have approximately $32.7 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 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.[41] 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 BOK with all the conditions imposed in this Order, including receipt of all

[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).

[41] 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.

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 Kansas City, acting under delegated authority.

By order of the Board of Governors, effective November 15, 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 International Banking Act

Fédération des caisses Desjardins du Québec
Levis, Canada

Order Approving Establishment of a Branch
FRB Order No. 2016–20 (December 16, 2016)

Fédération des caisses Desjardins du Québec ("Federation"), Levis, Canada, has applied under section 7(d) of the International Banking Act of 1978 ("IBA")[1] to establish a federally licensed branch in Hallandale, Florida, as part of a corporate reorganization of its existing banking operations. 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 Florida (*Miami Herald*, October, 28, 2016). The time for submitting comments has expired, and the Board has considered all comments received.

Federation has determined to combine a number of its operations in Canada, resulting in a change in control over its existing banking operations in the United States. Federation is a depository institution subsidiary of The Desjardins Group ("Desjardins"), Levis, Canada. Desjardins, with consolidated assets of approximately $200.7 billion, is the 6th largest banking organization in Canada.[2] Desjardins is a cooperative network of financial institutions operating primarily in the province of Quebec, Canada. Desjardins owns all of Federation's shares. Federation controls Caisse centrale Desjardins du Québec ("CCD"), Montreal, Canada, a cooperative financial institution, as well as the nonbanking companies of Desjardins. CCD primarily provides clearing services and funding for the financial institution members of Desjardins. In the United States, CCD operates a federally licensed branch in Hallandale, Florida. Federation and CCD propose to amalgamate into Federation.[3] As a result of this combination, Federation would take over operation of CCD's existing U.S. branch. Federation is, and would remain, a qualifying foreign banking organization under Regulation K.[4]

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, (2) the foreign bank has furnished to the Board the information it needs to assess the application adequately, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.[5] The Board

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1 12 U.S.C. § 3105(d).

2 Asset data and ranking information are as of June 30, 2016, and are based on the exchange rate on that date.

3 In addition, CCD owns a U.S. bank subsidiary, Desjardins Bank, National Association, through its subsidiary, Desjardins FSB Holdings, Inc., both of Hallandale, Florida.Desjardins and Federation have applied under section 3 of the Bank Holding Company Act for Federation to merge with CCD. This application is being processed by the Federal Reserve Bank of Atlanta under delegated authority.

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

also considers additional standards as set forth in the IBA and Regulation K.[6]

As noted above, Federation and CCD engage directly in the business of banking outside the United States. Federation 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 Desjardins, Federation, and CCD are subject to comprehensive supervision on a consolidated basis by their home country supervisor, the Autorité des marchés Financiers ("AMF").[7] Desjardins, Federation, and CCD remain supervised by the AMF on substantially the same terms and conditions.[8] Based on all the facts of record, it has been determined that, after the proposed transaction, Desjardins and Federation would 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 AMF has no objection to the establishment of the proposed branch.

The Board has also considered the financial and managerial factors in this case. AMF's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Basel Accord"). Federation'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 Federation are considered consistent with approval, and Federation appears to have the experience and capacity to support the proposed branch. In addition, Federation has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general. Moreover, as noted above, the proposal represents the reorganization of existing banking operations.

Canada has enacted laws and regulations to deter money laundering that are consistent with Financial Action Task Force recommendations. Money laundering is a criminal

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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 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 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 *The Desjardins Group*, 90 *Federal Reserve Bulletin* 69 (2004).

8 At the time of the Board's prior CCS determination for Desjardins, the Quebec supervisory authority responsible for Desjardins was the Inspector General. Since 2003, the entity performing these functions has been restructured and renamed, with the core supervisory functions that were performed by the Inspector General at that time now performed by the AMF.

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. Federation has policies and procedures to comply with these laws and regulations, and Federation'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 Federation's operations, the restrictions on disclosure in relevant jurisdictions in which Federation operates have been reviewed. Federation 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, Federation 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 Federation 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.[9] 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 Federation in its home jurisdiction; the scope of Federation'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 Federation in its home jurisdiction. Based on these and other factors, financial stability considerations for this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by Federation as well as the terms and conditions set forth in this order, Federation's application to establish a branch in Florida 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.[10] Should any restrictions on access to information on the operations or activities of Federation and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Federation or its affiliates with applicable federal statutes, the Board may require termination of any of Federation's direct or indirect activities in the United States or, in the case of any such operations licensed by the Office of the Comptroller of the Currency ("OCC"), recommend termination of such operations. Approval of this application also is specifically conditioned on compliance by Federation with the commitments made in connection with this application and with the conditions in this order.[11]

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

[10] 12 CFR 265.7(d)(12).

[11] The Board's authority to approve the establishment of branches parallels the continuing authority of the 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 Federation in accordance with any terms and conditions that the OCC may impose.

By order, approved pursuant to authority delegated by the Board, effective December 16, 2016.

Robert deV. Frierson
Secretary of the Board

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Legal Developments: First Quarter, 2017

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

First Citizens BancShares, Inc.
Raleigh, North Carolina

Order Approving the Acquisition of Additional Shares of a Bank
FRB Order No. 2017-01 (January 11, 2017)

First Citizens BancShares, Inc. ("First Citizens"), Raleigh, 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 Act[2] to increase its ownership interest from 4.9 percent to 9.0 percent of the voting shares of Carter Bank & Trust ("Carter Bank"), Martinsville, Virginia.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 48421 (July 25, 2016)).[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 Citizens, which is part of the Holding F&L Family Chain,[4] has consolidated assets of approximately $32.2 billion and is the 54th largest insured depository organization in the United States, controlling approximately $27.3 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] First Citizens controls First-Citizens Bank & Trust Company ("First Citizens Bank"), which operates in Arizona, California, Colorado, Florida, Georgia, Kansas, Maryland, Missouri, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and the District of Columbia. First Citizens Bank is the fourth largest insured depository institution in North Carolina, controlling deposits of approximately $14.0 billion, which represent 4.0 percent of the total deposits of insured depository institutions in that state.[6] First Citizens Bank also is the 15th largest insured depository institution in Virginia, controlling

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1 12 U.S.C. § 1841 *et seq.*

2 12 U.S.C. § 1842.

3 12 CFR 262.3(b).

4 In addition to First Citizens, the Holding F&L Family Chain controls two other bank holding companies, Southern BancShares (N.C.), Inc. ("Southern"), Mount Olive, and Fidelity BancShares (N.C.), Inc. ("Fidelity"), Fuquay-Varina, both of North Carolina.

5 National asset and deposit data are as of June 30, 2016, and state deposit data are as of June 30, 2015, unless otherwise noted.

6 In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

deposits of approximately $1.4 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Carter Bank, with total assets of approximately $4.9 billion, is the 204th largest insured depository organization in the United States, controlling approximately $4.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Carter Bank operates in North Carolina and Virginia. Carter Bank is the tenth largest insured depository institution in Virginia, controlling deposits of approximately $3.9 billion, which represent 1.4 percent of the total deposits of insured depository institutions in that state. Carter Bank also is the 35th largest insured depository institution in North Carolina, controlling deposits of approximately $488.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Noncontrolling Investment

First Citizens currently owns approximately 4.9 percent of the voting shares of Carter Bank and proposes to increase its ownership interest up to 9.0 percent of Carter Bank's voting shares. First Citizens has represented that it does not propose to control or exercise a controlling influence over Carter Bank as a result of this proposal.[7]

To help ensure it would not control Carter Bank for purposes of the BHC Act, First Citizens provided the Board with commitments that are intended to ensure that First Citizens would not exercise or seek to exercise a controlling influence over Carter Bank for purposes of the BHC Act ("Passivity Commitments").[8] For example, First Citizens has committed not to exercise or attempt to exercise a controlling influence over the management or policies of Carter Bank; not to have or seek to have any employee or representative of First Citizens or its affiliates serve as an officer, agent, or employee of Carter Bank; and not to seek or accept representation on the board of directors of Carter Bank. First Citizens also has committed not to enter into any agreement with Carter Bank that substantially limits the discretion of Carter Bank's management over major policies or decisions. In addition, First Citizens has committed not to acquire, or seek to acquire, confidential or nonpublic financial information from or about Carter Bank.

Based on these considerations and all the facts of record, the Board concludes that First Citizens would not acquire control of, or have the ability to exercise a controlling influence over, Carter Bank. The Board notes that the BHC Act requires First Citizens to receive the Board's approval before directly or indirectly acquiring any additional shares of Carter Bank or attempting to exercise a controlling influence over Carter Bank.[9]

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 relevant banking market, unless the anti-competitive effects of the proposal are clearly

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[7] The Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank. *See*, *e.g.*, *Penn Bancshares, Inc.*, 92 *Federal Reserve Bulletin* C37 (2006) (acquiring up to 24.89 percent of the voting shares of a bank); *SunBanks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985) (acquiring up to 15 percent of the voting shares of a bank).

[8] The commitments made by First Citizens are set forth in appendix A.

[9] *See* 12 U.S.C. § 1842(a)(3).

outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[10]

First Citizens Bank, its affiliates, and Carter Bank compete directly in 32 banking markets in North Carolina and Virginia.[11] The Board has considered the competitive effects of the proposal in the banking markets in which First Citizens Bank, its affiliates, and Carter 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 First Citizens, its affiliates, and Carter Bank would control;[12] the concentration levels of market deposits and the increase in these levels as measured by the HerfindahlHirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[13] other characteristics of the markets; and, as discussed below, the noncontrolling nature of the proposed investment, as well as the Passivity Commitments First Citizens made to the Board with respect to Carter Bank.

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 28 banking markets. On consummation, 11 banking markets would remain highly concentrated; 15 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 from a full merger between First Citizens and Carter Bank 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.[14]

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Galax, Martinsville, and Mecklenburg banking markets, all in Virginia, and the Danville, Virginia–North Carolina, banking market warrant a detailed review. In these markets, the concentration levels if First Citizens and Carter Bank were considered a combined organization on consummation, would exceed the thresholds in the DOJ Bank Merger Guidelines and

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[10] 12 U.S.C. § 1842(c)(1).

[11] For purposes of its competitive analysis, the Board aggregates affiliate holding companies as if they were a single holding company. *See*, *e.g.*, *First National Bank Shares, Ltd.*, 80 *Federal Reserve Bulletin* 159 (1994). Accordingly, First Citizens is aggregated with Southern and Fidelity, the other two bank holding companies that are part of the Holding F&L Family Chain, for purposes of examining the competitive effects of the proposed investment in Carter Bank.

[12] 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 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).

[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] These banking markets and the competitive effects of the proposal in these markets are described in appendix B.

would result in the market deposit share of First Citizens, its affiliates, and Carter Bank equaling or exceeding 35 percent when using initial competitive screening data.

The Board previously has stated that noncontrolling interests in directly competing depository institutions may raise competitive issues under the BHC Act. The Board has noted that a company need not acquire control of another company to lessen competition between them substantially and has recognized that a significant reduction in competition can result from the sharing of nonpublic financial information between two organizations that are not under common control.[15] Accordingly, the Board examines the specific facts of each case to determine whether a minority investment in a competitor would result in significant adverse competitive effects in a banking market.[16]

Danville, Virginia–North Carolina, Banking Market

First Citizens Bank and its affiliate, Fidelity, would be the third largest depository institution in the Danville banking market, controlling approximately $225.4 million in deposits, which represent 12.5 percent of market deposits.[17] Carter Bank is the second largest depository institution in the market, controlling approximately $534.8 million in deposits, which represent 29.6 percent of market deposits. If considered a combined organization on consummation of the proposal, First Citizens Bank and Carter Bank would be the largest depository institution in the Danville banking market, controlling approximately $760.2 million in deposits, which would represent approximately 42.1 percent of market deposits. The HHI in this market would increase 740 points, from 2194 to 2934.

Three credit unions exert a competitive influence in the Danville 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.[18] In addition to First Citizens Bank and Carter Bank, eight other depository institutions compete in the Danville market, including one competitor with more than 30 percent of market deposits.

Galax, Virginia, Banking Market

First Citizens Bank is the sixth largest depository institution in the Galax banking market, controlling approximately $30.3 million in deposits, which represent 3.6 percent of market deposits.[19] Carter Bank is the largest depository institution in the market, controlling

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[15] *See*, *e.g.*, *City Holding Company*, 96 *Federal Reserve Bulletin* B21 (2010); *SunTrust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990).

[16] *See*, *e.g.*, *City Holding Company*, 96 *Federal Reserve Bulletin* B21 (2010); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); *BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052 (1995); *Mansura Bancshares, Inc.* 79 *Federal Reserve Bulletin* 37 (1993); *SunBanks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985).

[17] The Danville banking market is defined as the independent city of Danville, Virginia; Pittsylvania County, Virginia; and the Dan River, Milton, Pelham, and Yanceyville townships in Caswell County, North Carolina.

[18] 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.*, (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). Here, URW Community Federal Credit Union, Beacon Credit Union, and Piedmont Credit Union control approximately $92.0 million in deposits in that market that, on a 50 percent weighted basis, represent approximately 4.9 percent of market deposits. After inclusion of these deposits, First Citizens would control approximately 40.1 percent of market deposits, and the HHI would increase by 670 points to 2667.

[19] The Galax banking market is defined as the independent city of Galax, Grayson County, and the portion of Carroll County north of the Blue Ridge Parkway, all in Virginia.

approximately $286.2 million in deposits, which represent 34.4 percent of market deposits. If considered a combined organization on consummation of the proposal, First Citizens Bank and Carter Bank would be the largest depository institution in the Galax banking market, controlling approximately $316.5 million in deposits, which would represent approximately 38.1 percent of market deposits. The HHI in this market would increase 251 points, from 2490 to 2741.

One credit union exerts a competitive influence in the Galax banking 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.[20] In addition to First Citizens Bank and Carter Bank, seven other depository institutions would compete in the Galax market, including two competitors with more than 15 percent of market deposits.

Martinsville, Virginia–North Carolina, Banking Market

First Citizens' affiliate, Fidelity, is the sixth largest depository institution in the Martinsville banking market, controlling approximately $50.4 million in deposits, which represent 3.3 percent of market deposits.[21] Carter Bank is the largest depository institution in the market, controlling approximately $660.8 million in deposits, which represent 43.6 percent of market deposits. If considered a combined organization on consummation of the proposal, Fidelity and Carter Bank would be the largest depository institution in the Martinsville banking market, controlling approximately $711.2 million in deposits, which would represent approximately 46.9 percent of market deposits. The HHI in this market would increase 290 points, from 2691 to 2981.

One credit union exerts a competitive influence in the Martinsville banking market. This institution also 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] In addition to Fidelity and Carter Bank, nine other depository institutions would compete in the Martinsville market, including two competitors with more than 12 percent of market deposits.

Mecklenburg, Virginia, Banking Market

First Citizens Bank is the largest depository institution in the Mecklenburg banking market, controlling approximately $274.8 million in deposits, which represent 28.6 percent of market deposits.[23] Carter Bank is the fifth largest depository institution in the market, controlling approximately $90.3 million in deposits, which represent 9.4 percent of market deposits. If considered a combined organization on consummation of the proposal, First Citizens Bank and Carter Bank would be the largest depository institution in the Mecklenburg banking market, controlling approximately $365.1 million in deposits, which would represent approximately 38.0 percent of market deposits. The HHI in this market

[20] Self-Help Credit Union controls approximately $14.8 million in deposits in that market that, on a 50 percent weighted basis, represent approximately 1.8 percent of market deposits. After inclusion of these deposits, First Citizens would control approximately 37.4 percent of market deposits, and the HHI would increase by 242 points to 2649.

[21] The Martinsville banking market is defined as the independent city of Martinsville, Virginia; Henry County, Virginia; and Patrick County, Virginia (excluding the Dan River District).

[22] ValleyStar Credit Union controls approximately $77.7 million in deposits in that market that, on a 50 percent weighted basis, represent approximately 4.9 percent of market deposits. After inclusion of these deposits, First Citizens would control approximately 44.6 percent of market deposits, and the HHI would increase by 262 points to 2721.

[23] The Mecklenburg banking market is defined as Mecklenburg, Lunenburg and Brunswick Counties, all in Virginia.

would increase 538 points, from 1839 to 2377. In addition to First Citizens Bank and Carter Bank, six other depository institutions would compete in the Mecklenburg market, including three competitors with more than 10 percent of market deposits.

Additional Considerations Regarding Competition

After considering the competitive influence of certain credit unions and accounting for other competitors in the Danville, Galax, Martinsville, and Mecklenburg banking markets, First Citizens' proposal continues to exceed the DOJ Bank Merger Guidelines. However, the Board has considered additional factors that, in this case, indicate that the proposal is not likely to have a significantly adverse effect on competition in the Danville, Galax, Martinsville, and Mecklenburg banking markets.[24] First Citizens' investment in Carter Bank is limited to less than 10 percent of Carter Bank's voting shares, and Carter Bank's directors and executive officers, including the bank's long-tenured chief executive officer, own 24.9 percent of Carter Bank's common stock. As noted, First Citizens also has provided the Board with Passivity Commitments that are designed to limit the ability of First Citizens to use its investment in Carter Bank to exert a controlling or anti-competitive influence over Carter Bank.

While the Board previously and consistently has found that a noncontrolling relationship may still raise competitive issues under the BHC Act, it is significant that, in this case, First Citizens has provided additional commitments that help ameliorate the potential that this proposal will allow collusion or other anti-competitive behavior. In particular, First Citizens has committed not to acquire, or seek to acquire, any confidential or nonpublic financial information about or from Carter Bank. Further, there are no officer or director interlocks between the institutions through which First Citizens could acquire confidential or other nonpublic information about Carter Bank. These limitations restricting First Citizens' access to confidential information, when combined with the other restrictions on First Citizens' ability to exercise a controlling influence over Carter Bank, significantly reduce the potential that First Citizens may engage in anti-competitive or collusive behavior in any relevant banking market. Thus First Citizens has mitigated the potential that it may influence the behavior of Carter Bank and the potential that First Citizens may change its own behavior in an anti-competitive way based on advance or confidential knowledge about the plans, operations, or policies of Carter Bank. These restrictions, combined with the other limitations described above, mitigate the concerns that this proposal would likely have significantly adverse effects on competition in the Danville, Galax, Martinsville, and Mecklenburg banking markets.

The DOJ also 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 of the facts of record, including the limited nature of First Citizens' investment, the Passivity Commitments, and First Citizens' commitment not to acquire, or seek to acquire, confidential or nonpublic financial information about or from Carter Bank, 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 First Citizens, its affiliates, and Carter Bank compete directly or in any other relevant

[24] 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).

banking market. Thus, the Board finds competitive considerations to be 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 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. 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.

First Citizens and First Citizens Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction would be funded from First Citizens' existing cash reserves. The asset quality, earnings, and liquidity of First Citizens is consistent with approval, and First Citizens appears to have adequate resources to absorb the costs of the proposal. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of First Citizens, First Citizens Bank, and Carter Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Citizens, 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.

First Citizens and First Citizens Bank are each considered to be well managed. First Citizens' 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.

Based on all the facts of record, including First Citizens' supervisory record and managerial and operational resources, 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 Citizens and Carter Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[25] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be

[25] 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 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,[26] 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.[27]

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 First Citizens Bank and Carter Bank, the fair lending and compliance records of both banks, confidential supervisory information, and information provided by First Citizens.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, 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.[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 data reported under the Home Mortgage Disclosure Act of 1975, 12 U.S.C. § 2801 *et seq*. in addition to small business, small farm, and community development loan

[26] 12 U.S.C. § 2901(b).

[27] 12 U.S.C. § 2903.

[28] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg*. 48506, 48548 (July 25, 2016).

[29] 12 U.S.C. § 2906.

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, 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.

CRA Performance of First Citizens Bank

First Citizens Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of May 28, 2013 ("First Citizens Bank Evaluation").[31] First Citizens Bank received a "High Satisfactory" rating for each of the Lending, Investment, and Service Tests.

Examiners found that First Citizens Bank's lending levels reflected good responsiveness to community credit needs. According to examiners, the bank's geographic distribution of loans reflected good penetration throughout the bank's assessment areas. Examiners also found that the First Citizens Bank's lending to borrowers reflected a good distribution among businesses of different sizes and an adequate distribution among retail customers of different incomes. Examiners noted that First Citizens Bank used flexible lending practices in order to serve assessment area credit needs. Examiners also found that First Citizens Bank originated a relatively high level of community development loans and that both the number and dollar volume of community development loans increased from First Citizens Bank's previous CRA evaluation.

Examiners found that First Citizens Bank had an excellent level of qualified community development investments, grants, and donations. Examiners noted that the bank exhibited good responsiveness to credit and community economic development needs and that each of the bank's investments was responsive to an identified need, particularly those involving the bank's position in the Community Affordable Housing Equity Corporation. The bank also used innovative and complex investments to support community development initiatives.

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[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.*, 12 CFR 228.22(b)(3).

[31] The First Citizens 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, community development investments and services, and delivery systems for the bank's products and services from October 19, 2009, through May 28, 2013. The First Citizens Bank Evaluation covered First Citizens Bank's 59 assessment areas located in 15 states and two multistate metropolitan statistical areas ("MSAs"): Arizona; California; Colorado; Florida; Georgia; Maryland; New Mexico; North Carolina; Oklahoma; Oregon; Tennessee; Texas; Virginia; Washington; West Virginia; the Kansas City, Missouri–Kansas, MSA; and the Washington–Arlington–Alexandria, District of Columbia–Virginia–Maryland–West Virginia, MSA. The First CitizensBank Evaluation included a full-scope review of 33 of these assessment areas, including both multistate MSAs. A limited-scope review was conducted in the remaining 26 assessment areas. The FirstCitizens Bank Evaluation was released in June 2014.

Examiners also noted that First Citizens Bank's delivery systems were accessible to the bank's assessment areas. Examiners further noted that the services and business hours offered by First Citizens Bank did not vary in a way that inconvenienced its assessment areas, particularly LMI geographies or individuals. Examiners noted that the bank provided a relatively high level of community development services that benefited organizations throughout its assessment areas, including for organizations that focus on economic development and revitalization, affordable housing, small business development, financial education, services for at-risk youth, and basic human needs for LMI individuals and areas.

First Citizens Bank's Efforts since the First Citizens Bank Evaluation

First Citizens represents that First Citizens Bank has continued its commitment to serve the needs of LMI individuals and geographies and small businesses in its communities. First Citizens asserts that First Citizens Bank offers a variety of products and services designed to meet the needs of LMI and minority borrowers. In particular, First Citizens represents that First Citizens Bank has made a number of home mortgage loans and products available to LMI and first-time homebuyers. In addition, First Citizens represents that First Citizens Bank has remained active in community development and small business lending. First Citizens also notes that First Citizens Bank has continued its participation in community development investments and that the bank provides a high level of community development services, including by providing time and expertise to various community organizations and for homebuyer and financial literacy seminars.

CRA Performance of Carter Bank

Carter Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of December 15, 2014 ("Carter Bank Evaluation").[32] Carter Bank received "High Satisfactory" ratings for the Lending Test and Service Test and a "Low Satisfactory" rating for the Investment Test.[33]

Examiners noted that Carter Bank's overall lending activity reflected good responsiveness to its assessment area credit needs. Examiners also found that the bank's geographic distribution of loans showed good penetration throughout its assessment areas. Examiners noted that the bank's lending to borrowers reflected a good distribution among businesses of different sizes and retail customers of different incomes. Examiners also found that the bank originated a relatively high level of community development loans.

Examiners noted that Carter Bank had an adequate level of qualified community development investments and grants. Examiners also found that the bank exhibited adequate responsiveness to credit and community economic development needs through its investments and contributions. Examiners noted that Carter Bank occasionally used innovative

[32] The Carter 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), and qualified investments from December 27, 2011, through December 14, 2014.

[33] The Carter Bank Evaluation included a full-scope assessment review of the bank's assessment areas in the following geographies: the Danville, Virginia, MSA; the Lynchburg, Virginia, MSA; the Roanoke, Virginia, MSA; the Virginia Non–MSA; the Durham–Chapel Hill, North Carolina, MSA; the Greensboro–High Point, North Carolina, MSA; and the North Carolina Non–MSA. A limited-scope review was performed in the Blacksburg–Christiansburg–Radford, Virginia, MSA; Charlottesville, Virginia, MSA; the Harrisonburg, Virginia, MSA; the Kingsport–Bristol–Bristol, Tennessee–Virginia, MSA; the Washington–Arlington–Alexandria, District of Columbia–Virginia–Maryland–West Virginia, Metropolitan Division; the Burlington, North Carolina, MSA; the Fayetteville, NorthCarolina, MSA; the Goldsboro, NorthCarolina, MSA; the Greenville, North Carolina, MSA; the Hickory–Lenoir–Morganton, North Carolina MSA; the Raleigh, North Carolina, MSA; and the Winston–Salem, NorthCarolina, MSA.

and/or complex investments to support community development initiatives in its assessment areas.

Examiners found that the bank's delivery systems were readily accessible to essentially all portions of the bank's assessment areas. Examiners also noted the bank's services and business hours did not vary in a way that inconvenienced its assessment areas, particularly LMI geographies or individuals. Examiners found that the bank provided a relatively high level of community development services that benefit organizations throughout its assessment areas, including for economic development and revitalization, affordable housing, small business development, financial education, services for at-risk youth, and basic human needs for LMI individuals and areas.

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, confidential supervisory information, information provided by First Citizens, 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."[34]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[35] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[36]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. In this case, the proposed acquisition of a noncontrolling interest in Carter Bank is not a significant expansion by First Citizens and would have a de minimis impact on First Citizens's systemic footprint. The value of the additional shares that First Citizens proposes to purchase is approximately $14.0 million. The Board generally

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

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

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

presumes that an acquisition of less than $2 billion in assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by First Citizens 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 January 11, 2017.

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

First Citizens BancShares, Inc. ("First Citizens"), Raleigh, together with Southern Bancshares (N.C.), Inc. ("Southern"), Mount Olive, and Fidelity Bancshares (N.C.), Inc. ("Fidelity"), Fuquay-Varina, all of North Carolina, and their subsidiaries and affiliates (each a "First Citizens Acquirer" and collectively, the "First Citizens Acquirer Group"), will not, without the prior approval of the Board of Governors of the Federal Reserve System (the "Board") or its staff, directly or indirectly:

1. Exercise or attempt to exercise a controlling influence over the management or policies of Carter Bank & Trust ("Carter Bank"), Martinsville, Virginia, or any of its subsidiaries;
2. Have or seek to have a representative of the First Citizens Acquirer Group serve on the board of directors of Carter Bank or any of its subsidiaries;
3. Have or seek to have any employee or representative of the First Citizens Acquirer Group serve as an officer, agent, or employee of Carter Bank or any of its subsidiaries;
4. Take any action that would cause Carter Bank or any of its subsidiaries to become a subsidiary of the First Citizens Acquirer Group;
5. Own, control, or hold with power to vote securities that (when aggregated with securities that the executive officers and directors of the First Citizens Acquirer Group own,

control, or hold with power to vote) represent 15.0 percent or more of any class of voting securities of Carter Bank or any of its subsidiaries, but First Citizens will not own, control, or hold with power to vote securities that represent more than 9.0 percent of any class of voting securities of Carter Bank or any of its subsidiaries;

6. Own or control equity interests that would result in the combined voting and nonvoting equity interests of the First Citizens Acquirer Group and its executive officers and directors to equal or exceed 15.0 percent of the total equity capital of Carter Bank or any of its subsidiaries, but First Citizens will not own or control equity interests that would result in the combined voting and nonvoting equity interests of First Citizens that exceed 9.0 percent of the total equity capital of Carter Bank or any of its subsidiaries;
7. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of Carter Bank or any of its subsidiaries;
8. Enter into any agreement with Carter Bank or any of its subsidiaries that substantially limits the discretion of Carter Bank's management over major policies and decisions, including but not limited to, policies or decisions about employing and compensating executive officers; engaging in new business lines; raising additional debt or equity capital; merging or consolidating with another firm; or acquiring, selling, leasing, transferring, or disposing of material assets, subsidiaries, or other entities;
9. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of Carter Bank or any of its subsidiaries;
10. Dispose or threaten to dispose (explicitly or implicitly) of equity interests of Carter Bank or any of its subsidiaries in any manner as a condition or inducement of specific action or non-action by Carter Bank or any of its subsidiaries; or
11. Enter into any other banking or nonbanking transactions with Carter Bank or any of its subsidiaries, except that the First Citizens Acquirer Group may establish and maintain deposit accounts with Carter Bank, provided that the aggregate balance of all such deposit accounts does not exceed $500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with Carter Bank.
12. Acquire, or seek to acquire, any confidential or nonpublic financial information of Carter Bank or any of its subsidiaries. The First Citizens Acquirer Group also confirms that there are no legal, contractual, or statutory provisions that would allow it or its subsidiaries to have any access to financial information of Carter Bank or its subsidiaries beyond the information available to all shareholders.

Each First Citizens Acquirer understands that these commitments constitute conditions imposed in writing in connection with the Board's findings and decisions in First Citizens' application to acquire up to 9.0 percent of Carter Bank, pursuant to section 3 of the Bank Holding Company Act of 1956, as amended ("BHC Act"), and the Board's Regulation Y, and as such, may be enforced in proceedings under applicable law. Nothing in these commitments releases the First Citizens Acquirer Group from compliance with the BHC Act and the Board's regulations thereunder for any subsequent acquisition or increase in the percentage ownership of any class of voting shares of Carter Bank.

Appendix B

First Citizens Bank/Carter Bank Banking Markets
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
Washington, DC– District of Columbia–Maryland–Virginia–West Virginia— Washington, DC; Charles, Calvert, Frederick, Montgomery, and Prince George's Counties all in Maryland; District 7 in Anne Arundel County, Maryland; the Clarksville and Savage districts in Howard County, Maryland; Arlington, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Stafford, and Warren Counties all in Virginia; the Virginia cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and Jefferson County, West Virginia.						
First Citizens	56	$64.1M	0			
Carter Bank	44	$171.0M	0.1			
First Citizens Post-Consummation	38	$235.1M	0.1	993	0	80
Charlotte, North Carolina–South Carolina—Anson, Cabarrus, Gaston, Lincoln, Mecklenburg, and Union Counties, all in North Carolina; Lancaster and York Counties, both in South Carolina; the city of Mooresville and the townships of Davidson and Coddle Creek in Iredell County, North Carolina; the townships of Atwell and China Grove in Rowan County, North Carolina; and the King's Mountain township in Cleveland County, North Carolina.						
First Citizens	5	$2.0B	0.9			
Carter Bank	37	$27.1M	0			
First Citizens Post-Consummation	5	$2.0B	0.9	5829	0	41
Durham–Chapel Hill, North Carolina–Chatham, Durham, Orange, and Person Counties, all in North Carolina.						
First Citizens	6	$469.2M	4.2			
Carter Bank	15	$48.8M	0.4			
First Citizens Post-Consummation	6	$518.0M	4.7	1819	4	17
Fayetteville, North Carolina[1] —Cumberland and Hoke Counties, both in North Carolina; and the Anderson Creek, Barbeque, Johnsonville, and Stewarts Creek townships in Harnett County, North Carolina.						
First Citizens	2	$533.2M	17.4			
Carter Bank	10	$15.2M	0.5			
First Citizens Post-Consummation	2	$548.4M	17.9	1940	17	13
Goldsboro, North Carolina[2] —Wayne County, North Carolina; and the Faison, Wolfscrape, Glisson, and Albertson townships in Duplin County, North Carolina.						
First Citizens	2	$377.7M	26.2			
Carter Bank	9	$3.7M	0.3			
First Citizens Post-Consummation	2	$381.4M	26.5	2538	13	9
Greensboro–High Point, North Carolina[1] — Davidson, Guilford, Randolph, and Rockingham Counties, all in North Carolina.						
First Citizens	7	$849.2M	5.9			
Carter Bank	15	$195.8M	1.4			
First Citizens Post-Consummation	7	$1.0B	7.3	1078	16	21
Greenville, North Carolina[1] —Pitt, Beaufort, and Greene (excluding the Shine, Jason, and Hookerton townships) Counties, all in North Carolina.						
First Citizens	1	$641.2M	21.9			
Carter Bank	13	$3.7M	0.1			
First Citizens Post-Consummation	1	$644.9M	22	1536	6	14
Hickory, North Carolina—Alexander, Burke, Caldwell, and Catawba Counties, all in North Carolina.						
First Citizens	3	$613.1M	15.4			
Carter Bank	9	$50.8M	1.3			
First Citizens Post-Consummation	3	$663.9M	16.7	1591	39	15
Mount Airy, North Carolina—Virginia – Surry County, North Carolina; the Dan River district in Patrick County, Virginia; and the portion of Carroll County, Virginia, south of the Blue Ridge Parkway.						
First Citizens	5	$98.5M	8			
Carter Bank	9	$35.9M	2.9			
First Citizens Post-Consummation	4	$134.4M	11	1651	47	9
Raleigh, North Carolina[3] —Franklin, Granville, Johnston, Wake, and Harnett (excluding the Anderson Creek, Barbeque, Johnsonville, and Stewarts Creek townships), Counties, all in North Carolina.						

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Appendix B—*continued*

First Citizens Bank/Carter Bank Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
First Citizens	3	$3.3B	12.9			
Carter Bank	27	$12.1M	0.1			
First Citizens Post-Consummation	3	$3.3B	13	1372	1	31
Rutherford County, North Carolina—Rutherford County, North Carolina.						
First Citizens	3	$97.3M	14.6			
Carter Bank	10	$8.1M	1.2			
First Citizens Post-Consummation	3	$105.4M	15.8	2058	35	10
Sanford, North Carolina[1] — Lee County, North Carolina.						
First Citizens	3	$108.1M	14.3			
Carter Bank	8	$11.8M	1.5			
First Citizens Post-Consummation	3	$120.0M	15.9	1951	45	8
Henderson, North Carolina[1] —Vance and Warren Counties, both in North Carolina.						
First Citizens	2	$112.4M	22.8			
Carter Bank	6	$12.9M	2.6			
First Citizens Post-Consummation	2	$125.3M	25.4	2362	119	8
Wilkes County, North Carolina—Wilkes County, North Carolina.						
First Citizens	4	$87.2M	12.3			
Carter Bank	10	$9.2M	1.3			
First Citizens Post-Consummation	2	$96.3M	13.6	1554	33	10
Winston-Salem, North Carolina[1] —Davie, Forsyth, Stokes, and Yadkin Counties, all in North Carolina.						
First Citizens	4	$586.1M	1.9			
Carter Bank	15	$21.6M	0.1			
First Citizens Post-Consummation	3	$607.6M	1.9	6741	0	17
Wilson, North Carolina[1] — Wilson County, North Carolina.						
First Citizens	2	$196.6M	18.8			
Carter Bank	8	$10.1M	1			
First Citizens Post-Consummation	2	$206.7M	19.7	3010	36	7
Johnson City–Bristol, Tennessee –Virginia —Carter, Sullivan, Unicoi, and Washington Counties, all in Tennessee; Scott County, Virginia; the towns of Church Hill, Kingsport, Mount Carmel, and Holston in Hawkins County, Tennessee; the independent city of Bristol, Virginia; and the towns of Benhams, Green Valley, Burson Place, Wallace, Wyndale, and Scenic Park in Washington County, Virginia.						
First Citizens	30	$8.2M	0.1			
Carter Bank	22	$34.0M	0.6			
First Citizens Post-Consummation	21	$42.3M	0.7	889	0	32
Alleghany, Virginia— Alleghany and Bath Counties; and the independent city of Covington, all in Virginia.						
First Citizens	7	$32.3M	6.4			
Carter Bank	9	$2.6M	0.5			
First Citizens Post-Consummation	7	$34.9M	6.9	1792	6	8
Charlottesville, Virginia— the independent city of Charlottesville, Virginia, Albemarle; Buckingham, Fluvanna, Greene, Madison, and Nelson Counties, all in Virginia; districts 1, 2, and 3 in Orange County, Virginia.						
First Citizens	11	$69.4M	1.4			
Carter Bank	15	$24.8M	0.5			
First Citizens Post-Consummation	10	$94.2M	1.9	1374	2	19
Emporia, Virginia—the independent city of Emporia, Virginia; and Greensville County, Virginia.						
First Citizens	5	$29.1M	12			
Carter Bank	6	$17.0M	7			
First Citizens Post-Consummation	3	$46.1M	19.1	2163	170	5

(continued on next page)

Appendix B—*continued*

First Citizens Bank/Carter Bank Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Fredericksburg, Virginia— the independent city of Fredericksburg, Virginia; Caroline, King George, and Spotsylvania Counties, all in Virginia; Districts 4 and 5 in Orange County, Virginia, and the Washington District in Westmoreland County, Virginia.						
First Citizens	12	$19.8M	0.7			
Carter Bank	8	$67.1M	2.3			
First Citizens Post-Consummation	8	$86.8M	3	1784	3	16
Harrisonburg, Virginia–West Virginia—the independent city of Harrisonburg, Virginia; and Rockingham and Page Counties, both in Virginia; and Pendleton County, West Virginia.						
First Citizens	15	$27.0M	1			
Carter Bank	12	$77.2M	2.9			
First Citizens Post-Consummation	11	$104.2M	3.9	1029	6	17
Lynchburg, Virginia — the independent city of Lynchburg, Virginia; Amherst, Appomattox, and Campbell Counties, all in Virginia; and the portion of Bedford County east of Route 43 (excluding the independent city of Bedford, Virginia), Virginia.						
First Citizens	10	$69.4M	1.7			
Carter Bank	5	$370.5M	8.9			
First Citizens Post-Consummation	4	$439.9M	10.6	1366	30	15
Blacksburg, Virginia— the independent city of Radford, Virginia; and Floyd, Giles, Montgomery, and Pulaski Counties, all in Virginia.						
First Citizens	12	$21.4M	0.7			
Carter Bank	4	$287.6M	9.8			
First Citizens Post-Consummation	4	$309.0M	10.5	1491	14	13
Roanoke, Virginia[1] —the independent cities of Bedford, Roanoke, and Salem, all in Virginia; Botetourt, Craig, Franklin, and Roanoke Counties, all in Virginia; and the portion of Bedford County west of Route 43, in Virginia.						
First Citizens	6	$325.9M	4.2			
Carter Bank	4	$712.2M	9.1			
First Citizens Post-Consummation	3	$1.0B	13.3	1515	76	18
Staunton, Virginia— the independent cities of Staunton and Waynesboro, both in Virginia; and Augusta and Highland Counties, both in Virginia.						
First Citizens	12	$42.8M	2.8			
Carter Bank	9	$66.3M	4.3			
First Citizens Post-Consummation	5	$109.1M	7.1	1263	24	14
Burlington, North Carolina—Alamance and Caswell Counties (excluding the Dan River, Milton, Pelham, and Yanceyville townships), in North Carolina.						
Fidelity	12	$30.7M	1.6			
Carter Bank	14	$17.7M	0.9			
First Citizens Post-Consummation	9	$48.4M	2.5	1355	3	15
Shelby, North Carolina—Cleveland County (excluding King's Mountain Township), North Carolina.						
Fidelity	4	$95.3M	11.6			
Carter Bank	10	$1.9M	0.2			
First Citizens Post-Consummation	4	$97.2M	11.8	2130	6	9

Note: 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.

[1] Data reflect inclusion of Fidelity's banking operations in the market.

[2] Data reflect inclusion of Southern's banking operations in the market.

[3] Data reflects inclusion of both Southern's and Fidelity's banking operations in the market.

Central Bancompany, Inc.
Jefferson City, Missouri

Order Approving the Acquisition of a Bank
FRB Order No. 2017-03 (February 8, 2017)

Central Bancompany, Inc. ("Central"), Jefferson City, Missouri, 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 Act[2] to acquire 100 percent of the voting shares of Bank Star One ("Star One"), Fulton, Missouri.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 56,654 (2016)).[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.

Central, with consolidated assets of approximately $12.3 billion, is the 108th largest depository organization in the United States, controlling deposits of approximately $9.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[4] Central controls 13 insured depository institutions, which operate in Illinois, Kansas, Missouri, and Oklahoma. Central is the sixth largest insured depository organization in Missouri, controlling deposits of approximately $7.6 billion, which represent approximately 4.8 percent of the total deposits of insured depository institutions in that state.[5]

Star One, with total assets of approximately $87.6 million, is a subsidiary of Bancstar, Inc., St. Louis, Missouri, the 3,323rd largest depository organization in the United States. Star One is a Missouri-chartered nonmember bank that operates only in Missouri. Bancstar, Inc. is the 102nd largest insured depository organization in Missouri, controlling approximately $215.5 million in deposits, which represent less than 1 percent of the total deposits held by insured depository institutions in Missouri.

On consummation of this proposal, Central would become the 107th largest depository organization in the United States, with consolidated assets of approximately $12.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Central would control deposits of approximately $9.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Missouri, Central would remain the sixth largest depository organization, controlling deposits of approximately $7.7 billion, which represent approximately 5.0 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market.[6] The BHC Act also prohibits the Board from approving a

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1 12 U.S.C. § 1841 *et seq*.
2 12 U.S.C. § 1842.
3 12 CFR 262.3(b).
4 Nationwide deposit, asset, and ranking data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.
5 State deposit, market share, and ranking data are as of June 30, 2015.
6 12 U.S.C. § 1842(c)(1)(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.[7]

Central has subsidiary depository institutions that compete directly with Star One in the Jefferson City, Missouri, banking market (the "Jefferson City market")[8] and the Lake of the Ozarks, Missouri, banking market (the "Lake of the Ozarks market").[9] The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of the total deposits in insured depository institutions in the markets ("market deposits") that Central would control,[10] the concentration level of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[11] and other characteristics of the markets.

The competitive effects of the proposal in the Jefferson City and Lake of the Ozarks markets warrant a detailed review because the proposal would result in the market deposit share of Central exceeding 35 percent in these markets when using initial competitive screening data.

Jefferson City, Missouri, Banking Market

Using the initial competitive screening data, Central is the largest depository organization in the Jefferson City market, controlling deposits of approximately $2.1 billion, which represent approximately 47.7 percent of market deposits. Star One is the 15th largest depository organization in the market, controlling deposits of approximately $42.8 million, which represent approximately 1.0 percent of market deposits. On consummation of the proposal, the combined entity would be the largest depository organization in the Jefferson City market, controlling deposits of approximately $2.1 billion, which would represent approximately 48.7 percent of market deposits. The HHI in the market would increase by 92 points, from 2,553 to 2,645.

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 Jefferson City market.[12] Factors indicate that the increase in concentra-

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[7] 12 U.S.C. § 1842(c)(1)(B).

[8] The Jefferson City market is defined as Callaway, Cole, and Osage counties; Boone, Jackson, and Jefferson townships in Maries County; and the western half of Gasconade County, including the Richland, Boulware, Third Creek, Clay, and Bourbois townships, all in Missouri.

[9] The Lake of the Ozarks market is defined as Camden, Miller, and Morgan counties, all in Missouri.

[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 survey.

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

[12] 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).

tion in the Jefferson City market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of four community credit unions in the Jefferson City market. The institutions offer a wide range of consumer banking products, operate street level branches, and have 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 these credit unions at a 50 percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests modest reductions are appropriate in the resulting market concentration of the proposed transaction in the Jefferson City market. After consummation, adjusting to reflect competition from credit unions in the market, the market concentration level in the Jefferson City market as measured by the HHI would increase by 89, from a level of 2,445 to 2,534, and the market share of Central resulting from the transaction would increase in the market from 46.7 percent to 47.6 percent.

Central argues that certain of its deposits in the Jefferson City market distort the measure of the competitive effect of the proposal on the Jefferson City market because those deposits cannot be used for lending. In conducting its competitive analysis in previous cases, the Board generally has not adjusted its market share calculations to exclude categories of 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 to exclude specific types of out-of-market deposits held by an acquirer 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, if appropriate.[14]

Central has some out-of-market deposits that are 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 a large class action settlement and are being held in escrow for payment to consumers throughout the United States. Central represents that it cannot lend on these deposits.

To account for the possibility that other market competitors might maintain similar deposits in the Jefferson City market, the Board excluded deposits from the second largest competitor in the market such that the size of this competitor's largest branch in the market is reduced to the size of its second largest branch in the market. This adjustment also suggests a modest reduction in the initial measures of market concentration. After making these adjustments and weighing the deposits of credit unions at 50 percent, Central would control approximately 46.6 percent of market deposits, and the HHI would increase by 96 points to a level of 2,422.

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[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 Huntington Bancshares Incorporated* , FRB Order No. 2016-13, 12-15 (July 29, 2016); *First Security Corp.*, 86 *Federal Reserve Bulletin* 122, 125-27 (2000).

The Board has also examined other aspects of the structure of the Jefferson City 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 Jefferson City market. After consummation of the proposal, Central would face competition from 23 other depository institutions in the market, one of which would control more than 9 percent of market deposits and two of which would control more than 6 percent of market deposits. The presence of these viable competitors suggests that Central would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Central in the Jefferson City market. This conclusion is supported in this case by an analysis of private pricing data, which indicates that Central's fees and interest rates for deposit products in the Jefferson City market are close to the median prices of other banks in the market and do not deviate substantially from Central's prices in markets where Central is not the dominant firm. Moreover, although the market is highly concentrated, as measured by the HHI, the change in market share and market structure would be de minimis.

Lake of the Ozarks, Missouri, Banking Market

Using the initial competitive screening data, Central is the largest depository organization in the Lake of the Ozarks market, controlling deposits of approximately $579.4 million, which represent approximately 36.8 percent of market deposits. Star One is the 10th largest depository organization in the market, controlling deposits of approximately $32.5 million, which represent approximately 2.1 percent of market deposits. On consummation of the proposal, the combined entity would be the largest depository organization in the Lake of the Ozarks market, controlling deposits of approximately $611.9 million, which would represent approximately 38.9 percent of market deposits. The HHI in the market would increase by 152 points, from 1,816 to 1,968.

One credit union exerts a competitive influence in the Lake of the Ozarks market. This 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 this credit union at a 50 percent weight in estimating market influence. Adjusting to reflect competition from this credit union, the market concentration level in the Lake of the Ozarks market as measured by the HHI would increase by 149, from a level of 1,773 to 1,922, and the market share of Central resulting from the transaction would increase in the market from 36.3 percent to 38.4 percent. In addition to the credit union, 17 commercial bank competitors would remain in the market, two of which would control more than 10 percent of market deposits and one of which is a large, national depository institution that would control approximately 9 percent of market deposits. The presence of these viable competitors suggests that Central would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Central in the Lake of the Ozarks market. Moreover, as in the Jefferson City market, the change in market share and market structure resulting from the proposal in the Lake of the Ozarks market would be relatively small.

Conclusion Regarding Competitive Effects

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 Jefferson City market and the Lake of the Ozarks 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, in particular the structure of the relevant markets, the number of remaining competitors, the small increase in market share associated with the proposal, and other factors discussed 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 Jefferson City market, the Lake of the Ozarks 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.[15] 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 relevant 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.

Central and Star One are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a purchase of stock in exchange for cash.[16] The asset quality, earnings, and liquidity of Central and Star One are consistent with approval, and Central 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 Central, its subsidiary depository institutions, and Star One, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Central; 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 the commenter.

Central and its subsidiary depository institutions are considered to be well managed. Central'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 Central's plans for implementing the proposal. Central has conducted comprehensive due diligence and is devoting significant financial and other

[15] 12 U.S.C. §§ 1842(c)(2), (5), and (6).

[16] Central will purchase 100 percent of Star One's outstanding voting shares from BancStar, Inc., St. Louis, Missouri, a bank holding company, in exchange for cash. Central has the resources to fund this transaction.

resources to address all aspects of the post-integration process for this proposal. Star One would initially be a standalone depository institution subsidiary of Central following consummation of the proposal. Central has represented that it plans to submit an application to merge Star One into two of its subsidiary depository institutions, Central Bank of Lake of the Ozarks and The Central Trust Bank, following consummation of the proposal. Central would implement its risk-management policies, procedures, and controls at Star One, and these are considered acceptable from a supervisory perspective. In addition, Central's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner.

Based on all the facts of record, including Central's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, and the 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 Central and Star One 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.[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, in evaluating bank expansionary proposals.[19]

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 each of Central's subsidiary depository institutions and Star One, the fair lending and compliance records of each of the involved banks, the supervisory views of examiners, confidential supervisory information, information provided by Central, and the public comments received on the proposal.

[17] 12 U.S.C. § 1842(c)(2).
[18] 12 U.S.C. § 2901(b).
[19] 12 U.S.C. § 2903.

Public Comments Regarding the Proposal

In this case, the Board received comments from commenters who objected to the proposal on the basis of alleged disparities in mortgage lending by one of Central's subsidiary depository institutions, Central Bank of the Midwest ("CBMW"), particularly in the number of home improvement and refinancing loans made to African American borrowers and borrowers in minority-populated LMI areas in the urban core of Kansas City, Missouri, as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA") for 2011 to 2015. The commenters stated that CBMW has failed to adequately serve the needs of the communities in which it operates and does not adequately comply with the CRA, the Fair Housing Act, and the Equal Credit Opportunity Act.[20] The commenters also alleged that CBMW has not established any branches in or near any minority or LMI areas and that its lending in these areas is negligible; that CBMW's community development lending efforts have ignored certain minority communities within Kansas City; and that CBMW's small business lending in low-income tracts lags behind that of other banks in the area. The commenters indicated that they would support the application if Central would agree to take a series of steps, including designating a full-time urban loan originator,[21] establishing a branch within the urban core of Kansas City, and adopting certain community development and lending goals for the urban core of Kansas City.[22]

Businesses of the Involved Institutions and Response to Comments

Central controls 12 regional banks throughout Missouri and one bank in Oklahoma. Central's subsidiary depository institutions provide a broad range of retail and commercial banking products and services. Central's bank subsidiaries engage in significant commercial and industrial lending and offer an array of financing alternatives, such as revolving lines of credit, equipment and fixture financing, letters of credit, and floor plan lines for automobile dealers. Central's subsidiary banks also provide treasury management services to commercial customers and wealth management, trust, and brokerage services.

Star One also offers a broad range of retail and commercial banking products and services. Star One's lending activities are primarily focused in real-estate-secured commercial lending.

Central asserts that its subsidiary depository institutions have consistently met the requirements of the CRA and that since CBMW was acquired by Central in 1993, CBMW has consistently received "Satisfactory" CRA ratings. Central states that CBMW has adopted community outreach initiatives to assess the needs of local LMI and minority communities and that the bank has made efforts to reach these segments of the population. Central further represents that CBMW markets its products to the entire Kansas City metro area, including the urban core, and has purposely directed some of its advertising to media that reach primarily minority audiences. Central also asserts that CBMW's "Home Turf Loan Program" was designed specifically for LMI individuals and is targeted to LMI census

[20] 42 U.S.C. §§ 3601-3619; 15 U.S.C. §§ 1691 *et seq*.

[21] The commenters subsequently acknowledged that CBMW already has established a full-time urban loan originator.

[22] 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.*, *Wintrust Financial Corporation*, FRB Order No. 2016-17 at 8 n. 19 (October 28, 2016); *Huntington Bancshares Incorporated*, FRB Order No. 2016-13 at 32 n. 50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n. 54 (July 19, 2015). 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.

tracts within the bank's CRA assessment area. Central also argues that CBMW's officers and employees are actively engaged in outreach to areas throughout Kansas City and that CBMW has made significant investments in affordable housing projects in the Kansas City metro area. Central also represents that CBMW has created a full-time mortgage lending position with a focus on the LMI and minority-populated areas within the urban core of Kansas City.

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 responses to comments by the applicant. In particular, the Board evaluates an institution's performance 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.[23]

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[24] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply 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 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.[25] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amount of their community development loans and qualified investments, the extent to which they provide community development services, and their responsiveness to community development lending, investment, and service needs.[26] Large institutions are subject to a lending test similar to that described above and an investment test that evaluates the number and amount of qualified investments that benefit their assessment areas. Large institutions are also subject to a service test that evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[27]

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[23] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48,506, 48,548 (July 25, 2016).

[24] 12 U.S.C. § 2906.

[25] *See* 12 CFR 228.26(b).

[26] *See* 12 CFR 228.26(c).

[27] *See* 12 CFR 228.21 *et seq*.

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.[28] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of Kansas City with respect to CBMW; the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of St. Louis with respect to Central Bank of Lake of the Ozarks and The Central Trust Bank, which operate in the same banking markets as Star One; and the supervisory views of the Federal Deposit Insurance Corporation ("FDIC") with respect to Star One.

CRA and Consumer Compliance Performance of Central Bank of the Midwest

CBMW, which operates primarily in the Kansas City, Missouri, banking market, received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of Kansas City, as of August 24, 2015 ("CBMW Evaluation").[29] CBMW received "High Satisfactory" ratings for both the lending test and the service test and a "Low Satisfactory" rating for the investment test.[30]

Examiners determined that the bank's lending activities reflected good responsiveness to the credit needs of its assessment area, and a high percentage of CBMW's loans were made inside its assessment area. The distribution of CBMW's loans to borrowers of different income levels and businesses of different revenue sizes was considered adequate. Examiners found that the bank made use of innovative and flexible lending programs to reach minority and LMI borrowers. Examiners noted that CBMW made a relatively high level of community development loans, including revitalization and stabilization loans in areas addressed in city revitalization plans and loans to support economic development, originated through the Small Business Administration. Examiners concluded that CBMW's total qualified investment activity remained adequate. Examiners further noted that the bank's investments demonstrated adequate responsiveness to community development needs. Examiners also found that CBMW's performance under the service test reflected a high level of qualified community development services within the bank's assessment area, including bank staff and officers providing financial expertise, personal financial checkups, home buyer counseling, and small business training. Examiners noted CBMW's accessible delivery systems, reasonable business hours, and a neutral effect of branch openings and closings.

Concurrently with the CBMW Evaluation, examiners conducted a consumer compliance examination of CBMW. As part of this review, examiners reviewed CBMW's lending activity reported under HMDA and assessed the effectiveness of controls to mitigate fair lending risk. The Board has taken into consideration the results of this examination,

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[28] 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.

[29] The CBMW Evaluation was conducted using Large Bank CRA Examination Procedures, consisting of the lending test, the investment test, and the service test described above. The CBMW Evaluation reviewed HMDA loans and small business loans from January 1, 2013, through December 31, 2014. Examiners reviewed community development activities from August 13, 2013, through August 24, 2015.

[30] The CBMW Evaluation reviewed the bank's activities in Johnson County, Kansas and Jackson and Cass Counties, Missouri.

including examiners' review of the bank's policies and procedures for fair lending and conclusion that the bank has well established, detailed policies and procedures.

CBMW's Efforts since the CBMW Evaluation

Central represents that, since the CBMW Evaluation, CBMW has made a number of community development loans and investments to support its assessment area and that CBMW continues to review and analyze opportunities to increase the level of applications and originations within LMI areas. Central represents that CBMW has hired a new Community Affairs Officer, who brings significant experience and knowledge of the challenges within Kansas City's urban core. Central further states that CBMW plans to enhance the bank's "Home Turf Loan Program," which is targeted to LMI communities, by significantly increasing outreach efforts throughout the community, including in the urban core of Kansas City.

CRA Performance of Central Bank of Lake of the Ozarks

Central Bank of the Lake of the Ozarks ("CBLO") received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of St. Louis, as of August 10, 2015 ("CBLO Evaluation").[31] CBLO received "Satisfactory" ratings for both the lending test and the community development test.[32]

Examiners determined that the bank's borrower profile revealed excellent penetration among borrowers of different income levels, including LMI borrowers, and businesses of different sizes. Examiners further found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout its assessment area. Examiners also noted that CBLO's loan-to-deposit ratio was reasonable given its size, financial condition, and assessment area credit needs. Examiners noted that a substantial majority of the bank's loans and other lending-related activities were in its assessment area. Examiners found that CBLO's overall community development performance demonstrated adequate responsiveness to the community development needs of its assessment area, considering its capacity and the availability of opportunities for community development in its assessment area.

CBLO's Efforts since the CBLO Evaluation

Central represents that, since the CBLO Evaluation, CBLO has made significant qualified investments in its assessment area. Central also represents that CBLO has increased its community development lending and that CBLO's employees continue to offer their banking expertise through community development services by participating in local organizations that benefit LMI individuals.

CRA Performance of The Central Trust Bank

The Central Trust Bank ("Central Trust Bank") received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of St. Louis, as of July 18, 2016 ("Central Trust Bank Evaluation").[33] Central Trust Bank

[31] The CBLO Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending test and the community development test described above. The CBLO Evaluation reviewed 1-4 family residential real estate lending, small business lending, and consumer motor vehicle lending from January 1, 2014, to December 31, 2014, and community development activities from November 5, 2012, to August 10, 2015.

[32] The CBLO Evaluation reviewed the bank's activities in Camden, Miller, and Morgan counties, Missouri.

[33] The Central Trust Bank Evaluation was conducted using Large Bank CRA Examination Procedures, consisting of the lending test, the investment test, and the service test described above. The Central Trust Bank Evalua-

received "High Satisfactory" ratings for each of the lending test, the investment test, and the service test.[34]

Examiners found that Central Trust Bank's lending levels reflected good responsiveness to assessment area credit needs and that a high percentage of the bank's loans were made within its assessment areas. Examiners noted that the bank's loan distribution reflected good penetration among borrowers of different income levels and businesses of different revenue sizes. Furthermore, examiners noted that the geographic distribution of loans reflected good penetration throughout Central Trust Bank's assessment areas, including LMI geographies. Examiners also found that Central Trust Bank made an adequate level of community development loans and that it made use of innovative and flexible lending practices in order to better serve the credit needs of its assessment areas. Examiners determined that the bank made a significant level of qualified community development investments and donations and was occasionally in a leadership position. Examiners found that the bank's delivery systems were accessible to geographies and individuals of different income levels in its assessment areas and that its record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and individuals. Examiners also found that Central Trust Bank provided a relatively high level of community development services within its assessment areas.

CRA Performance of Central's Other Subsidiary Banks

In addition to CBMW, CBLO, and Central Trust Bank, Central is the parent company of 10 other insured depository institutions. The Board also considered the reports of examination of the CRA performance and fair lending compliance records of these other subsidiary depository institutions. Each of these institutions received a "Satisfactory" rating at its most recent CRA examination.

CRA Performance of Star One

Star One received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC, as of February 4, 2013 ("Star One Evaluation").[35] Examiners found that Star One's loan-to-deposit ratio reflected a reasonable willingness to provide credit given the bank's size, financial condition, and community credit needs. Examiners noted that a majority of the bank's loans were extended in its assessment areas. Examiners also found that Star One's overall borrower profile reflected a reasonable penetration to individuals of different income levels and to businesses of different revenue sizes, given the demographics of its assessment areas. Examiners also noted that the bank's geographic distribution of lending reflected a 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. Central represents that it would improve Star One's

tion reviewed HMDA loans, small business loans, and consumer motor vehicle loans from January 1, 2014, through December 31, 2015. Examiners reviewed community development lending activity from May 27, 2014, through July 18, 2016.

[34] The Central Trust Bank Evaluation reviewed the bank's activities in the Jefferson City, Missouri, metropolitan statistical area, consisting of Callaway, Cole, and Moniteau counties, Missouri. The Central Trust Bank Evaluation also included a limited-scope evaluation of Central Trust Bank's activities in Miller County, Missouri.

[35] The Star One Evaluation was conducted using the Small Bank CRA Examination Procedures, consisting of the lending test described above. The Star One Evaluation reviewed the bank's HMDA data and small business loans originated from January 1, 2010, through December 31, 2011. The Star One Evaluation included reviews of the bank's activities in two separate assessment areas, one encompassing all of Callaway County, Missouri, and another consisting of Camden, Miller, and Morgan counties, Missouri.

customers' access to banking products and services because it has a wider selection of products and services than those currently offered by Star One. For example, Central's subsidiary banks offer a full range of mortgage products through a mortgage service company affiliate, lockbox services, business internet banking with ACH and wire transfers, and the ability to make loan payments by telephone. Customers of Star One will also benefit from an expanded automated teller machine and branch network.

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 provided by Central, 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 decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[38]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Central would have approximately $12.4 billion 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.

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[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.

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

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

Conclusion

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

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 Federal Reserve Bank of St. Louis acting pursuant to delegated authority.

By order of the Board of Governors, effective February 8, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Anchor Bancshares, Inc.
Houston, Texas

Order Approving the Formation of a Bank Holding Company
FRB Order No. 2017-04 (February 9, 2017)

Anchor Bancshares, Inc. ("Anchor"), Houston, Texas, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to become a bank holding company by acquiring 100 percent of the voting shares of First Bancshares of Texas, Inc. ("First Bancshares"), McGregor, Texas, and thereby indirectly acquiring control of its subsidiary state nonmember bank, Security Bank of Crawford ("SBC"), Crawford, Texas.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 60701 (2016)).[2] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Anchor is a newly organized Texas corporation formed for the purpose of acquiring control of First Bancshares. First Bancshares, with consolidated assets of approximately $32.3 million, is the 5,712th largest insured depository organization in the United States, controlling approximately $27.6 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[3] First Bancshares controls SBC, which operates only in Texas. First Bancshares is the 509th largest insured depository organization in Texas, controlling deposits of approximately $17.9 million, which represent less than 1 percent of total deposits of insured depository institutions in that state.[4]

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[5]

Anchor is a newly formed company that does not control any depository institutions. Consequently, the proposal does not involve a merger or acquisition that would result in a monopoly or elimination of a competitor in any relevant market. The Department of Justice has advised the Board that it does not believe that consummation of the proposal is likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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1 12 U.S.C. § 1842(a)(1).

2 12 CFR 262.3(b).

3 Asset and nationwide deposit-ranking data are as of June 30, 2016, unless otherwise noted.

4 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.

5 12 U.S.C. § 1842(c)(1).

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board 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, 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, and public comments on the proposal. The Board also evaluates the effect of the transaction on the financial condition of the applicant, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

On consummation of the proposal, Anchor would be well capitalized. In addition, SBC is well capitalized. The transaction is structured as a cash purchase funded from capital contributions made to Anchor by its principals. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that Anchor has sufficient financial resources to effect the proposal and to comply with the Board's Small Bank Holding Company Policy Statement.[6]

The Board also has considered the managerial resources of the applicant and the public comments received on the proposal. The Board has reviewed the examination records of First Bancshares and SBC, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

First Bancshares and SBC are both considered to be well managed. First Bancshares' existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of First Bancshares have substantial knowledge of and experience in the banking and financial services sectors. Anchor represents that it has no plans to effect significant changes in management at SBC, other than the appointment of two principals of Anchor to SBC's board of directors. The current officers and directors of SBC will serve as directors on the board of Anchor.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the records of effectiveness of First Bancshares and SBC in combatting money-laundering activities, are consistent with approval.

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[6] Anchor would be a small bank holding company after acquiring control of First Bancshares and would be subject to the Small Bank Holding Company Policy Statement. 12 CFR 225, appendix C.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the 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. In this evaluation, the Board places particular emphasis on the records of the relevant depository institution under the Community Reinvestment Act ("CRA").[7] 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,[8] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[9]

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 SBC, the fair lending and compliance record of the bank, the supervisory views of the Federal Deposit Insurance Corporation ("FDIC"), confidential supervisory information, other information provided by Anchor, and the public comments received on the proposal.

Public Comments Regarding the Proposal

One commenter objects to the proposal, alleging that Anchor 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.[10] The commenter also states that Anchor has no advertising or marketing efforts directed at African American communities.

Businesses of the Involved Institutions and Response to Comments

Anchor states that it is a newly formed entity with no banking operations or operating locations in either Houston or Dallas, and it has not engaged in any advertising or marketing activities anywhere. Anchor further states that upon consummation of the

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[7] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

[8] 12 U.S.C. § 2901(b).

[9] 12 U.S.C. § 2903.

[10] 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. *See* Interagency Fair Lending Examination Procedures (August 2009), available at https://www.ffiec.gov/pdf/fairlend.pdf.

proposed transaction, Anchor intends to operate SBC at its current location of Crawford, Texas, which is outside the Houston and Dallas metropolitan statistical areas.

SBC is a one-branch community bank serving the City of Crawford, western McLennan County, and surrounding communities. SBC offers commercial and consumer deposit accounts with online banking and bill pay and 24-hour telephone banking. Deposit accounts include no-service-charge checking, money market, savings, and certificates of deposit. SBC makes loans in the community for a wide range of purposes, including for business, farm, and personal needs.

SBC represents that it has not engaged in nor received any consumer complaints regarding discriminatory lending practices in Houston, Dallas, or elsewhere. SBC emphasizes that it operates out of one location in Crawford, Texas, and that it does not have any material lending activity in Houston or Dallas. SBC states that it has consistently operated and continues to operate in material compliance with all applicable consumer regulations and that SBC's compliance with fair lending statutes and regulations has been consistently reviewed by the FDIC as part of its regular CRA performance evaluations.

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 applicant's response to comments. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance record of the institution, as well as information and views provided by the appropriate federal supervisors.[11] 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.[12] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

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 under the Home Mortgage Disclosure Act ("HMDA"), 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.[13]

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

[12] 12 U.S.C. § 2906.

[13] *See* 12 CFR 228.26(b).

The Board is concerned when commenters assert that data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. However, in this case, the Board recognizes that neither the applicant nor SBC operates in the banking markets identified by the commenter. Rather, the applicant is a newly formed company, and SBC is a small banking organization that operates only in Crawford, Texas, and not in the Dallas or Houston banking markets.

CRA Performance of SBC

SBC was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC in August 2014 (the "SBC Evaluation").[14] Examiners determined that SBC demonstrated reasonable performance regarding its loan-to-deposit ratio given the bank's asset size, financial condition, and assessment area credit needs. In addition, examiners found that a majority of loans sampled were made within the assessment area, illustrating a reasonable commitment to meeting the credit needs of the local community. Examiners also noted that the bank's geographic distribution of lending within the assessment area reflected reasonable performance.

During the SBC Evaluation, FDIC examiners reviewed SBC's loan data to evaluate risks of discrimination.[15] Examiners also reviewed the bank's policies and procedures for fair lending. The Board has considered the results of these reviews.

Anchor represents that since the SBC Evaluation, the bank's lending strategy has not changed. SBC has increased its lending for multifamily rental units for low- to moderate-income families and individuals. In addition, SBC has not received any complaints from the public regarding any alleged violations of the Equal Credit Opportunity Act or other fair lending laws. Anchor represents that it has no plans to effect significant changes in management at SBC. Anchor believes that such continuity in management is in the best interests of the communities served by SBC. Further, Anchor represents that SBC has historically received satisfactory ratings during its CRA examinations and that SBC does not anticipate undertaking any new programs, activities, or products that would undermine its consistently satisfactory ratings.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the report of examination of the CRA record of the institution involved, information provided by Anchor, the public comments received, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of SBC, review of examination reports, consultations with the FDIC, and all the facts of record, the Board concludes that the convenience and needs factor, including the CRA record of the insured depository institution involved in this transaction, is consistent with approval of the application.

Financial Stability

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

[14] SBC's CRA evaluation was conducted using Small Institution CRA Examination Procedures, and examiners reviewed the bank's lending activity from August 10, 2009, through August 4, 2014.

[15] SBC is not required to report home loan data under the HMDA because it falls below the HMDA asset-size exemption threshold. *See* 12 CFR 1003.2(1)(i). SBC's assessment area contains no majority minority census tracts.

proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[16]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[17] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[18]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Anchor would have approximately $32.3 million in consolidated assets and would not be likely to pose a systemic risk. The Board generally presumes that a merger or acquisition resulting in a firm with less than $25 billion in consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

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

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

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

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

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

By order of the Board of Governors, effective February 9, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

F.N.B. Corporation
Pittsburgh, Pennsylvania

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2017-06 (February 24, 2017)

F.N.B. Corporation ("FNB"), Pittsburgh, Pennsylvania, 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 Act[2] to merge with Yadkin Financial Corporation ("Yadkin"), Raleigh, and thereby indirectly acquire Yadkin Bank, Statesville, both of North Carolina. Following the proposed acquisition, Yadkin Bank would be merged into FNB's subsidiary bank, First National Bank of Pennsylvania ("First National Bank"), Greenville, Pennsylvania.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 65358 (September 22, 2016)).[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.

FNB, with consolidated assets of approximately $21.6 billion, is the 75th largest insured depository organization in the United States, controlling approximately $16.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] FNB controls First National Bank, which operates in Maryland, Ohio, Pennsylvania, and West Virginia.

Yadkin, with consolidated assets of approximately $7.4 billion, is the 166th largest insured depository organization in the United States, controlling approximately $5.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Yadkin controls Yadkin Bank, which operates in North Carolina and South Carolina.

On consummation of this proposal, FNB would become the 62nd largest insured depository organization in the United States, with consolidated assets of approximately $28.9 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. FNB would control consolidated deposits of approximately $21.3 billion, which represent less than 1 percent of the total deposits of insured depository institutions in 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.[6] Under this section, the Board may not approve an application that would permit an out-of-state bank holding

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Yadkin Bank into First National Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

4 12 CFR 262.3(b).

5 Asset and deposit data are as of September 30, 2016, unless otherwise noted.

6 12 U.S.C. § 1842(d)(1)(A).

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 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 any state in which the acquirer and target have overlapping banking operations.[8]

For purposes of the BHC Act, the home state of FNB is Pennsylvania, and the home state of Yadkin Bank is North Carolina.[9] Yadkin Bank also is located in South Carolina. FNB is well capitalized and well managed under applicable law, and First National Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[10] North Carolina does not have a minimum age requirement,[11] and South Carolina does not have a minimum age requirement applicable to this transaction.[12] Yadkin Bank has been in existence for more than five years.

On consummation of the proposed transaction, FNB would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. The Board has considered all other requirements under section 3(d) of the BHC Act, including FNB's record of meeting the credit needs of the communities it serves. 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.[13]

FNB and Yadkin do not directly compete in any retail banking market. 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

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[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 by which the bank is chartered.

[10] 12 U.S.C. § 2901 *et seq*.

[11] *See* N.C. Gen. Stat. ch. 53C.

[12] South Carolina law imposes a minimum age requirement only on the acquisition of a bank, or the acquisition of all or substantially all the branches of a bank, that is organized under the laws of South Carolina or that maintains its principal place of business in South Carolina. *See* S.C. Code Ann. §§ 34-25-50 and 34-25-240. This age requirement is not applicable to the proposed transaction because Yadkin Bank is organized under the laws of North Carolina.

[13] 12 U.S.C. § 1842(c)(1).

relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.[14]

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.

FNB and First National 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.[15] The asset quality, earnings, and liquidity of both First National Bank and Yadkin Bank are consistent with approval, and FNB 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 FNB, Yadkin, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by FNB, 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.

FNB, Yadkin, and their subsidiary depository institutions are each considered to be well managed. FNB has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. FNB's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and its risk-management program appears consistent with approval of this expansionary proposal.

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[14] 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.

[15] At the time of the merger, each share of Yadkin voting common stock would be converted into a right to receive FNB common stock based on an exchange ratio. Each share of Yadkin nonvoting common stock would be converted into a right to receive either FNB common stock, based on an exchange ratio, or cash. FNB has the financial resources to effect the transaction.

The Board also has considered FNB's plans for implementing the proposal. FNB 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. FNB would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, FNB's and Yadkin's management have the experience and resources to operate the combined organization in a safe and sound manner, and FNB plans to integrate Yadkin's existing management and personnel in a manner that augments FNB's management.[16]

Based on all the facts of record, including FNB's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and public comments on the proposal,[17] 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 FNB and Yadkin 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.[18] 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,[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, in evaluating bank expansionary proposals.[20]

In addition, the Board considers the banks' overall compliance record and their 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.

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[16] FNB will increase the size of its board by one director, who will be appointed from Yadkin's board. In addition, FNB will invite six members of the board of directors of Yadkin to serve for a minimum of one year as members of FNB's newly established North Carolina Community Advisory Board.

[17] A commenter criticized the portions of transaction-account revenues generated by overdraft fees at First National Bank and Yadkin Bank, based on data reported for 2015. The levels of overdraft-fee revenues at First National Bank and Yadkin Bank do not raise safety and soundness concerns. Commenters also criticized the sequencing of credit and debit transactions implemented by First National Bank and criticized the number of overdraft item fees that First National Bank could charge in a single day pursuant to its account terms and conditions. FNB contends that its noninterest charges, including the sequencing of transactions, are in compliance with applicable regulations of the OCC. *See* 12 CFR 7.4002. The Board has consulted with the OCC and has considered the supervisory histories of the involved institutions and the firms' records of compliance in considering this case.

[18] 12 U.S.C. § 1842(c)(2).

[19] 12 U.S.C. § 2901(b).

[20] 12 U.S.C. § 2903.

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 First National Bank and Yadkin Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC, confidential supervisory information, information provided by FNB, and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

The Board received comments from 16 commenters supporting the proposal. Commenters described favorable experiences with the community investment and service programs of FNB. Several commenters commended the bank for its support of programs that provide services to LMI and other historically underserved communities. One commenter praised the speed at which FNB creates a positive impact in geographies that are new to the organization. Another commenter contended that the proposal will encourage economic development, job creation, and wealth generation in Cleveland, Ohio, and in surrounding communities.

The Board also received comments from four commenters expressing concerns about the proposal, alleging that FNB and Yadkin neglect LMI and minority communities. Three commenters allege, on the basis of data for 2015 reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[21] that FNB made a disproportionately low number of loans to LMI and minority borrowers, criticizing First National Bank's record of lending to minorities in the Allegheny County, Pennsylvania; Akron, Ohio; Anne Arundel County, Maryland; Baltimore, Maryland; Cleveland, Ohio; and Summit County, Ohio, areas. One commenter alleges that First National Bank has engaged in "redlining" in the Baltimore area.[22] Three commenters allege that FNB denied a disproportionately high number of loans to LMI and minority borrowers, based on 2015 HMDA data. Commenters expressed particular concern regarding denial rates for minority loan applicants in the Allegheny County, Baltimore, and Cleveland areas. One commenter alleges that FNB had an average to below-average record of small business lending in LMI areas, and two commenters criticized FNB's record of small business lending in Allegheny County. In addition, one commenter criticized Yadkin Bank's level of lending to minority borrowers in Mecklenburg County, North Carolina, based on 2015 HMDA data. One commenter criticized First National Bank's community development lending and investment performance, alleging that the bank's performance underperformed that of Yadkin Bank.

Commenters also expressed concerns regarding the future CRA performance of the combined bank. Several commenters argue that FNB should be required to work with community groups to create a community reinvestment plan and urged the Board to approve the application on the condition that FNB develop and successfully implement such a plan.

Businesses of the Involved Institutions and Response to Comments

FNB and First National Bank assert that they provide a range of financial products and services to individual customers and businesses. Through its branch network in Maryland, Ohio, Pennsylvania, and West Virginia, First National Bank states that it offers banking products and services to its customers, including deposits, safe deposit facilities, electronic

[21] 12 U.S.C. § 2801 *et seq*.

[22] 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. Office of the Comptroller of the Currency et al., Interagency Fair Lending Examination Procedures (August 2009), https://www.ffiec.gov/pdf/fairlend.pdf.

banking services, money transfer services, secured and unsecured loans, and trust and fiduciary services. FNB also explains that it offers services through nonbank subsidiaries, including a consumer-finance company, an insurance agency, a leasing company, and a wealth-management affiliate.

FNB represents that Yadkin and Yadkin Bank also offer a range of financial products and services to individual customers and businesses, including business and consumer loans, commercial cash management services, and consumer deposit products.

In response to the commenters' allegations, FNB states that it maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations. For example, First National Bank monitors and reviews its loan policies and practices for the purpose of measuring its compliance with fair lending laws and equal credit opportunity requirements. FNB states that it will ensure that the level of community involvement historically performed by Yadkin will continue uninterrupted and contends that this level will be elevated when backed by the resources of the combined organization. FNB intends to maintain Yadkin's community development team at the combined organization and has hired a new Community Development Officer, whose primary objective will be to continue to execute FNB's community benefits plan.

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.[23]

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[24] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's 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

[23] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

[24] 12 U.S.C. § 2906.

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;[25] (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.[26] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of First National Bank

First National Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of August 10, 2015 ("First National Bank Evaluation").[27] First National Bank received a "High Satisfactory" rating for the Lending Test, a "Low Satisfactory" rating for the Investment Test, and a "High Satisfactory" rating for the Service Test.

Examiners found that First National Bank's overall lending levels reflected excellent responsiveness to community credit needs. According to examiners, the bank's geographic distribution of loans reflected good penetration throughout many of the bank's assessment areas. Examiners also found that the bank's distribution of borrowers reflected good penetration among borrowers of different income levels and among business and farm customers of different sizes, given the product lines offered by the institution.

In Pennsylvania,[28] an area of concern for commenters, examiners noted that First National 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, consistent with safe and sound banking practices. Examiners found that First National Bank used flexible lending practices in order to serve assessment area credit needs,

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[25] Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See*, *e.g.*, 12 CFR 228.22(b)(3).

[26] Other data relevant to credit decisions could include credit histories, 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.

[27] The First National Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage and small business loan lending from January 1, 2010, through December 31, 2014, except for community development loans, which were evaluated from January 22, 2011, through December 31, 2014. The evaluation period for the Investment Test and the Service Test was from January 22, 2011, through December 31, 2014. The First National Bank Evaluation included a full-scope review of the bank's assessment areas within the following areas: the Pittsburgh, Pennsylvania, Metropolitan Statistical Area ("Pittsburgh assessment area"); the Cleveland–Elyria, Ohio, Metropolitan Statistical Area ("Cleveland assessment area"); the Baltimore–Columbia–Towson, Maryland, Metropolitan Statistical Area ("Baltimore assessment area"); the Weirton–Steubenville, WestVirginia–Ohio, Metropolitan Statistical Area ("MSA"); the Youngstown–Warren–Boardman, Ohio–Pennsylvania, MSA; and the bank's assessment area in non-MSA areas of Pennsylvania. A limited-scope review was conducted in 11 other assessment areas in Ohio and Pennsylvania.

[28] First National Bank's performance in Pennsylvania had the greatest impact on the bank's CRA performance due to a higher concentration of deposits and lending than in other areas.

including single-family mortgage loan programs that serve eligible LMI borrowers.[29] These programs provided reduced down-payment requirements, "zero point" fixed interest rates, flexible loan-to-value limits, and reduced closing costs. Examiners noted that the bank made a relatively high level of community development loans in Pennsylvania during the review period.

In Ohio,[30] another area of concern for commenters, examiners found that First National 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. Examiners found that First National Bank's lending levels in the Cleveland assessment area reflected excellent responsiveness to the assessment area credit needs relative to the bank's deposit market share. Examiners noted that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas in that assessment area, low-income individuals, and/or very small businesses when considering bank lending distributions across geographies, and among borrowers, of different income levels. Examiners noted that the bank made an adequate level of community development loans in the Cleveland assessment area during the review period.

In Maryland,[31] another area of concern for commenters, examiners found that the bank's lending levels reflected adequate responsiveness to credit needs in the Baltimore assessment area, and that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas in that assessment area, low-income individuals, and/or very small businesses. Examiners noted that the bank made an adequate level of community development loans in the Baltimore assessment area during the review period, given the bank's short tenure and competitive position in the market.

Examiners found that First National Bank had an adequate level of qualified community development investment activity. In the areas of Pennsylvania receiving full-scope reviews, the bank had an adequate level of qualified community development investment and grants. The bank's investments supported affordable housing and activities that promote economic development. The bank also purchased mortgage-backed securities with the underlying collateral consisting of loans to LMI borrowers within the Pittsburgh assessment area. In each of the Cleveland and Baltimore assessment areas, examiners found the bank's Investment Test performance to be adequate.

With respect to the Service Test, examiners noted that, in the areas of Pennsylvania receiving full-scope reviews, First National Bank's delivery systems were accessible to essentially all portions of First National Bank's assessment areas and that the bank's services did not vary in a way that inconvenienced portions of the bank's assessment areas, particularly LMI geographies and/or individuals. Examiners also found that the bank provided an adequate level of community development services that were responsive to community needs. Examiners indicated that, in the Pittsburgh assessment area, First National Bank's employees provided technical assistance to community development organizations that provided an array of community services and access to affordable housing for LMI individuals, as well as technical assistance to organizations that supported economic development through programs that assist LMI and unemployed persons obtain

[29] A commenter alleges that FNB rarely originates Federal Housing Administration ("FHA") loans.

[30] First National Bank's performance in Ohio was primarily based on the results of examiners' full-scope review in the Cleveland assessment area.

[31] First National Bank's performance in Maryland was based on the results of examiners' full-scope review in the Baltimore assessment area.

jobs. In the Cleveland and Baltimore assessment areas, examiners found the bank's Service Test performance in each assessment area to be adequate.[32]

First National Bank's Efforts since the 2015 CRA Evaluation

FNB represents that, since the First National Bank Evaluation, First National Bank is satisfactorily meeting the lending needs of LMI borrowers and areas, as well as the lending needs of small businesses and farms located in LMI census tracts. FNB has continued to provide mortgage loan products targeted toward LMI borrowers—the Family Homeownership Program and the Family Home Improvement/Rehabilitation Program—that include features such as reduced down-payment requirements, flexible down-payment assistance, and reduced closing costs. The bank also offers flexible loan products, such as FHA and Department of Veterans Affairs ("VA") products. First National Bank has continued to make qualifying community development investments, including Low Income Housing Tax Credit investments.

CRA Performance of Yadkin Bank

Yadkin Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of March 23, 2015 ("Yadkin Bank Evaluation").[33] Yadkin Bank received a "High Satisfactory" rating for the Lending Test, a "Low Satisfactory" rating for the Investment Test, and a "High Satisfactory" rating for the Service Test.[34]

Examiners noted that Yadkin Bank's overall lending levels reflected good responsiveness to the assessment areas' credit needs. Examiners also found that the bank's geographic distribution of loans reflected good penetration of home loans, small business loans, and small farm loans throughout the bank's assessment areas. Examiners found that the bank distribution of borrowers reflected good penetration among retail customers of different income levels and businesses and farms of different sizes. Examiners noted that the bank made extensive use of flexible lending practices to serve the assessment areas' credit needs, including flexible small business loan products through the Small Business Administration ("SBA") and the North Carolina Rural Economic Development Center. The SBA recognized the bank as the number one SBA lender in dollar volume in North Carolina. Examiners also noted that the bank offered flexible mortgage loan products through the VA, the FHA, the U.S. Department of Agriculture ("USDA"), and the North and South Carolina housing finance agencies. Examiners found that Yadkin Bank made an adequate level of community development loans.

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[32] One commenter alleges that FNB's overdraft practices were found to be unfair trade practices resulting in unjust enrichment as part of a class-action litigation, *Ord v. First National Bank of Pennsylvania*, No. 2:12-cv-00766-AJS (W.D. Pa. dismissed June 21, 2013). The case was settled without any admission of wrongdoing by the parties. Final Judgment & Order of Dismissal with Prejudice at 4–5, *Ord* (No. 2:12-cv-00766-AJS). FNB's practices have subsequently been reviewed by the OCC.

[33] The Yadkin Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed loans reported pursuant to HMDA and CRA data collection requirements for 2012 through 2014. Examiners did not consider HMDA or CRA lending data from the former VantageSouth Bank, which merged with Yadkin Bank in July 2014. Examiners also reviewed community development lending, innovative and flexible business practices, qualified investments, and community development services from May 15, 2012, through December 31, 2014. Examiners considered the bank's branch office distribution as of December 31, 2014. Examiners did not consider the bank's branches acquired from VantageSouth Bank, which were located outside of the bank's delineated assessment areas.

[34] The Yadkin Bank Evaluation included a full-scope assessment review of the bank's assessment areas in the following geographies: the Durham–Chapel Hill, North Carolina, MSA; the Charlotte–Concord–Gastonia, North Carolina–South Carolina, MSA ("Charlotte assessment area"); and the bank's assessment areas in non-MSA areas of each of North Carolina and South Carolina. A limited-scope review was performed in the Winston-Salem, North Carolina, MSA.

In the Charlotte assessment area, an area of concern for commenters, examiners noted that Yadkin Bank's lending levels reflected good responsiveness to assessment area credit needs. Examiners found that the bank's geographic distribution of loans reflected adequate penetration throughout the assessment area. The bank's distribution of borrowers was found by examiners to reflect good penetration among retail customers of different income levels, business customers of different sizes, and farms of different sizes. Yadkin Bank was found to have made an adequate level of community development loans in the assessment area.

Examiners observed that the bank's overall level of community development investments was adequate. Yadkin Bank invested in small business investment companies, purchased bonds that help to finance affordable housing in North Carolina, invested in a bond that supports economic development and revitalization in distressed and underserved areas of North Carolina, and invested in mortgage pools secured by LMI borrower mortgages. The bank provided qualified grants and donations to organizations that primarily provide services to LMI families located within the bank's assessment areas. In the Charlotte assessment area, examiners found that the bank had an adequate level of qualified community development investments.

Examiners found that the bank's delivery systems were reasonably accessible to all portions of the bank's assessment areas. Examiners noted that the bank's services did not vary in a way that inconveniences portions of the bank's assessment areas, particularly LMI geographies and/or individuals. Examiners found that the bank overall had provided a relatively high level of community development services, including in the Charlotte assessment area.

Yadkin Bank's Efforts since the 2015 CRA Evaluation

FNB represents that, since the Yadkin Bank Evaluation, Yadkin Bank has continued satisfactorily to help meet the needs of LMI borrowers and communities, as well as the borrowing needs of small businesses and farms located in LMI census tracts. Yadkin Bank has continued to provide flexible loan products, such as FHA loans, USDA loans, and VA loans. Yadkin Bank's employees participate on the boards of organizations that support or sustain economic growth and provide consumer-finance training.

Views of the OCC

In its review of the proposal, the Board consulted with the OCC regarding First National Bank's CRA, consumer compliance, and fair lending records. The OCC is reviewing the bank merger underlying this proposal, considering the same convenience and needs factor as must be considered by the Board. The OCC separately received comments on the bank merger application and was provided with the comments received by the Board. The OCC is considering all of the comments, those received by the OCC and those provided to the OCC by the Board, in connection with its review of the bank merger application.

The Board has considered the results of a recent consumer compliance examination of First National Bank conducted by OCC examiners, which included a review of the bank's compliance risk-management program and the bank's compliance with consumer protection laws and regulations. The Board also has considered the results of a recent examination of First National Bank's compliance with the Fair Housing Act ("FHA"),[35] which included a review of the bank's lending data and policies and procedures to ensure compliance with the FHA.

[35] 42 U.S.C. § 3601 *et seq.*

The Board has taken these consultations with the OCC and the information discussed above into account in evaluating this proposal, including in considering whether FNB has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's assessment areas. The Board expects FNB to ensure that First National 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 has considered other potential effects of the proposal on the convenience and needs of the communities to be served. FNB represents that as a result of the proposal, existing customers of Yadkin would have access to a complement of products and services that is comparable to or more expansive than those currently available at Yadkin, including trust services, investment products, insurance products, international banking, retirement plan and trust services, products for high-net-worth customers, and lease financing and other asset-based lending.[36] Moreover, FNB asserts that customers of both institutions would benefit from a more expansive branch and ATM network.[37]

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, confidential supervisory information, information provided by FNB, 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

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[36] A commenter expressed concerns about Regency Finance, a subsidiary of FNB, alleging that the company may violate state usury laws through the sale of high-cost credit insurance products. FNB contends that Regency Finance adheres to all relevant federal laws and regulations and state statutes, including those governing usury, and would continue to do so if Regency Finance were to operate in North Carolina. The Board will continue to monitor FNB's compliance with applicable laws and regulations through the supervisory process.

[37] Commenters urged FNB to develop a community reinvestment plan. Following its submission of the application, FNB developed a community benefits plan in consultation with commenters and other organizations. In addition, two community organizations urged the Board to approve the application on the condition that FNB successfully implement a community reinvestment plan. 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 (July19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *FifthThird 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.

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

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. Both the acquirer and the target are predominately engaged in retail commercial banking activities.[41] 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 neither be a critical services provider nor would it 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.

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

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[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 No. 2012-2 (February 14, 2012).

[41] FNB primarily offers deposit, loan, wealth-management, insurance, and consumer finance products. Yadkin primarily offers deposit, loan, wealth-management, and insurance products. In each of its activities, FNB 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.

[42] 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. 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.

In addition, a commenter requested an extension of the comment period for 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 determines not to extend the comment period.

BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by FNB 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.

By order of the Board of Governors, effective February 24, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

People's United Financial, Inc.
Bridgeport, Connecticut

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2017-08 (March 16, 2017)

People's United Financial, Inc. ("People's United"), Bridgeport, Connecticut, 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 Act[2] to merge with Suffolk Bancorp, and thereby indirectly acquire The Suffolk County National Bank of Riverhead ("Suffolk Bank"), both of Riverhead, New York. Following the proposed acquisition, Suffolk Bank would be merged into People's United's subsidiary bank, People's United Bank, N.A. ("People's United Bank"), Bridgeport, Connecticut.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 55457 (August 19, 2016)).[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.

People's United, with consolidated assets of approximately $40.6 billion, is the 60th largest depository organization in the United States. People's United controls approximately $29.7 billion in consolidated deposits, which represent less than 0.3 percent of the total amount of deposits of insured depository institutions in the United States.[5] People's United controls People's United Bank, which operates in Connecticut, Maine, Massachusetts, New Hampshire, New York, and Vermont. People's United is the 34th largest depository organization in New York, controlling deposits of approximately $3.4 billion in New York, which represent approximately 0.3 percent of the total deposits of insured depository institutions in that state.[6]

Suffolk Bancorp, with consolidated assets of approximately $2.1 billion, is the 412th largest depository organization in the United States, controlling approximately $1.9 billion in consolidated deposits nationwide, which represent less than 0.03 percent of the total amount of deposits of insured depository institutions in the United States. Suffolk Bancorp controls Suffolk Bank, which operates only in New York. Suffolk Bancorp is the 52nd largest insured depository organization in New York, controlling deposits of approximately $1.7 billion in New York, which represent 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, People's United would remain the 60th largest depository organization in the United States, with consolidated assets of approximately $43.0 billion, which represent less than 0.2 percent of the total amount of assets of insured depository institutions in the United States. People's United would control consolidated deposits of approximately $31.6 billion, which represent less than 0.3 percent of the total deposits of insured depository institutions in the United States. People's United would become the 29th largest depository organization in New York, controlling deposits of

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Suffolk Bank with and into People's United 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). The OCC approved the merger on February 2, 2017.

4 12 CFR 262.3(b).

5 National asset and deposit data are as of September 30, 2016, unless otherwise noted.

6 State deposit data are as of June 30, 2015.

approximately $5.1 billion, which represent approximately 0.4 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.[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 less than 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, 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.[9]

For purposes of the BHC Act, the home state of People's United is Connecticut, and the home state of Suffolk Bank is New York.[10] People's United is well capitalized and well managed under applicable law and People's United Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[11] New York does not have any minimum age requirements,[12] and Suffolk Bank has been in existence for more than five years.

On consummation of the proposed transaction, People's United 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 New York, the only state in which People's United and Suffolk Bancorp have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including People's United's record of meeting the convenience and needs of the communities it serves. 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

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[7] 12 U.S.C. § 1842(d)(1)(A).

[8] 12 U.S.C. § 1842(d)(1)(B).

[9] 12 U.S.C. § 1842(d)(2)(A) and (B). 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 national bank's home state is the state in which the main office of the bank is located.

[11] 12 U.S.C. § 2901 *et seq.*

[12] *See* N.Y. Banking Law § 223.

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.[13]

People's United and Suffolk Bancorp have subsidiary depository institutions that compete directly in one geographic banking market, the Metro New York City banking 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 shares of total deposits in insured depository institutions in the market ("market deposits") that People's United would control;[15] the concentration levels of market deposits and the increase in these levels as measured by the HerfindahlHirschman 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 in the Metro New York City banking market. On consummation, the Metro New York City banking market would remain unconcentrated, as measured by the HHI and as defined by the DOJ Bank Merger Guidelines. The change in HHI would be small, and numerous competitors would remain in the market.[17]

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. 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 Metro New York City market or in any other relevant banking

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[13] 12 U.S.C. § 1842(c)(1).

[14] The Metro New York City 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 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 in New Jersey; Pike County and portions of Monroe and Wayne counties in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

[15] 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 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), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[17] Together, the two firms control 1.1 percent of the deposits in that market and their merger would increase the HHI by only 1 point. Nearly 240 competitors would remain in the market after the proposed acquisition.

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 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 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.

People's United and Suffolk Bancorp are both well capitalized and People's United would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a share exchange.[18] The asset quality, earnings, and liquidity of both People's United Bank and Suffolk Bank are consistent with approval, and People's United 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 People's United, Suffolk 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 People's United; 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; and information provided by the commenters.

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

The Board also has considered People's United's plans for implementing the proposal. People's United 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. People's United would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervi-

[18] At the time of the merger, each share of Suffolk Bancorp common stock would be converted into the right to receive shares of People's United common stock, based on an exchange ratio.

sory perspective. In addition, People's United's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and People's United plans to integrate Suffolk Bancorp's existing management and personnel in a manner that augments People's United's management.[19]

Based on all the facts of record, including People's United'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 People's United and Suffolk Bancorp 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 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 People's United Bank and Suffolk 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 People's United, and the public comments received on the proposal.

[19] People's United will invite the members of the board of directors of Suffolk Bancorp to serve as members of a regional advisory board. People's United Bank also plans to hire the president and chief executive officer of Suffolk Bancorp as its New York Market President.

[20] 12 U.S.C. § 1842(c)(2).

[21] 12 U.S.C. § 2901(b).

[22] 12 U.S.C. § 2903.

Summary of Public Comments on Convenience and Needs

The Board received comments from 14 commenters objecting to the proposal. All 14 commenters criticized People's United Bank's lending in the bank's New York City and Nassau-Suffolk County assessment areas ("AAs") by asserting that People's United Bank made a disproportionately low number of home purchase loans, home improvement loans, and refinance loans to African American, Asian, Hispanic, and LMI borrowers and by criticizing the rate at which People's United denied applications by African Americans and Hispanics, as compared to whites, for home purchase loans, home improvement loans, and refinance loans, as reflected in data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA")[23] for 2012 through 2015. One commenter suggested that People's United Bank engaged in redlining in the New York City and Nassau-Suffolk County AAs.

Thirteen of the commenters alleged that People's United Bank makes a disproportionately low number of loans to businesses with annual revenues of less than $1 million in the bank's Hartford County and New Haven County AAs, both in Connecticut. These same commenters also generally alleged that People's United Bank has an inadequate record of helping to meet the convenience and needs of the communities where it does business because People's United Bank received a "Very Poor" rating on its investment performance in the Boston AA, a "Low Satisfactory" rating on its investment test in every state in which it operates except Vermont, and a "Low Satisfactory" rating on its lending and service tests in the New York City and Boston AAs, all in 2013. These commenters request that the Board not approve the proposal until People's United enters into a community benefits plan that outlines how the bank plans to help meet the convenience and needs of the communities it serves.

One commenter expressed concern about the size of People's United's philanthropic grants. This commenter alleged that smaller grants can be less helpful for many nonprofit organizations, especially when coupled with extensive reporting requirements.

The Board also received 117 comments in support of the proposal from organizations that serve the communities in which People's United Bank does business. These commenters stated that People's United Bank has been a valuable community partner and sponsor for many initiatives, including afterschool, crime reduction, community development, and homelessness reduction programs.

Business of the Involved Institutions and Response to Comments

People's United and People's United Bank offer a broad range of financial products and services to consumers and businesses. Through its branch network in Connecticut, Maine, Massachusetts, New Hampshire, New York, and Vermont, People's United Bank offers a variety of banking products and services to its customers, including commercial, retail, and small business banking services, as well as wealth management services to individual, corporate, and municipal customers.

Suffolk Bank is a full-service bank that offers commercial and retail banking products and services, including commercial real estate loans, multifamily and mixed-use commercial loans primarily in the boroughs of New York City, commercial and industrial loans and agricultural loans, as well as loans secured by residential mortgages (including second lien mortgage loans) with a variety of plans for repayment.

[23] 12 U.S.C. § 2801 *et seq.*

People's United denies the commenters' allegations of discriminatory lending and redlining. People's United represents that it is committed to all fair lending laws and regulations and actively engages in monitoring, testing, and internal controls to maintain compliance with fair lending laws and regulations. People's United asserts that it offers many affordable mortgage loan programs and community development activities to increase affordable housing opportunities for LMI individuals and communities. People's United also asserts that its home mortgage lending volume in the New York City and Nassau-Suffolk County AAs is small because People's United entered these markets beginning in 2010 by acquiring banking institutions that had either small mortgage portfolios or whose branch staff were not trained to accept applications for mortgage loans. People's United argues that, as a result, it has had to create a mortgage origination business *de novo* in these markets. People's United maintains that it is difficult for an institution with few branches in New York City to gain material market share because it is a highly competitive banking market where significantly larger institutions enjoy broader name recognition. Since 2015, to increase its mortgage business in the New York City and Nassau-Suffolk County AAs, People's United has hired additional mortgage account officers and trained staff at the branch locations it has recently acquired to accept mortgage applications.

People's United represents that it is a committed lender to small businesses. According to People's United, it has been ranked as one of the top U.S. Small Business Administration volume lenders. People's United notes that it participates in programs with several government agencies to provide capital and special loans to small businesses. Specifically, People's United represents that People' United Bank is a significant investor in several small business loan funds, including the Connecticut-based Community Economic Development Fund and Capital for Change. People's United also represents that its employees provide human capital support to community development financial institutions and other entities that are focused on serving the needs of these communities.

People's United argues that its overall CRA rating of "Satisfactory" is consistent with approval, notwithstanding the isolated test ratings in the specific geographies noted by the commenters. People's United notes that its most recent CRA exam was conducted shortly after People's United Bank acquired branches in New York and Boston, so its CRA rating reflects the bank's performance in those markets before the institution had an opportunity to build its CRA program in those areas and does not reflect the bank's most recent efforts to improve its CRA performance. People's United also represents that it has taken steps to improve its CRA performance in the markets cited by the commenters, including by increasing its CRA-related investments in the Nassau-Suffolk County and Boston AAs between 2013 and 2016. People's United represents that it has made low-income, historic, new markets, and state tax credit investments in the New York City and Nassau-Suffolk County AAs. In addition, People's United represents that People's United Bank has undertaken a significant initiative to expand and broaden its mortgage origination capabilities in New York City and Long Island and has sought to expand its offering of affordable home mortgage products by participating in various state housing authority programs. Further, People's United represents that it has invested substantial amounts in funds that support affordable housing in Massachusetts.

In response to commenters' contention that approval should be conditioned on People's United's entering into a community benefits plan, People's United argues that the submission of such a plan is not required for approval under section 3 of the BHC Act. It asserts

that the record of People's United and People's United Bank in meeting the convenience and needs of the communities they serve is otherwise consistent with approval.[24]

With respect to criticisms of its philanthropic activity, People's United represents that it has maintained a high level of cash giving through The People's United Community Foundation, The People's United Community Foundation of Eastern Massachusetts, and People's United's corporate philanthropy program. People's United asserts that it has allocated its philanthropic resources in a manner it believes to be in the best interest of its charitable recipients and the communities they serve. Additionally, the Board received several letters from community groups stating that People's United's grant-making activities were positively impactful.[25]

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 responses to comments by the applicant. In particular, the Board evaluates an institution's performance 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.[26]

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[27] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on 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 AAs; (2) the geographic distribution of the company's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amount of loans in low-, moderate-, middle-, and upper-

[24] 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., Central Bancompany, Inc.*, FRB Order No. 2017-03 at 12 n. 22 (February 8, 2017); *Wintrust Financial Corporation*, FRB Order No. 2016-17 at 8 n. 19 (October 28, 2016); *Huntington Bancshares Incorporated*, FRB Order No. 2016-13 at 32 n. 50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n. 54 (July 19, 2015). 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 AAs.

[25] The Board has noted that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to engage in charitable giving. *See e.g., CIT Group, Inc.*, FRB Order No. 2015-20 at 22 n. 51 (July 19, 2015).

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

[27] 12 U.S.C. § 2906.

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;[28] (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.[29] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of People's United Bank

People's United Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of July 15, 2013 ("2013 CRA Evaluation").[30] People's United Bank received a "High Satisfactory" rating for the Lending and Service tests and a "Low Satisfactory" rating for the Investment Test.

Examiners found that People's United Bank's overall lending levels were responsive to community credit needs. According to examiners, the bank originated a substantial majority of loans within its AAs, and the distribution of loans across geographies and income levels was good. Examiners also found that People's United Bank exhibited a very strong record of community development lending that enhanced the bank's CRA performance in several AAs.

In New York, an area in which People's United was a recent entrant at the time of the CRA examination, People's United Bank's performance under the Lending Test was rated "Low Satisfactory." In the Nassau-Suffolk County AA, an area of concern to the commenters, People's United Bank's lending performance was considered adequate. Examiners found that, in New York, the bank's level of community development lending was good, the overall geographic distribution of small loans to businesses was good, and the overall geographic distribution of home mortgage loans was adequate. Examiners also found that the overall borrower distribution of home mortgage lending and small loans to businesses was adequate. Examiners noted that People's United Bank offered loan programs targeted to LMI borrowers, demonstrating product flexibility.

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[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] 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] The 2013 CRA Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage lending data and other CRA data (small loans to businesses and farms) from July 1, 2009, through December 31, 2012. Examiners reviewed community development loans, qualified investments, branching activities, and community development services from July 1, 2009, through June 30, 2013. The 2013 CRA Evaluation covered People's United Bank's 22AAs located in six states and one multistate metropolitan statistical area ("MSA"): Connecticut, Maine, Massachusetts, New Hampshire, New York, Vermont, and the Boston-Cambridge-Quincy MSA. The 2013 CRA Evaluation included a full-scope review of nine of these AAs, including the multistate MSA. A limited-scope review was conducted of the remaining 13AAs.

In Connecticut, including the Bridgeport, Hartford, and New Haven, Connecticut MSAs ("Connecticut MSAs"), another area of concern for the commenters and an area in which People's United was well established at the time the CRA examination was conducted, examiners assigned People's United a "High Satisfactory" rating for the Lending Test. Examiners found that the overall geographic distribution of small loans to businesses was excellent and of home mortgage loans was adequate. The examiners also found that, overall, the borrower distribution of the bank's lending was good.

In the Boston-Cambridge-Quincy MA-NH Multistate MSA ("Boston MSA"), an area of concern for the commenters and an area in which People's United was a recent entrant at the time the CRA examination was conducted, examiners found that the bank's performance under the Lending Test was "Low Satisfactory." With respect to home mortgage loans, examiners found that the overall geographic distribution of home purchase loans was good, but that the overall geographic distribution of home refinance loans was poor. Examiners also found that the overall borrower distribution of loans to small businesses was poor. However, examiners found that People's United Bank made use of innovative and flexible lending practices.

With respect to the bankwide Investment Test, examiners found that the bank's overall community development performance was adequate when considering the bank's responsiveness to community needs through its strong lending performance. In New York, the bank received a "Low Satisfactory" rating. In the Connecticut MSAs, examiners found that People's United Bank's performance was adequate considering its investment authority limitations and "High Satisfactory" performance under the Lending Test. In the Boston MSA, examiners found that People's United's performance on the Investment Test was very poor and was not offset by the bank's lending performance in that AA.

As noted, People's United Bank received a "High Satisfactory" rating for the Service Test overall. In New York, examiners rated People's United Bank's performance as "Low Satisfactory." However, examiners found that the bank's branch distribution in the Nassau-Suffolk County AA was good and that branches were reasonably accessible to individuals of different income levels. In the Connecticut MSAs, examiners rated People's United's performance as "High Satisfactory." Examiners found that bank employees participated, many in leadership roles, in a variety of organizations and partnerships, which benefited LMI individuals, promoted economic development, and provided affordable housing. In the Boston MSA, People's United Bank's performance on the Service Test was rated "Low Satisfactory." Examiners noted the bank's branch distribution was adequate and that branches were reasonably accessible to geographies and individuals of different incomes. Examiners stated that the bank's management provided alternative delivery systems to its customers. However, examiners noted that the bank had no branches in low-income geographies. Examiners also noted that the bank's employees provided a good level of community development services and participated in a variety of organizations and partnerships that benefited low- and moderate-income individuals, promoted economic development, and provided affordable housing.

People's United Bank's Efforts since the 2013 CRA Evaluation

People's United Bank represents that it has significantly expanded its investment activities, particularly in New York and Massachusetts, in order to help meet the needs of LMI communities since the 2013 CRA Evaluation. The bank states that it has significantly increased its CRA-related investments, including in affordable housing. It represents that it has offered debt facilities to further provide capital for economic development. It states that it also has provided grants and gifts to a number of community development organizations. It represents that it supports numerous nonprofit and economic development

committees and has representatives that serve on advisory boards, investment committees, and loan committees for organizations engaged in community development and workforce development. The bank also asserts that the foundation affiliated with People's United Bank has provided grants to nonprofits engaged in financial education outreach for adults and children.

In New York, People's United Bank represents that it has made investments to build low-income housing, primarily through the purchase of Low-Income Housing Tax Credits. The bank states that it also has made community development and small business association loans. It represents that it has representatives who sit on advisory boards and committees for a number of community development organizations. In addition, the bank asserts that the community foundation affiliated with People's United has provided grants to nonprofit organizations and taught over 250 financial literacy classes in New York since the 2013 CRA Evaluation.

In Connecticut, People's United Bank represents that it has continued its commitment to providing banking services and investment capital to small businesses. The bank states that it has continued to invest in several small business loan funds and that its employees continue to sit on the loan committees of these funds and to help small businesses develop their creditworthiness. It states that its reputation for providing business operations and treasury management services to small businesses continues to grow in each of its AAs. The bank also highlighted its efforts to improve its home purchase lending in Connecticut. People's United Bank states that it has invested in participation certificates for junior mortgage instruments that allow consumers to purchase homes with close to 100 percent financing. The bank also represents that it has expanded the number of first-time homebuyer seminars it provides at no cost to consumers.

In Massachusetts, People's United Bank represents that it has substantially increased its level of CRA-related investments. For example, the bank represents it has significantly increased its level of CRA-qualified investments in Boston. The bank similarly represents that it has tripled its qualifying investments in Massachusetts as measured by both absolute dollar amounts and as a percentage of its tier 1 capital attributable to Massachusetts. People's United Bank states that these investments have primarily been used to develop affordable housing and to assist community development corporations that make capital contributions and loans to local and small businesses. The bank states that it has continued to sponsor the Federal Home Loan Bank of Boston's affordable housing program and has committed additional funds to state and nonprofit entities that develop low-income housing projects and make loans to small businesses. The bank notes that its employees actively participate and volunteer with nonprofits in Massachusetts and that the bank has a dedicated CRA officer who focuses on Massachusetts and spends a significant amount of time developing relationships with community development organizations in the state.

People's United asserts that People's United Bank offers a variety of loan products to LMI households and communities, including home mortgages, small business loans, economic development loans, loans for affordable housing, and loans for rural development. It asserts that the bank also partners with federal and state agencies to provide lending products tailored to LMI households. It contends that People's United Bank makes community development investments by purchasing low-income housing tax credits, state tax credits, and historical tax credits, and by investing in equity funds that work to meet the banking needs of the communities in which the bank operates.

People's United represents that it has undertaken several marketing and informational campaigns to make LMI and other consumers aware of its product offerings. It asserts that the bank has distributed mortgage product information to local realtors, as well as infor-

mation packets for first-time homebuyers to the bank's lending partners. It contends that, in the third quarter of 2016, People's United Bank engaged a marketing firm to create a program to inform LMI borrowers about affordable home-purchase and refinance mortgage options. It also maintains that the bank operates branches in grocery stores that offer extended weekday and weekend hours to accommodate consumers whose work schedules prohibit them from visiting a bank during regular business hours.

CRA Performance of Suffolk Bank

Suffolk Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of November 30, 2015 ("Suffolk Bank Evaluation").[31] Suffolk Bank received "Outstanding" ratings for the Lending Test and Service Test and a "High Satisfactory" rating for the Investment Test.[32]

Examiners found that Suffolk Bank's geographic and borrower distribution of home mortgage loans was excellent, including in the Nassau-Suffolk County AA. Examiners also found that Suffolk Bank's geographic distribution of small loans to businesses and distribution of loans to small businesses was excellent. Examiners noted that the bank has provided flexible lending programs that are responsive to identified affordable housing needs and that a high percentage of the bank's loans were made within the bank's AA.

Examiners found that Suffolk Bank made a significant number of community development investments even though there had been few opportunities for such investments. Examiners noted that the majority of investments targeted an identified need in Suffolk Bank's AA, affordable housing for both home ownership and rental units.

Examiners noted that the bank's delivery systems were readily accessible to geographies and individuals of different income levels. Examiners found that all of Suffolk Bank's branches offered full retail services and that the percentage of branches located in moderate-income geographies coincided with the percentage of the population that lives in moderate-income geographies. Examiners observed that the bank had no branches in low-income geographies, but noted that only a few of the census tracts available to Suffolk Bank qualified as low-income and that less than 2 percent of the low-income population lived in the bank's AA. Examiners also noted that Suffolk Bank had been responsive to the retail banking needs of the communities it served by adjusting its branch hours based on feedback from customers and community members. Examiners stated that Suffolk Bank was a leader in providing community development services, including by having its branch managers and executives provide technical assistance to local organizations that focused on economic development, including chambers of commerce, economic development corporations, redevelopment councils, and local non-profit organizations. Examiners commented favorably on the bank's free homebuyer workshop that educated LMI borrowers about home ownership and financing and the bank's seminars to help customers protect themselves against fraud and cybersecurity risks. Examiners concluded that Suffolk Bank's community development services benefit the needs of LMI individuals in the bank's AA.

[31] The Suffolk Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage lending data and other CRA data (small loans to businesses and farms) from January 1, 2013, to September 30, 2015. The evaluation period for the Lending Test, Investment Test, and Service Test was from December 3, 2012, through November 30, 2015.

[32] The Suffolk Bank Evaluation included a full-scope assessment review of the bank's sole AA in the Nassau-Suffolk, New York MSA.

Views of the OCC and CFPB

In addition to conducting its own review of the institutions' records of meeting the convenience and needs of the communities in which they operate, the Board consulted with the OCC regarding both institutions' CRA and consumer compliance records, as well as with the CFPB regarding People's United Bank's record of consumer compliance. The OCC is the primary supervisor of both People's United Bank and Suffolk Bank. The OCC considered all of the comments, including 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 submitted by People's United Bank. The OCC approved the bank merger application on February 2, 2017.

The Board also consulted with the OCC regarding People's United's and Suffolk Bancorp's records of compliance with fair lending laws and regulations and the banks' policies and procedures relating to fair lending and other consumer protection laws and regulations, as well as the lending records of both institutions. The OCC recently reviewed People's United Bank's fair lending management practices and the bank's framework for identifying fair lending risks. In conducting this review, the OCC evaluated the bank's product offerings, delivery channels, underwriting processes, pricing, marketing practices, and lender compensation programs. The OCC also recently completed a review of Suffolk Bank's fair lending program. As part of its review, the OCC reviewed policies and procedures, training materials and records, compliance reviews, and loan data. The Board has taken into consideration this supervisory information.

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. People's United represents that, as a result of the proposal, existing customers of Suffolk Bancorp would have access to a complement of products and services that is comparable to or more expansive than that currently available at Suffolk Bancorp, including brokerage, financial advisory, and investment management services. Similarly, People's United represents that the merger would allow it to provide banking products not provided by Suffolk Bancorp that are targeted towards LMI consumers, including loans offered through the New York Mortgage Authority, Fannie Mae, the Home Development Fund, the Departments of Agriculture and Veterans Affairs, as well as the Federal Housing Administration. Moreover, People's United asserts that customers of both institutions would benefit from a more expansive branch and ATM network. For example, People's United Bank's supermarket branches offer expanded evening and weekend hours, providing expanded branch access and greater flexibility for people of all income levels, including LMI individuals whose work schedules make it difficult to visit a branch during "traditional" banking hours. People's United also asserts that it will maintain and enhance Suffolk Bank's strong CRA performance by leveraging Suffolk Bank's expertise in the Long Island market, especially its LMI lending performance, community development, and small business loan capabilities, and its existing involvement with local community development organizations.

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 People's United, public comments on the proposal, information provided by the OCC and CFPB, and other potential effects of the proposal on the

convenience and needs of the communities to be served. Based on this 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 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]

In 2012, in its order approving Capital One Financial Corporation's acquisition of certain U.S. operations of ING, the Board stated that a proposal that involves an acquisition of less than $2 billion in assets, that results in a firm with less than $25 billion in total assets, or that represents a corporate reorganization may be presumed not to raise material financial stability concerns absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[36] Since establishing this presumption, the Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to create institutions that pose systemic risks. Transactions below either of these asset thresholds have typically not involved, or resulted in, firms with activities, structures, and operations that are complex or opaque.[37] Such transactions have also not materially increased the interconnectedness or complexity of the financial system.

Accordingly, the Board now presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of the aforementioned size thresholds, absent evidence that the transaction would result in a significant increase in

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[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] *Id* at 30.

[37] *See e.g., F.N.B. Corporation*, FRB Order No. 2017-06 (February 24, 2017); *Huntington Bancshares Incorporated*, FRB Order No. 2016-13 (July 29, 2016); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *BB&T Corporation*, FRB Order No. 2015-35 (December 23, 2015); *M&T Bank Corporation*, FRB Order No. 2015-27 (September 30, 2015); *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015).

interconnectedness, complexity, cross-border activities, or other risk factors.[38] The Board will continue to presume that a proposal that represents a corporate reorganization does not raise financial stability concerns.[39]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that has less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Both the acquirer and the target are predominately engaged in retail commercial banking activities.[40] 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 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.[41] In reaching its conclusion, the Board has consid-

[38] Notwithstanding these presumptions, the Board has the authority to review the financial stability implications of any proposal. For example, any acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

[39] The Board delegates to the Reserve Banks the authority to approve applications and notices in connection with proposals that meet the presumptions described above and that otherwise meet the criteria for delegated action.

[40] People's United 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 securities brokerage services, treasury management, capital market services (including corporate risk management, institutional sales, and 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. Suffolk Bancorp offers primarily retail and commercial deposit and loan products, commercial lease financing and related services, insurance brokerage services, financial consulting, trust operations, and fiduciary services. In each of its activities, People's United 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.

[41] 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. 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. Notice of the proposal was published in the *Federal Register* on August 19, 2016, and in relevant newspapers of general circulation (*Newsday*and *Connecticut Post*) on August 11, 2016. The comment period ended on September 10, 2016. 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, several commenters requested a further extension of the comment period for the proposal. As noted above, the Board believes that commenters have had ample opportunity to submit comments on the proposal. During the comment period, the commenters, including the requestors, submitted detailed comments

ered 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 People's United 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 New York, acting under delegated authority.

By order of the Board of Governors, effective March 16, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

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 commenters' requests for additional time to comment do not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board determined not to extend further the comment period.

Cathay General Bancorp
Los Angeles, California

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2017-09 (March 20, 2017)

Cathay General Bancorp ("Cathay"), Los Angeles, California, 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 Act[2] to acquire SinoPac Bancorp ("SinoPac") and thereby indirectly acquire Far East National Bank ("Far East Bank"), both of Los Angeles, California.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's rules (81 *Federal Register* 70682 (October 13, 2016)).[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.

Cathay, with consolidated assets of approximately $14.1 billion, is the 102nd largest insured depository organization in the United States. Cathay controls approximately $10.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] Cathay controls Cathay Bank, which operates in California, Illinois, Nevada, New York, New Jersey, Maryland, Massachusetts, Texas, Washington, Hong Kong, Shanghai, and Taipei. Cathay Bank is the 18th largest insured depository institution in California, controlling deposits of approximately $7.4 billion in California, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[6]

SinoPac, with consolidated assets of approximately $1.3 billion, is the 571st largest insured depository organization in the United States. SinoPac controls approximately $981.8 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. SinoPac controls Far East Bank, which operates in California and controls less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Cathay would become the 94th largest depository organization in the United States, with consolidated assets of approximately $15.4 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Cathay would control consolidated deposits of approximately

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 Following the proposed acquisition, Cathay plans to submit an application pursuant to section 18(c) of the Federal Deposit Insurance Act to merge Far East Bank into Cathay's subsidiary bank, Cathay Bank, Los Angeles, California. The merger of Far East Bank into Cathay Bank will be subject to the approval of the Federal Deposit Insurance Corporation ("FDIC"). 12 U.S.C. § 1828(c). For the interim period between consummation of the proposed acquisition and the anticipated bank merger, Cathay intends to operate Cathay Bank and Far East Bank as separate subsidiaries.

4 12 CFR 262.3(b). The Board received a comment asserting that Cathay did not provide adequate notice of the proposed acquisition to communities outside of California. In accordance with the Board's rules, notice of the proposal was published in a relevant newspaper of general circulation (*The Los Angeles Times*) in the community in which both Cathay and Far East Bank have their head offices, and commenters were provided over 30 days from the date of publication to submit their views on all aspects of the proposal.

5 National asset and deposit data are as of September 30, 2016, unless otherwise noted.

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

$11.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In California, Cathay would remain the 18th largest depository institution, controlling deposits of approximately $8.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[7] 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 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]

Cathay and SinoPac have subsidiary depository institutions that compete directly in the Los Angeles, California, banking market ("Los Angeles market")[9] and the San Francisco-Oakland-San Jose, California, banking market ("San Francisco market").[10] The Board has considered the competitive effects of the proposal in these banking markets. 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 Cathay would control;[11] 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");[12] 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 in the Los Angeles and San Francisco markets. On consummation of the proposal, the Los Angeles market would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in this market would be small, and numerous competitors would remain in the banking market.[13] On consummation of the proposal, the San Francisco

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7 12 U.S.C. § 1842(c)(1).

8 12 U.S.C. § 1842(c)(1)(B).

9 The Los Angeles market is defined as the Los Angeles metropolitan area in Los Angeles and Orange counties, as well as portions of San Bernardino, Ventura, and Kern counties.

10 The San Francisco market is defined as the San Francisco-Oakland-San Jose metropolitan area in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties, as well as portions of Sonoma, Solano, San Benito, and Napa counties.

11 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); *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).

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 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.

13 Cathay operates the 14th largest depository institution in the Los Angeles market, controlling approximately $6.0 billion in deposits, which represent 1.34 percent of market deposits. SinoPac operates the 43rd largest

market would remain highly concentrated, as measured by the HHI. The change in the HHI in the San Francisco market would be small, and numerous competitors would remain in the banking market.[14]

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. 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 Los Angeles or San Francisco 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 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 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 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.

Cathay and SinoPac 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 acquisition that is structured primarily as an exchange of shares for cash.[15] The asset quality, earnings, and liquidity of Cathay Bank and Far East Bank are consistent with approval, and Cathay appears to have adequate resources to absorb the costs of the

depository institution in the same market, controlling deposits of approximately $616.1 million, which represent about 0.14 percent of market deposits. On consummation of the proposed transaction, Cathay would become the 13th largest depository organization in the market, controlling deposits of approximately $6.6 billion, which represent approximately 1.48 percent of market deposits. The HHI for the Los Angeles market would increase by less than 1 point and remain at 982, and 125 competitors would remain in the market.

[14] Cathay operates the 22nd largest depository institution in the San Francisco market, controlling approximately $1.2 billion in deposits, which represent 0.28 percent of market deposits. SinoPac operates the 44th largest depository institution in the same market, controlling deposits of approximately $219.0 million, which represent about 0.05 percent of market deposits. On consummation of the proposed transaction, Cathay would become the 20th largest depository organization in the market, controlling deposits of approximately $1.42 billion, which represent approximately 0.33 percent of market deposits. The HHI for the San Francisco market would increase by less than 1 point and remain at 1810, and 83 competitors would remain in the market.

[15] To effect the transaction, each share of SinoPac common stock would be converted into a right to receive cash, based on an exchange ratio. Additionally, Cathay may elect to pay up to 10 percent of the purchase price in the form of shares of Cathay common stock. Cathay has the financial resources to fund the transaction.

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 Cathay, SinoPac, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by Cathay; the Board's supervisory experiences with Cathay and SinoPac 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.[16]

Cathay, SinoPac, and their subsidiary depository institutions are each considered to be well managed. Cathay's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and Cathay's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Cathay's plans for implementing the proposal. Cathay 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. Cathay represents that, following consummation of the anticipated merger of Cathay Bank and Far East Bank, it would implement its risk-management policies, procedures, and controls at the combined organization.[17] These policies, procedures, and controls are considered satisfactory from a supervisory perspective. In addition, Cathay's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner.[18]

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[16] A commenter expressed concern that the purchase price of the transaction was low and did not reflect an arm's length transaction. Another commenter raised concerns about whether the proposed transaction would promote trade relations and foreign policy with China. These concerns are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See, Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973) ("*Western Bancshares*"). One commenter expressed concern, without providing any evidence, that the government of China is influencing Cathay Bank, a United States-based bank. Based on the record, there is no indication that the government of China has an ownership interest in Cathay.

The Board also received a comment citing newspaper articles regarding concerns related to potential affiliate and insider transactions by the foreign parents of SinoPac. SinoPac is a wholly owned United States subsidiary of Bank SinoPac Company Limited ("Bank SinoPac"), a foreign banking organization based in Taipei, Taiwan. The incidents cited by the commenter do not relate to the applicant in this case and do not appear to relate to the operations of SinoPac or Far East Bank, but involve the foreign operations and activities of Bank SinoPac and a subsidiary of Bank SinoPac's Taiwan-based parent, SinoPac Financial Holdings Company Limited. As discussed above, the Board has reviewed the supervisory records of SinoPac and Far East Bank, the institutions that Cathay is proposing to acquire. This review included consideration of SinoPac's and Far East Bank's records of compliance with applicable laws and regulations, including those related to affiliate and insider transactions.

[17] Cathay represents that Far East Bank's risk-management policies and procedures would be maintained during the interim period between consummating the proposed acquisition of SinoPac and the anticipated merger of Cathay Bank and Far East Bank; however, Cathay Bank's current management team would provide comprehensive oversight and day-to-day monitoring.

[18] One commenter asked the Board to consider the diversity of Cathay's employees and management in reviewing the proposed transaction. While the Board encourages all firms to promote diversity in their management and workforce, the statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act are limited and specifically defined. *See, e.g., PacWest Bancorp*, 102 *Federal Reserve Bulletin* 82, 88 n. 24 (2015); *CIT Group, Inc.*, 102 *Federal Reserve Bulletin* 1, 7 n. 24 (2015); *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 223 n. 31 (2004). *See also Western Bancshares*. Other provisions of law authorize the Board, together with the other federal financial supervisory agencies, to monitor 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). *See* Pub. L. No. 111-203, 124 Stat. 1376, 1541-44 (2010), codified at 12 U.S.C. § 5452.

Based on all the facts of record, including Cathay'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 Cathay and SinoPac 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.[19] 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,[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, in evaluating bank expansionary proposals.[21]

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 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 Cathay Bank and Far East Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC and the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by Cathay; and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

In this case, the Board received comments from two commenters objecting to the proposal on the basis of Cathay's CRA performance and record of meeting the credit needs of the communities that it serves. The comments focused on Cathay Bank's record of serving LMI, African American, and Hispanic individuals, and small businesses. One comment focused primarily on the bank's performance in its California assessment areas, particularly the Los Angeles assessment area. The commenters argued that the bank is primarily

[19] 12 U.S.C. § 1842(c)(2).
[20] 12 U.S.C. § 2901(b).
[21] 12 U.S.C. § 2903.

focused on meeting the needs of Chinese American and/or Asian American individuals and should expand its customer base to other minority populations.

Specifically, one commenter argued that Cathay Bank made a disproportionately small number of loans to LMI individuals and small businesses as compared to peer institutions.[22] This commenter argued that, based on data reported for 2015 under the Home Mortgage Disclosure Act ("HMDA"), Cathay Bank did not adequately serve African American and Hispanic individuals in the bank's California assessment areas. This commenter also argued that Cathay Bank was inadequately serving Southeast Asian individuals according to such data. Further, this commenter alleged that Cathay Bank engages in redlining and rewarded redlining by its management. This commenter was also critical of the amount Cathay Bank has devoted to CRA-related philanthropy and asserted that Cathay Bank's programs to address issues related to the unbanked or underbanked are inadequate.[23] Another commenter asserted that Cathay Bank's CRA performance is generally poor and contended that Cathay Bank received some of its worst ratings outside the state of California. This commenter also contended that Cathay plans to close several branches following consummation of the proposed transaction.

In addition to the adverse comments received by the Board, Cathay submitted 17 letters from California-based community, charitable, and business organizations supporting the proposal. These organizations generally represented that Cathay Bank and Far East Bank have strong histories of providing banking services to underserved populations in the community and that the merger would enable Cathay to better address the diverse needs of the communities in which it operates.

Businesses of the Involved Institutions and Response to Comments

Cathay operates primarily through Cathay Bank and provides a broad range of financial products and services to retail consumers and businesses. Cathay Bank's products and services include a variety of checking, savings, and certificate of deposit accounts; mortgage and other consumer lending products; business services and lending; forward currency spot and forward contracts; and international banking. Cathay's nonbanking subsidiaries provide customers with wealth management services, securities, and investment products.

Far East Bank offers a broad range of consumer and commercial banking products and services through nine locations in California. Its products and services include checking, savings, and certificate of deposit accounts; mortgage and other consumer lending products; business services and lending; and international banking services.

In response to the comments, Cathay asserts that Cathay Bank is committed to meeting the credit needs of the communities it serves and believes its product and service offerings are responsive to the diverse needs of its assessment areas. Further, Cathay maintains that Cathay Bank has comprehensive policies and procedures in place to ensure compliance with fair lending laws and to monitor fair lending risk.

Cathay asserts that it has a strong record of lending to small businesses and compares favorably to peers in terms of lending rates to small businesses in LMI areas, including in its California assessment areas. In support of this claim, Cathay represents that Cathay

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[22] One commenter also voiced concerns about Cathay Bank's lending levels to minority-owned businesses and asserted that Cathay Bank made no Small Business Administration 7(a) loans to African American, Hispanic, or Southeast Asian American-owned businesses in 2015.

[23] The Board notes that neither the CRA nor the agencies' implementing rules require that institutions engage in a specific activity, such as charitable giving, in order to meet the credit needs of the communities the institutions serve. *See, e.g., PacWest Bancorp*, 102 *Federal Reserve Bulletin* 82, 88 (2015).

Bank's penetration rate for small businesses in LMI areas exceeded the average penetration rate by at least 3 percent in both 2014 and 2015. Further, Cathay asserts that Cathay Bank offers a number of loan products and programs targeted to small businesses, including micro loans in amounts ranging from $5,000 to $10,000 and unsecured revolving lines of credit with simple underwriting criteria that are offered in amounts ranging from $10,000 to $150,000. Cathay also represents that, contrary to one commenter's claim, Cathay Bank has made a number of loans to businesses owned by individuals of Southeast Asian origin and Latino-owned businesses.

Cathay notes that Cathay Bank's home mortgage loan operation is not large, representing only 25 percent of the bank's overall lending portfolio as of year-end 2015. Further, Cathay represents that mortgage loan penetration in the Los Angeles area is difficult considering the competitive environment and a very low percentage of owner-occupied housing. Nevertheless, Cathay represents that, as measured as a percentage of total lending, Cathay Bank's lending to low-income individuals is comparable to its peers. Cathay represents that another way it has tried to reach LMI and minority customers is through specific product and service offerings, including free or low-cost starter or second-chance bank accounts, and financial education programs. Cathay also represents that the bank offers a mortgage product for first-time homebuyers with lower fees, flexible terms, and lower down-payment requirements. Cathay also represents that some of these products are offered as part of a national program to move underbanked and unbanked individuals into the mainstream financial system and to improve access to financial education.

Cathay denies allegations that Cathay Bank engages in or rewards executives for redlining and asserts that these allegations are unfounded. Further, Cathay asserts that fair treatment of all of its customers and potential customers is an integral part of the bank's compliance management program. Cathay represents that this program includes ongoing fair lending and HMDA monitoring and testing; escalation and reporting of fair lending results to senior management; regular monitoring of customer complaints for potential fair lending concerns; and assessments for potential redlining, reverse redlining, and steering. In particular, Cathay represents that all applications are subject to a multilevel manager review prior to funding or denial to ensure that all lending decisions are made within the scope of the bank's fair lending policies. Cathay also represents that the bank's compliance department monitors and evaluates the effectiveness of these policies and procedures, including through an annual fair lending compliance monitoring review of mortgage and retail lending across all lines of business. Cathay further represents that the results of the bank's compliance monitoring activities are reported to the appropriate line of business, as well as the bank's chief risk officer, chief executive officer, president, and the board's risk and compliance committee.

Cathay represents that Cathay Bank branches are located in areas with high Asian populations and the bank has strong brand identification with Asian Americans; however, Cathay Bank also represents that the bank actively engages in outreach activities to other minority or ethnic populations, including by advertising in a variety of languages. Further, Cathay asserts that Cathay Bank does not turn away or otherwise exclude any mortgage applicants. According to Cathay, all applicants are reviewed using the bank's normal policies and procedures for underwriting and are subject to all of the bank's policies and procedures with respect to fair lending and other consumer protection laws.

Cathay also represents that it and Cathay Bank have engaged organizations in California communities to determine the needs of those communities. Cathay further represents that, based on input from various community groups, as well as through Cathay Bank's community development efforts, Cathay Bank has identified affordable housing, small business training, and financial literacy as important needs in its assessment areas. Moreover,

Cathay represents that, as a result, the bank's community development efforts have been focused, and will continue to focus, on these areas. Further, in October 2016, Cathay Bank announced multiyear goals and commitments related to community development lending, investments and services, charitable contributions, and residential mortgage lending and small business lending. As part of this announcement, Cathay Bank committed to work to increase and diversify mortgage loan originations over the course of four years with the goal that its percentages of mortgage originations to LMI individuals and census tracts, as well as to racial and ethnic minorities, are substantially comparable to the average of all lenders in the relevant assessment areas.

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 applicant's response to comments. 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, in this case, the FDIC and the CFPB.[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 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 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;[26] (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.

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[24] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[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).

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[27] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Cathay Bank

Cathay Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 7, 2016 ("Cathay Bank Evaluation").[28] The bank received a "Low Satisfactory" rating for the Lending Test and "High Satisfactory" ratings for both the Investment Test and the Service Test.[29] Although Cathay Bank's overall rating took into consideration its performance in each of its state and multistate metropolitan assessment areas, examiners gave the greatest weight to Cathay Bank's performance in California due to higher volume of activities in that state.[30] The Board has consulted with the FDIC regarding the Cathay Bank Evaluation.

Examiners found that Cathay Bank's overall lending activity reflected adequate responsiveness to the credit needs of its combined assessment area. Examiners noted that the bank was a leader in community development lending considering the bank's average asset size, financial ability, competition, and available opportunities. According to examiners, the bank's community development loans primarily supported affordable housing initiatives, community services, economic development, and revitalization or stabilization of communities. Examiners also found that the bank originated a substantial majority of loans inside of its assessment areas. Although examiners found that, overall, the bank's distribution of borrowers reflected poor penetration among retail customers of different income levels and business customers of different revenue sizes, they concluded that the bank exhibited an

[27] 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.

[28] The Cathay Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans reported pursuant to HMDA, and small business loans reported under CRA data collection requirements, for 2014 and 2015. The evaluation period for community development lending, investments, and services was September 4, 2012, through March 7, 2016.

[29] The Cathay Bank Evaluation included full-scope evaluations of nine assessment areas: Los Angeles, California (the Los Angeles–Long Beach–Glendale, California, Metropolitan Division ("MD"); the Anaheim-Santa Ana-Irvine, California, MD; and the Riverside-San Bernardino-Ontario, California, Metropolitan Statistical Area ("MSA"); San Francisco, California (the San Francisco-Redwood City-South San Francisco, California, MSA; the San Jose-Sunnyvale-Santa Clara, California, MSA; and the Oakland-Hayward-Berkeley, California, MD); New York/New Jersey (the Nassau County-Suffolk County, New York, MD; the New York-Wayne-White Plains, New York-New Jersey MD; and the Newark, New Jersey-Pennsylvania MD); Seattle, Washington (the Seattle-Bellevue-Everett, Washington, MD); Houston, Texas (the Houston-The Woodlands-Sugarland, Texas, MSA); Boston, Massachusetts (the Boston, Massachusetts, MD and the Cambridge-Newton-Framingham, Massachusetts, MD); Chicago, Illinois (the Chicago-Naperville-Arlington Heights, Illinois, MD); Las Vegas, Nevada (the Las Vegas-Henderson-Paradise, Nevada, MSA); Maryland (the Silver Spring-Frederick-Rockville MD); and the Washington-Arlington-Alexandria, District of Columbia-Virginia-Maryland-West Virginia MD). Limited scope evaluations were performed in three assessment areas: Sacramento, California (the Sacramento-Roseville-Arden-Arcade, California, MSA); San Diego, California (the San Diego-Carlsbad, California, MSA); and Dallas, Texas (the Dallas-Plano-Irving, Texas, MD).

[30] Cathay Bank received a "Satisfactory" overall rating in each of its state and multistate metropolitan assessment areas, except for Nevada and Maryland where it received ratings of "Substantial Non-Compliance." Because only a minor portion of the bank's overall lending, investments, and services were conducted in Nevada and Maryland, performance within each state received less weight in determining the bank's overall CRA rating. As described in more detail below, Cathay represents that the bank is working to improve its CRA performance in both states and has already made significant progress in doing so since the Cathay Bank Evaluation. Further, Cathay represents that the bank is a relatively recent entrant in, and has a limited presence in, each state.

adequate record of serving the credit needs of the most economically disadvantaged individuals and very small businesses. Examiners also noted that, overall, geographic distribution of the bank's loans was adequate.

In Cathay Bank's California assessment areas, the primary focus of concern for one commenter, examiners found Cathay Bank's lending activity reflected adequate responsiveness to credit needs. This was also the conclusion regarding the bank's Los Angeles assessment area, the area most affected by the proposed transaction and that was given the most weight for determining the bank's overall CRA rating.

Examiners found that, overall, the bank's geographic distribution of loans reflected adequate penetration throughout the California assessment areas, and no conspicuous lending gaps were noted. While examiners found geographic distribution of residential mortgage loans reflected poor penetration throughout the Los Angeles assessment area, they found geographic distribution of small business loans reflected good penetration. Examiners noted that, for 2014, the bank's percentage of small business loans in LMI census tracts in the assessment area exceeded the percentage of businesses in such census tracts. For 2015, examiners noted that the bank's percentage of small business loans exceeded the percentage of businesses in low-income census tracts in the assessment area and was consistent with the percentage of businesses in moderate income census tracts.

Examiners found that, overall, the bank's lending to businesses of different revenue sizes and borrowers of different income levels was poor in the California assessment areas;[31] however, Cathay Bank was found to be a leader in community development lending in the state. In the Los Angeles assessment area, for example, examiners found the bank to be excellent in community development lending and highlighted several loans to support affordable housing, businesses, and nonprofits in LMI areas. Further, examiners concluded that Cathay Bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its California assessment areas, low-income individuals, and very small businesses, consistent with safe and sound banking practices.

Examiners found that Cathay Bank made a significant level of qualified community development investments and grants within its assessment areas, particularly those that are not routinely provided by private investors. Examiners also noted that occasionally Cathay Bank took a leadership position with respect to these community development investments and grants. Examiners also noted that the bank exhibited good responsiveness to credit and community economic development needs. Examiners further observed that the bank made significant use of innovative or complex qualified investments to support community development initiatives. Examiners explained that the bank's investments included investments in affordable housing projects, community development financial institutions, and small business investment companies.

Additionally, examiners found that Cathay Bank's delivery systems were accessible to all portions of the bank's assessment areas, including LMI communities. To the extent that Cathay Bank had made changes to its branch network, examiners noted that the institution's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and/or LMI individuals. Examiners also found that the bank provided a relatively high level of community development services in its assessment areas.

[31] In the Los Angeles assessment area, examiners noted that nearly 13 percent of the assessment area's families live below the poverty level, which can adversely impact the ability of families to qualify for mortgage loans and the bank's ability to make mortgage loans based on normal underwriting standards.

Cathay Bank's Efforts Since the Cathay Bank Evaluation

Cathay represents that Cathay Bank has continued to demonstrate responsiveness to credit needs in the bank's assessment areas and continues to grow its CRA programs. Cathay asserts that the bank has made a number of community development loans and investments to support affordable housing and economic development in its assessment areas. Cathay notes that the bank has engaged in various outreach efforts and community service opportunities to support LMI persons and communities, as well as small businesses. Such efforts have included providing financial literacy courses to LMI individuals and technical assistance to small business owners.

Cathay represents that many of these community development loans and investments have been made in Cathay Bank's California assessment areas, where most of Cathay Bank's activities take place and the areas of primary concern for one commenter. In particular, Cathay represents that Cathay Bank has made a number of community development loans that promote economic development and investments that promote affordable housing. Further, Cathay represents that Cathay Bank has provided community service hours supporting financial literacy and small business development.

While receiving an overall "Satisfactory" rating at the Cathay Bank Evaluation, Cathay acknowledges that examiners identified weaknesses in Cathay Bank's CRA performance in its Nevada and Maryland assessment areas, but represents that the bank is making significant progress in addressing these weaknesses. Cathay notes that Cathay Bank entered both markets as a result of recent acquisitions and that the bank only has a single branch in each market. Cathay asserts that Cathay Bank has made significant strides since the Cathay Bank Evaluation to improve the CRA programs at each branch, and it is closely monitoring the programs' performance. According to Cathay, the bank's recent efforts in both assessment areas have included training programs for branch employees on the bank's CRA program, goals, and expectations, as well as meetings with community organizations to gain a better understanding of community credit needs. Cathay represents that its efforts have already led to a significantly increased CRA presence for each branch over previous levels, and that it is confident the bank's performance will continue to improve as it becomes more established in the areas.

CRA Performance of Far East Bank

Far East Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of April 23, 2014 ("Far East Bank Evaluation").[32] The bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test.

[32] The Far East Bank Evaluation was conducted using Intermediate Small Institution CRA Examination Procedures, consisting of the lending and community development tests. The institution's lending performance is based on its (1) loan-to-deposit ratio, (2) loan originations for sale to the secondary market, (3) lending-related activities in its assessment areas, (4) record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, (5) geographic distribution of loans, and (6) record of taking action in response to written complaints about its performance. The community development test 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. The Far East Bank Examination reviewed the bank's small business loans originated during the period from January 1, 2012, through December 31, 2013, as well as a limited number of mortgage loans originated before the bank discontinued its mortgage operations in 2010. Examiners also reviewed community development loans, qualified investments, and community development services from March 1, 2010, through April 23, 2014. The Far East Bank Evaluation included a full-scope review of the bank's Los Angeles County and Alameda County assessment areas. Limited-scope reviews were conducted of the bank's Orange County, San Francisco County, and Santa Clara County assessment areas.

Examiners determined that Far East Bank's loan-to-deposit ratio exceeded the standard for satisfactory performance on the Lending Test given the bank's size, financial condition, and the credit needs of the bank's assessment areas. According to examiners, the bank's loan-to-deposit ratio compared favorably to peer institutions. Examiners also found that the bank originated a substantial majority of loans inside its assessment areas.

Examiners found that geographic distribution of the bank's loans reflected an excellent dispersion of loans in LMI areas. In the bank's Los Angeles assessment area, examiners also found that borrower distribution of small loans to businesses reflected a reasonable penetration to businesses with revenues of $1 million or less. In the bank's Alameda assessment area, examiners found that borrower distribution of loans to businesses reflected poor penetration of loans to businesses with revenues of $1 million or less, but noted that the bank only made a small volume of loans to businesses of any size. Examiners further explained that lending restrictions, competition, and limited branch staff hampered lending efforts in the Alameda assessment area.

Examiners found that the bank's overall performance in community development activities in its assessment area was "Outstanding." This conclusion was based on high levels of community development loans and community development investments, and an adequate level of retail and community development services. Examiners explained that the bank's community development loans and investments focused primarily on affordable housing and the bank's community services focused on financial literacy, which are both stated needs in the bank's assessment areas.

Views of Other Regulators

The Board has considered the record of Cathay Bank in complying with fair lending and other consumer protection laws, including the bank's policies and procedures relating to fair lending and other consumer protection laws and regulations. The FDIC and CFPB have each conducted consumer compliance examinations of Cathay Bank. The Board reviewed those examination reports and consulted with the FDIC and CFPB regarding Cathay Bank's record of compliance with fair lending laws and regulations. As part of its consumer compliance examination, the FDIC conducted a fair lending review focusing on residential mortgage lending. Concurrent with the FDIC's examination, the CFPB conducted a review of Cathay Bank's mortgage origination operations in order to determine compliance with applicable federal consumer financial laws, as well as Cathay Bank's system for managing compliance with these laws.

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. Cathay represents that upon consummation of the proposal, existing customers of Far East Bank would have access to a more expansive line of products and services. Specifically, Cathay represents that existing customers of Far East Bank would gain access to a variety of consumer and commercial credit card products, personal automobile loans, and a variety of investment products and services offered by affiliates of Cathay Bank. Existing Far East Bank customers also would have access to a broader array of cash management products and services.

Cathay represents that the acquisition will make available expanded resources to the communities currently served by Far East Bank. Specifically, Cathay represents that customers of both institutions would benefit from a larger lending capacity and a higher

lending limit. Cathay also represents that customers of both institutions would benefit from a more expansive branch network.[33]

Cathay represents that it has not made any decisions regarding closing branches, but it may consider closing or consolidating Cathay Bank or Far East Bank branches following consummation of the anticipated bank merger. Cathay represents that any such decisions would be based on a variety of factors, including proximity of locations, future prospects of branch locations from a cost and income perspective, and whether the branch would provide added benefit to the community. According to Cathay, location in a majority-minority or LMI area would be one factor taken into consideration. Moreover, Cathay represents that any branch closures would be completed in accordance with regulatory requirements associated with closing branches.[34]

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 FDIC and CFPB, confidential supervisory information, information provided by Cathay, 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. Moreover, the Board expects Cathay to implement policies, programs, and activities to help meet community credit needs at a level commensurate with the expanded size and scope of the combined organization.

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."[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

[33] One commenter asserted that Cathay Bank should develop a Community Reinvestment Act Plan ("Plan") that addresses certain goals and meets the needs of specific segments of the community. This commenter urged the Board to approve the proposed transaction only if such a Plan is finalized. 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., Huntington Bancshares Incorporated*, FRB Order No. 2016-13 at 32 n. 50 (July 29, 2016); *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.

[34] The Board notes that 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.

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

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, Cathay would have approximately $15.4 billion 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 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.[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 Cathay 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.

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[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 2012-2 (February 14, 2012).

[38] 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. 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 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 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.

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 San Francisco, acting under delegated authority.

By order of the Board of Governors, effective March 20, 2017

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 Bank Merger Act

Farmers Bank & Capital Trust Company
Frankfort, Kentucky

Order Approving the Merger of Banks and the Establishment of Branches
FRB Order No. 2017-02 (February 3, 2017)

Farmers Bank & Capital Trust Company ("Farmers Bank"), Frankfort, Kentucky, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[1] ("Bank Merger Act") to merge with its affiliated banks, United Bank & Trust Company, Versailles ("United Bank"), a state nonmember bank; First Citizens Bank, Elizabethtown, a state member bank; and Citizens Bank of Northern Kentucky, Inc., Newport ("Citizens Bank"), a state nonmember bank, all in Kentucky.[2] In addition, Farmers Bank has applied under section 9 of the Federal Reserve Act ("FRA")[3] to establish and operate branches at the locations of the main offices and branches of United Bank, First Citizens Bank, and Citizens Bank.

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 time for filing comments has expired. 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.

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.[5] 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.[6]

Farmers Bank's proposal involves the consolidation of four banks that are affiliates in the same banking organization, and the proposal, therefore, would not lessen competition in any relevant market. The Board has received no objection to the proposal from the other federal banking agencies. Based on the record, the Board concludes that consummation of the proposed transaction would not be likely to result in a significantly adverse effect on competition or the concentration of banking resources in any banking market, and that competitive factors are consistent with approval.

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1 12 U.S.C. § 1828(c).

2 Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank are wholly owned subsidiaries of Farmers Capital Bank Corporation, Frankfort, Kentucky ("FCBC").

3 12 U.S.C. § 321. These branches are listed in the appendix.

4 12 CFR 262.3(b).

5 12 U.S.C. § 1828(c)(5)(A).

6 12 U.S.C. § 1828(c)(5)(B).

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, 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.

Farmers Bank is well capitalized and would remain so on consummation of the proposal. United Bank, First Citizens Bank, and Citizens Bank would be merged into Farmers Bank.[7] The asset quality, earnings, and liquidity of Farmers 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 operations of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

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

Farmers Bank is considered to be well managed, and its board of directors and senior management have substantial banking experience. Farmers Bank would operate the acquired branches of United Bank, First Citizens Bank, and Citizens Bank under its existing policies and procedures, which are considered to be satisfactory. In addition, Farmers 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 Farmers Bank, as well as the records of effectiveness of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank in combating money-laundering activities, are consistent with approval.

[7] In addition to United Bank, First Citizens Bank, and Citizens Bank, FCB Services, Inc., Frankfort, Kentucky ("FCB"), a nonbank subsidiary of FCBC, will be merged into Farmers Bank. FCB provides data processing services and related support. The merger of FCB into Farmers Bank is subject to approval under the Bank Merger Act and is being reviewed by the Federal Deposit Insurance Corporation ("FDIC").

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.[8] 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"). 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,[9] 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.[10] 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.[11]

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 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 Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank, the fair lending and compliance records of all four banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Farmers Bank, and the public comments received on the proposal.

Public Comment on the Proposal

A commenter on the proposal expressed concern that the products and services of the involved banks might be reduced as a result of the bank merger and that access to physical branches might be diminished. This commenter also expressed concern about the planned change of name of Farmers Bank to United Bank & Capital Trust following the proposed transaction, suggesting the potential for customer confusion.

Response to the Comment

Farmers Bank represents that there will be no change to the product and service offerings of the four banks as a result of the proposed merger and that customers will continue to be able to access physical branches for their banking needs. Farmers Bank also represents that the name change is intended to distinguish Farmers Bank from several competitors with

[8] 12 U.S.C. § 1828(c)(5)(B).
[9] 12 U.S.C. § 2901(b).
[10] 12 U.S.C. § 2903.
[11] *See*, *e.g.*, 12 CFR 228.21(b).

similar names and that adequate notice of the name change was provided to customers of the four banks.

Record of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, 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.[12] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[13] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite 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 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 ("LTD") 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 Farmers Bank, United Bank, and First Citizens 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.[14]

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 St. Louis ("Reserve Bank") in October 2014 ("Farmers Bank Evaluation").[15] Farmers Bank received "Satisfactory" ratings for both the lending test and the community development test.[16] Examiners determined that Farmers Bank's LTD ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. Examiners found that a majority of Farmers Bank's loans and other lending-related activities were undertaken in the assessment area.

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[12] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

[13] 12 U.S.C. § 2906.

[14] *See* 12 CFR 228.26.

[15] The Farmers Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The Farmers Bank Evaluation reviewed lending data from July 1, 2013, to December 31, 2013, and community development activities from May 7, 2012, to October 27, 2014.

[16] The Farmers Bank Evaluation included reviews of the bank's activities in Franklin, Anderson, Mercer, and Boyle counties, all of which are located in a nonmetropolitan statistical area portion of the state of Kentucky.

Examiners also found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area and a reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that Farmers Bank's community development loan and investment record demonstrated adequate responsiveness to the community development needs in its assessment area.

CRA Performance for United Bank

United Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC in July 2015 ("United Bank Evaluation").[17] United Bank received "Satisfactory" ratings for both the lending test and the community development test.[18]

Examiners found United Bank's LTD ratio to be reasonable given the institution's size, financial condition, and assessment area credit needs. Examiners noted that a majority of United Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area, and the distribution of borrowers reflected reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that United Bank demonstrated adequate responsiveness to the community development needs of its assessment area through community development loans and qualified investments.

CRA Performance of First Citizens Bank

First Citizens Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Reserve Bank in May 2016 ("First Citizens Bank Evaluation").[19] First Citizens Bank received "Satisfactory" ratings on the lending test and the community development test.[20]

Examiners determined that First Citizens Bank's LTD ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. Examiners noted that a majority of First Citizens Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area and a reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that First Citizens Bank's community development loan and investment record demonstrated adequate responsiveness to the community development needs in its assessment area.

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[17] The United Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The United Bank Evaluation reviewed lending data from January 1, 2014, to May 31, 2015, and community development activities from July 2, 2012, to July 27, 2015.

[18] The United Bank Evaluation included reviews of the bank's activities in Fayette, Jessamine, Scott, and Woodford counties, Kentucky, all of which are located in the Lexington-Fayette, Kentucky metropolitan statistical area ("MSA").

[19] The First Citizens Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The First Citizens Bank Evaluation reviewed lending data from January 1, 2014, to December 31, 2014, and community development activities from April 16, 2012, to May 9, 2016.

[20] The First Citizens Bank Evaluation included reviews of the bank's activities in Hardin County, Kentucky, which is located in the Elizabethtown-Fort Knox, Kentucky MSA, as well as Bullitt and Jefferson counties, Kentucky, which are located in the Louisville/Jefferson County, Kentucky-Indiana MSA.

CRA Performance of Citizens Bank

Citizens Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC in May 2015 ("Citizens Bank Evaluation").[21] Citizens Bank received a "Satisfactory" rating for the lending test.[22]

Examiners found Citizens Bank's LTD ratio to be reasonable given the institution's size, financial condition, and assessment area credit needs. Examiners noted that a majority of Citizens Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area, and the distribution of borrowers reflected reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes.

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.

Farmers Bank represents that the proposed transaction would provide customers of United Bank, First Citizens Bank, and Citizens Bank with more efficient services and expanded banking access. In addition, the merger would provide increased efficiencies and other savings, particularly in areas of management of personnel and operating expenses, risk management, strategic planning, regulatory compliance, and data processing. Customers of United Bank, First Citizens Bank, and Citizens Bank will continue to have access to existing banking services in each of the communities currently served by these banks, and there would be no change to the accessibility of all of the branches currently operated by those banks and Farmers Bank.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[23]

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[21] The Citizens Bank Evaluation was conducted using the Interagency CRA Procedures for Small Institutions, which consists of the lending test described above. The Citizens Bank Evaluation reviewed lending data from January 1, 2014, to December 31, 2014.

[22] The Citizens Bank Evaluation included reviews of the bank's activities in Boone, Campbell, and Kenton counties, Kentucky, all of which are located in the Cincinnati-Middleton, Ohio-Kentucky-Indiana MSA.

[23] 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.[24] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[25]

In this case, the Board has considered information relevant to risk to the stability of the United States banking or financial system. The Board generally presumes that a merger that represents a corporate reorganization 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 case.

Based on these and all other facts of record, the Board concludes 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 branches at the current locations of United Bank, First Citizens Bank, and Citizens Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.[26] 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 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 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 deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

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

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

[26] 12 U.S.C. § 322; 12 CFR 208.6.

Acquisition of United Bank, First Citizens Bank, and Citizens Bank may be consummated immediately upon the effective date of this order[27] but not later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 3, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Branches to Be Acquired by Farmers Bank in Kentucky

1. Branches to Be Acquired from United Bank

- 100 United Drive, Versailles
  146 North Locust Street, Versailles
  206 North Grantz Street, Midway
  200 East Main Street, Georgetown
  100 North Bradford Lane, Georgetown
  100 Farmers Bank Drive, Georgetown
  3285 Main Street, Stamping Ground
  3098 Harrodsburg Road, Lexington
  2509 Sir Barton Way, Lexington
  201 North Main Street, Nicholasville
  995 South Main Street, Nicholasville
  986 North Main Street, Nicholasville
  106 South Lexington Avenue, Wilmore

2. Branches to Be Acquired from First Citizens Bank

- 425 West Dixie Avenue, Elizabethtown
  3030 Ring Road, Elizabethtown
  111 Towne Drive, Elizabethtown
  645 South Dixie Boulevard, Radcliff
  4810 North Preston Highway, Shepherdsville
  157 Eastbrooke Court, Mount Washington

3. Branches to Be Acquired from Citizens Bank

- 103 Churchill Drive, Newport
  7300 Alexandria Pike, Alexandria
  164 Fairfield Avenue, Bellevue
  8730 U.S. Highway 42, Florence
  34 North Fort Thomas Avenue, Fort Thomas
  2911 Alexandria Pike, Highland Heights
  2774 Town Center Boulevard, Crestview Hills

[27] 12 U.S.C. § 1828(c)(6).

Orders Issued Under Federal Reserve Act

Farmers Bank & Capital Trust Company
Frankfort, Kentucky

Order Approving the Merger of Banks and the Establishment of Branches
FRB Order No. 2017-02 (February 3, 2017)

Farmers Bank & Capital Trust Company ("Farmers Bank"), Frankfort, Kentucky, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[1] ("Bank Merger Act") to merge with its affiliated banks, United Bank & Trust Company, Versailles ("United Bank"), a state nonmember bank; First Citizens Bank, Elizabethtown, a state member bank; and Citizens Bank of Northern Kentucky, Inc., Newport ("Citizens Bank"), a state nonmember bank, all in Kentucky.[2] In addition, Farmers Bank has applied under section 9 of the Federal Reserve Act ("FRA")[3] to establish and operate branches at the locations of the main offices and branches of United Bank, First Citizens Bank, and Citizens Bank.

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 time for filing comments has expired. 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.

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.[5] 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.[6]

Farmers Bank's proposal involves the consolidation of four banks that are affiliates in the same banking organization, and the proposal, therefore, would not lessen competition in any relevant market. The Board has received no objection to the proposal from the other federal banking agencies. Based on the record, the Board concludes that consummation of the proposed transaction would not be likely to result in a significantly adverse effect on competition or the concentration of banking resources in any banking market, and that competitive factors are consistent with approval.

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1 12 U.S.C. § 1828(c).

2 Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank are wholly owned subsidiaries of Farmers Capital Bank Corporation, Frankfort, Kentucky ("FCBC").

3 12 U.S.C. § 321. These branches are listed in the appendix.

4 12 CFR 262.3(b).

5 12 U.S.C. § 1828(c)(5)(A).

6 12 U.S.C. § 1828(c)(5)(B).

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, 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.

Farmers Bank is well capitalized and would remain so on consummation of the proposal. United Bank, First Citizens Bank, and Citizens Bank would be merged into Farmers Bank.[7] The asset quality, earnings, and liquidity of Farmers 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 operations of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

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

Farmers Bank is considered to be well managed, and its board of directors and senior management have substantial banking experience. Farmers Bank would operate the acquired branches of United Bank, First Citizens Bank, and Citizens Bank under its existing policies and procedures, which are considered to be satisfactory. In addition, Farmers 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 Farmers Bank, as well as the records of effectiveness of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank in combating money-laundering activities, are consistent with approval.

[7] In addition to United Bank, First Citizens Bank, and Citizens Bank, FCB Services, Inc., Frankfort, Kentucky ("FCB"), a nonbank subsidiary of FCBC, will be merged into Farmers Bank. FCB provides data processing services and related support. The merger of FCB into Farmers Bank is subject to approval under the Bank Merger Act and is being reviewed by the Federal Deposit Insurance Corporation ("FDIC").

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.[8] 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"). 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,[9] 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.[10] 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.[11]

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 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 Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank, the fair lending and compliance records of all four banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Farmers Bank, and the public comments received on the proposal.

Public Comment on the Proposal

A commenter on the proposal expressed concern that the products and services of the involved banks might be reduced as a result of the bank merger and that access to physical branches might be diminished. This commenter also expressed concern about the planned change of name of Farmers Bank to United Bank & Capital Trust following the proposed transaction, suggesting the potential for customer confusion.

Response to the Comment

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similar names and that adequate notice of the name change was provided to customers of the four banks.

Record of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, 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.[12] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[13] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite 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 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 ("LTD") 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 Farmers Bank, United Bank, and First Citizens 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.[14]

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 St. Louis ("Reserve Bank") in October 2014 ("Farmers Bank Evaluation").[15] Farmers Bank received "Satisfactory" ratings for both the lending test and the community development test.[16] Examiners determined that Farmers Bank's LTD ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. Examiners found that a majority of Farmers Bank's loans and other lending-related activities were undertaken in the assessment area.

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[12] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

[13] 12 U.S.C. § 2906.

[14] *See* 12 CFR 228.26.

[15] The Farmers Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The Farmers Bank Evaluation reviewed lending data from July 1, 2013, to December 31, 2013, and community development activities from May 7, 2012, to October 27, 2014.

[16] The Farmers Bank Evaluation included reviews of the bank's activities in Franklin, Anderson, Mercer, and Boyle counties, all of which are located in a nonmetropolitan statistical area portion of the state of Kentucky.

Examiners also found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area and a reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that Farmers Bank's community development loan and investment record demonstrated adequate responsiveness to the community development needs in its assessment area.

CRA Performance for United Bank

United Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC in July 2015 ("United Bank Evaluation").[17] United Bank received "Satisfactory" ratings for both the lending test and the community development test.[18] Examiners found United Bank's LTD ratio to be reasonable given the institution's size, financial condition, and assessment area credit needs. Examiners noted that a majority of United Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area, and the distribution of borrowers reflected reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that United Bank demonstrated adequate responsiveness to the community development needs of its assessment area through community development loans and qualified investments.

CRA Performance of First Citizens Bank

First Citizens Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Reserve Bank in May 2016 ("First Citizens Bank Evaluation").[19] First Citizens Bank received "Satisfactory" ratings on the lending test and the community development test.[20]

Examiners determined that First Citizens Bank's LTD ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. Examiners noted that a majority of First Citizens Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area and a reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that First Citizens Bank's community development loan and investment record demonstrated adequate responsiveness to the community development needs in its assessment area.

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[17] The United Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The United Bank Evaluation reviewed lending data from January 1, 2014, to May 31, 2015, and community development activities from July 2, 2012, to July 27, 2015.

[18] The United Bank Evaluation included reviews of the bank's activities in Fayette, Jessamine, Scott, and Woodford counties, Kentucky, all of which are located in the Lexington-Fayette, Kentucky metropolitan statistical area ("MSA").

[19] The First Citizens Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The First Citizens Bank Evaluation reviewed lending data from January 1, 2014, to December 31, 2014, and community development activities from April 16, 2012, to May 9, 2016.

[20] The First Citizens Bank Evaluation included reviews of the bank's activities in Hardin County, Kentucky, which is located in the Elizabethtown-Fort Knox, Kentucky MSA, as well as Bullitt and Jefferson counties, Kentucky, which are located in the Louisville/Jefferson County, Kentucky-Indiana MSA.

CRA Performance of Citizens Bank

Citizens Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC in May 2015 ("Citizens Bank Evaluation").[21] Citizens Bank received a "Satisfactory" rating for the lending test.[22]

Examiners found Citizens Bank's LTD ratio to be reasonable given the institution's size, financial condition, and assessment area credit needs. Examiners noted that a majority of Citizens Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area, and the distribution of borrowers reflected reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes.

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.

Farmers Bank represents that the proposed transaction would provide customers of United Bank, First Citizens Bank, and Citizens Bank with more efficient services and expanded banking access. In addition, the merger would provide increased efficiencies and other savings, particularly in areas of management of personnel and operating expenses, risk management, strategic planning, regulatory compliance, and data processing. Customers of United Bank, First Citizens Bank, and Citizens Bank will continue to have access to existing banking services in each of the communities currently served by these banks, and there would be no change to the accessibility of all of the branches currently operated by those banks and Farmers Bank.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[23]

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[21] The Citizens Bank Evaluation was conducted using the Interagency CRA Procedures for Small Institutions, which consists of the lending test described above. The Citizens Bank Evaluation reviewed lending data from January 1, 2014, to December 31, 2014.

[22] The Citizens Bank Evaluation included reviews of the bank's activities in Boone, Campbell, and Kenton counties, Kentucky, all of which are located in the Cincinnati-Middleton, Ohio-Kentucky-Indiana MSA.

[23] 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.[24] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[25]

In this case, the Board has considered information relevant to risk to the stability of the United States banking or financial system. The Board generally presumes that a merger that represents a corporate reorganization 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 case.

Based on these and all other facts of record, the Board concludes 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 branches at the current locations of United Bank, First Citizens Bank, and Citizens Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.[26] 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 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 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 deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

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

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

[26] 12 U.S.C. § 322; 12 CFR 208.6.

Acquisition of United Bank, First Citizens Bank, and Citizens Bank may be consummated immediately upon the effective date of this order[27] but not later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 3, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Branches to Be Acquired by Farmers Bank in Kentucky

1. Branches to Be Acquired from United Bank

- 100 United Drive, Versailles
  146 North Locust Street, Versailles
  206 North Grantz Street, Midway
  200 East Main Street, Georgetown
  100 North Bradford Lane, Georgetown
  100 Farmers Bank Drive, Georgetown
  3285 Main Street, Stamping Ground
  3098 Harrodsburg Road, Lexington
  2509 Sir Barton Way, Lexington
  201 North Main Street, Nicholasville
  995 South Main Street, Nicholasville
  986 North Main Street, Nicholasville
  106 South Lexington Avenue, Wilmore

2. Branches to Be Acquired from First Citizens Bank

- 425 West Dixie Avenue, Elizabethtown
  3030 Ring Road, Elizabethtown
  111 Towne Drive, Elizabethtown
  645 South Dixie Boulevard, Radcliff
  4810 North Preston Highway, Shepherdsville
  157 Eastbrooke Court, Mount Washington

3. Branches to Be Acquired from Citizens Bank

- 103 Churchill Drive, Newport
  7300 Alexandria Pike, Alexandria
  164 Fairfield Avenue, Bellevue
  8730 U.S. Highway 42, Florence
  34 North Fort Thomas Avenue, Fort Thomas
  2911 Alexandria Pike, Highland Heights
  2774 Town Center Boulevard, Crestview Hills

[27] 12 U.S.C. § 1828(c)(6).

PlainsCapital Bank
Dallas, Texas

Order Approving the Establishment of Branches
FRB Order No. 2017-05 (February 24, 2017)

PlainsCapital Bank, a state member bank subsidiary of Hilltop Holdings, Inc. ("Hilltop"), both of Dallas, Texas, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[1] and the Board's Regulation H[2] to establish two branches in Frisco, 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 the comments received in light of the factors specified in the FRA.

Hilltop is the 13th largest depository organization in Texas with 63 branches throughout Texas, controlling approximately $6.3 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.[5] PlainsCapital Bank operates only in Texas, and the bank's main office is in Dallas, Texas. PlainsCapital Bank's wholly owned nonbank subsidiary, PrimeLending, A PlainsCapital Company ("PrimeLending"), engages in national mortgage lending and has approximately 300 offices in 42 states.[6]

Under section 208.6 of the Board's Regulation H,[7] 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");[8] and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.[9]

The Board has considered the application in light of these factors and the public comment received on the proposal. One commenter objects to the proposal, alleging that PlainsCapital 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, lending, and community development activities.[10]

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1 12 U.S.C. § 321.

2 12 CFR part 208.

3 PlainsCapital Bank proposes to establish one branch at One Cowboys Way and one branch at 6635 Cowboys Way, both in Frisco, Texas.

4 12 CFR 262.3(b).

5 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.

6 PlainsCapital Bank represents that the vast majority of its residential mortgage lending is conducted through PrimeLending.

7 12 CFR 208.6(b).

8 12 U.S.C. § 2901 *et seq* .

9 12 CFR 208.21(a).

10 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. *See* Interagency Fair Lending Examination Procedures (August 2009), available at https//www.ffiec.gov/pdf/fairlend.pdf.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of PlainsCapital Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by PlainsCapital Bank, and the comment received on the proposal. PlainsCapital Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of PlainsCapital Bank are consistent with approval, and PlainsCapital Bank appears to have adequate resources to absorb the costs of the proposal. In addition, future earnings prospects are considered consistent with approval. The Board also has reviewed PlainsCapital Bank's proposed investment in the branches and concludes that its investment is consistent with regulatory limitations on investment in bank premises.[11]

In considering PlainsCapital 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 PlainsCapital Bank and the bank's record of compliance with applicable banking laws, including consumer protection and anti-money-laundering laws. PlainsCapital Bank is considered to be well managed. PlainsCapital Bank's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and the bank's risk-management program appears consistent with approval.

Based on this review and all the facts of record, the Board concludes that PlainsCapital Bank's management, financial history and condition, capital adequacy, and future earnings prospects, as well as the effectiveness of PlainsCapital 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.[12] 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,[13] 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.[14]

In addition, the Board considers the bank's overall compliance record 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

[11] 12 CFR 208.21(a).
[12] 12 CFR 208.6(b)(3).
[13] 12 U.S.C. § 2901(b).
[14] 12 U.S.C. § 2903.

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 PlainsCapital Bank; the fair lending and compliance records of the bank; confidential supervisory information; information provided by PlainsCapital Bank; and the public comment received on the proposal. One commenter objects to the proposal, alleging that PlainsCapital Bank has engaged in discriminatory practices in Dallas and Houston. Specifically, the commenter alleges that PlainsCapital Bank engages in redlining in these areas.The commenter alleges that PlainsCapital Bank disfavors certain African American neighborhoods in Dallas and Houston and has limited its lending, marketing activities, community development activities, and branching in those neighborhoods.

PlainsCapital Bank denies the commenter's allegations, arguing that it has a strong commitment to ensuring compliance with consumer laws and a strong lending record under the Home Mortgage Disclosure Act ("HMDA"), and that the bank and PrimeLending both have comprehensive policies and procedures to ensure that they do not engage in discriminatory practices. PlainsCapital Bank represents that these policies and procedures include controls to determine if disparities exist regarding pricing and fees, analysis of approved and denied loans, and frequent fair lending reviews. PlainsCapital Bank also represents that its board of directors has a designated CRA/Compliance Committee that provides enhanced oversight to both the bank's and PrimeLending's compliance programs.

PlainsCapital Bank notes that it is a relatively recent entrant to the Houston area and only has two branches in the area, as it entered the market in late 2013 through the acquisition of a failed bank. PlainsCapital Bank represents that one of those two branches is located in a majority-minority area. While Houston is currently its smallest market, PlainsCapital Bank represents that it is actively working to expand the bank's presence in the community. PlainsCapital Bank asserts that, over the last two years, it has assembled a strong team of lenders, credit underwriters and loan administration staff, and it recently hired a new Houston market president. PlainsCapital Bank represents that, as a result of these efforts, the bank has expanded its loan portfolio in the Houston area by approximately 73 percent in 2015 and 31 percent in 2016, and continuously evaluates opportunities to further expand its presence in the market. Further, PlainsCapital Bank represents that it and PrimeLending engage in marketing and outreach, including targeted radio and advertising campaigns, to achieve lending penetration in LMI and minority census tracts.

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 in light of examinations and other supervisory information and information and views provided by the appropriate federal supervisors.[15] In this case, the Board considered the information collected by and findings of examiners from the Federal Reserve Bank of Dallas ("Reserve Bank"), who conducted an on-site CRA performance evaluation of PlainsCapital Bank.

[15] *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.[16] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation 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;[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.

The Board is concerned when commenters assert that 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 typically is not available to commenters.[18] Consequently, these alleged disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of PlainsCapital Bank

PlainsCapital Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of July 7, 2015 ("PlainsCapital Bank

[16] 12 U.S.C. § 2906.

[17] Examiners also consider the number and amounts 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).

[18] 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").[19] PlainsCapital Bank received a "High Satisfactory" rating for the Lending Test and a "Low Satisfactory" rating for both the Investment Test and the Service Test.[20]

Examiners found that PlainsCapital Bank's overall lending activity reflected good responsiveness to credit needs in its assessment areas and that the bank made a high percentage of its loans inside its assessment areas. According to examiners, the bank's geographic distribution of loans reflected adequate penetration throughout the assessment areas. Examiners also found that, overall, the bank's distribution of borrowers reflected good penetration among customers of different income levels and businesses of different sizes. Further, examiners noted that the bank made a relatively high level of community development loans, the majority of which were for affordable housing and economic development. Community development loans were also made to organizations providing services targeted to LMI individuals.

In the Dallas assessment area, an area where the commenter focused, examiners determined that PlainsCapital Bank exhibited good lending performance. The bank's geographic distribution of loans was judged to reflect adequate penetration throughout the assessment area, with no conspicuous lending gaps. Examiners also found that the bank's lending performance reflected good penetration among individuals of different income levels and businesses of different sizes. Further, examiners noted that PlainsCapital Bank made a relatively high level of community development loans in the assessment area, which were to a variety of projects for affordable housing and the revitalizing and stabilizing of LMI areas.

PlainsCapital Bank has only recently entered the Houston banking market and has a limited presence in the Houston assessment area, another area of concern to the commenter. Examiners noted that the bank maintains only 3 percent of its total number of branches and holds only 3.5 percent of its total deposits in the market. The PlainsCapital Bank Evaluation included a limited-scope review of lending activity by PlainsCapital Bank in the Houston assessment area. Examiners concluded that PlainsCapital Bank's lending performance in the Houston assessment area was better than its lending performance in other assessment areas. The bank's geographic distribution of loans was judged to reflect good penetration throughout the assessment area. Examiners also found that the bank's lending performance reflected good penetration among borrowers of different income levels and businesses of different sizes. Further, examiners found that the bank made a high level of community development loans in the assessment area.

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[19] The PlainsCapital Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA, small business, and small farm lending activities reported by the bank from January 1, 2013, through December 31, 2014, except for those reported by Southwest Securities, FSB, a bank that was merged into PlainsCapital Bank on January 1, 2015, and which had an evaluation period from July 1, 2013, through December 31, 2014. The evaluation period for community development lending, investments, and services was June 3, 2013, through July 7, 2015.

[20] The PlainsCapital Bank Evaluation included a full-scope review of the bank's assessment areas within the following Metropolitan Statistical Areas ("MSAs"): the Dallas-Fort Worth-Arlington, Texas, MSA ("Dallas assessment area"); the Lubbock, Texas, MSA; the McAllen-Edinburg-Mission, Texas, MSA; and the Brownsville-Harlingen, Texas, MSA. A limited-scope review was conducted in the bank's assessment areas within the Austin-Round Rock, Texas, MSA; the San Antonio-New Braunfels, Texas, MSA; the Houston-The Woodlands-Sugar Land, Texas, MSA ("Houston assessment area"); the El Paso, Texas, MSA; the Corpus Christi, Texas, MSA; the Laredo, Texas, MSA; the Victoria, Texas, MSA; Jim Wells County, Texas; and Maverick County, Texas.

The commenter alleged that PlainsCapital 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, 81 *Federal Register* 48506, 48549 (July 25, 2016). The Houston assessment area comprises the entirety of Harris and Montgomery counties. The Dallas assessment area comprises the entirety of Collin, Denton, Dallas, Parker, and Tarrant counties. Reserve Bank examiners found that the bank's assessment areas were appropriate and offered opportunities to lend in majority-minority geographies.

Examiners found that PlainsCapital Bank provided an adequate level of qualified community development investments and donations in its assessment areas. Examiners noted that PlainsCapital Bank's investments demonstrated adequate responsiveness to credit and community development needs throughout its assessment areas. However, examiners found that PlainsCapital Bank's investment performance varied among its assessment areas, with the majority of its investments concentrated in the Dallas assessment area.

In the Dallas assessment area, examiners determined that PlainsCapital Bank provided an excellent level of qualified community development investments and responsiveness to credit and community needs. Examiners noted that the investments provided support for small businesses and affordable housing, and that community contacts had identified the need for and opportunities to make such investments. Examiners also found that the bank made donations to various organizations that provide support services to LMI individuals. In the Houston assessment area, examiners concluded that PlainsCapital Bank's investment performance was consistent with its bank-wide investment performance.

Examiners found that PlainsCapital Bank's retail delivery systems were reasonably accessible to the geographies and individuals of different income levels in its assessment areas. Examiners further noted that PlainsCapital Bank's opening and closing of branches did not adversely affect the accessibility of banking services, particularly to LMI geographies and/or individuals. Further, examiners found 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. However, examiners found that PlainsCapital Bank provided only a limited level of community development services that benefited all of its assessment areas and that such services were concentrated in the Dallas assessment area.

In the Dallas assessment area, examiners concluded that PlainsCapital Bank provided a relatively high level of community development services. Examiners also found that PlainsCapital Bank's delivery systems were accessible to the bank's geographies and to individuals of different income levels in the assessment area and services did not vary in a way that would inconvenience LMI geographies or individuals. In the Houston assessment area, examiners concluded that PlainsCapital Bank's service performance was consistent with its bank-wide service performance.

PlainsCapital Bank's Efforts since the 2015 CRA Evaluation

PlainsCapital Bank represents that since the PlainsCapital Bank Evaluation, it has continued to offer several lending and deposit products specifically designed for LMI populations that are utilized by individuals and businesses in LMI and/or minority census tracts, including in its Houston and Dallas assessment areas. Such products include a closing-cost assistance program offered by PrimeLending and its "Simply Free" and "Business Free" checking accounts, which are consumer and business checking accounts with no minimum balance or monthly fees. PlainsCapital Bank also participates in the Federal Home Loan Bank of Dallas Homebuyer Equity Leverage Partnership, which provides low-income, qualified first-time homebuyers with down-payment assistance.

PlainsCapital Bank represents that it has continued its strong commitment to serving the banking needs of its assessment areas, including the Houston and Dallas assessment areas, through community development lending, investments, and services. For example, the bank represents that it has made community development loans that provided funding for small businesses and supported affordable housing projects, including a loan to support an affordable housing complex in an LMI, majority-minority census tract within the Houston assessment area. PlainsCapital Bank also represents that it has made a number of

community development investments that supported affordable housing developments in LMI areas, including within the Dallas and Houston assessment areas. The bank represents that it has continued to make donations to organizations that focus on providing services to LMI and minority individuals and communities. Additionally, PlainsCapital Bank represents that bank employees have actively participated in a variety of volunteer activities in its assessment areas, such as financial literacy classes at local schools in Dallas and Houston, including schools with primarily LMI and minority students.

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance examination conducted by Reserve Bank examiners, which included a review of the bank's compliance risk management program and the bank's compliance with consumer protection laws and regulations. As part of the consumer compliance examination, Reserve Bank examiners also evaluated PlainsCapital Bank's fair lending compliance management program, which included an evaluation of the bank's fair lending-related policies, procedures, and limits; board and senior management oversight of the bank's fair lending management program; fair lending risk-monitoring and management information systems; and internal controls relating to fair lending.

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. PlainsCapital Bank represents that the proposed branches would provide benefits to the bank's current customers and to the community as a whole. Both branches will be in Collin County, Texas, where the bank currently only has a single branch. The bank asserts that the proposed branches will be in a pedestrian-friendly area and will increase the accessibility of the bank's products and services, particularly to retail customers.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA record of PlainsCapital Bank and its recent entry into the Houston banking market; the bank's record of compliance with fair lending and other consumer protection laws; confidential supervisory information; information provided by PlainsCapital 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.

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 PlainsCapital 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. 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.

Approval of this application 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 February 24, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

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Legal Developments: Second Quarter, 2017

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

United Bankshares, Inc.
Charleston, West Virginia

Order Approving the Acquisition of a Bank Holding Company, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017–10 (April 6, 2017)

United Bankshares, Inc. ("UBI"), Charleston, West Virginia, and its subsidiary, UBV Holding Company, LLC ("UBV", and together with UBI, "United"), Fairfax, Virginia, both bank holding companies within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] have requested the Board's approval under section 3 of the BHC Act[2] to acquire Cardinal Financial Corporation ("Cardinal") and thereby indirectly acquire Cardinal Bank, both of McLean, Virginia.

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

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 74803 (October 27, 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").

UBI, with consolidated assets of approximately $14.3 billion, is the 99th largest insured depository organization in the United States.[6] UBI controls approximately $10.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits

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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 the Appendix.
5 12 CFR 262.3(b).
6 National asset data, market share, and ranking data are as of September 30, 2016, unless otherwise noted. State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

of insured depository institutions in the United States.[7] UBI controls two subsidiary banks, United Bank-Virginia and United Bank, Inc. ("United Bank-West Virginia"), Parkersburg, West Virginia,[8] which operate in the District of Columbia, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia. UBI is the 10th largest insured depository organization in the District of Columbia, controlling deposits of approximately $1.1 billion in the District of Columbia, which represent 2.4 percent of the total deposits of insured depository institutions in that jurisdiction. In addition, UBI is the 18th largest insured depository organization in Maryland, controlling deposits of approximately $761.1 million in Maryland, which represent 0.6 percent of the total deposits of insured depository institutions in that state, and the 8th largest insured depository organization in Virginia, controlling deposits of approximately $4.1 billion in Virginia, which represent 1.5 percent of the total deposits of insured depository institutions in that state.

Cardinal, with consolidated assets of approximately $4.2 billion, is the 228th largest insured depository organization in the United States. Cardinal controls approximately $3.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Cardinal controls Cardinal Bank, which operates in the District of Columbia, Maryland, and Virginia. Cardinal is the 19th largest insured depository organization in the District of Columbia, controlling deposits of approximately $133.8 million in the District of Columbia, which represent 0.3 percent of the total deposits of insured depository institutions in that jurisdiction. In addition, Cardinal is the 43rd largest insured depository organization in Maryland, controlling deposits of approximately $188.6 million in Maryland, which represent 0.2 percent of the total deposits of insured depository institutions in that state, and the 10th largest insured depository organization in Virginia, controlling deposits of approximately $3.0 billion in Virginia, which represent 1.1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, UBI would become the 86th largest insured depository organization in the United States, with consolidated assets of approximately $18.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. UBI would control consolidated deposits of approximately $13.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In the District of Columbia, UBI would become the 9th largest insured depository organization, controlling deposits of approximately $1.2 billion in the District of Columbia, which represent 2.7 percent of the total deposits of insured depository institutions in that jurisdiction. In Maryland, UBI would become the 16th largest insured depository organization, controlling deposits of approximately $949.7 million in Maryland, which represent 0.7 percent of the total deposits of insured depository institutions in that state. In Virginia, UBI would become the 7th largest insured depository organization, controlling deposits of approximately $7.1 billion in Virginia, which represent 2.6 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

[7] In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

[8] United Bank-Virginia is a wholly owned subsidiary of UBV, and UBV is a wholly owned subsidiary of UBI. UBI controls United Bank-West Virginia, a state member bank, through a separate mid-tier holding company, UBC Holding Company, Inc., Charleston, West Virginia.

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[11] 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 any state in which the acquirer and target have overlapping banking operations.[12]

For purposes of the BHC Act, the home state of UBI is West Virginia, and the home state of both UBV and Cardinal Bank is Virginia.[13] Cardinal Bank is also located in the District of Columbia and Maryland. UBI and UBV are well capitalized and well managed under applicable law, and United Bank-Virginia has an "Outstanding" Community Reinvestment Act ("CRA")[14] rating. There are no minimum age requirements under the laws of the District of Columbia, Maryland, or Virginia that would apply to United's acquisition of Cardinal, and Cardinal Bank has been in existence for more than five years.[15]

On consummation of the proposed transaction, UBI 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 the District of Columbia, Maryland, and Virginia, the only states in which United and Cardinal have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including United's record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.[16]

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[9] 12 U.S.C. § 1842(d)(1)(A).

[10] 12 U.S.C. § 1842(d)(1)(B).

[11] 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 United Bank-Virginia and Cardinal Bank is Virginia. 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.

[12] 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).

[13] *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.

[14] 12 U.S.C. § 2901 *et seq*.

[15] *See* D.C. Code §26-737; Md. Code Ann., Fin. Inst. §§ 5-901 to 5-910; Va. Code Ann.§6.1-44.18.

[16] 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 United Bank-Virginia and Cardinal Bank is Virginia; therefore, section 102 of the Riegle-Neal Act does not apply to the proposed bank merger. *Id.*

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.[17]

UBI and Cardinal have subsidiary depository institutions that compete directly in the Washington, District of Columbia, banking market ("Washington market") and the Fredericksburg, Virginia, banking market ("Fredericksburg market").[18] 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 markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that UBI would control;[19] 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");[20] 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 Washington and Fredericksburg markets. On consummation of the proposal, the Washington market would remain unconcentrated and the Fredericksburg market would remain moderately concentrated, as measured by the HHI. The change in the HHI in these markets would be small, and numerous competitors would remain in the markets.[21]

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[17] 12 U.S.C. § 1842(c)(1) and 1828(c)(5).

[18] The Washington market is defined as the District of Columbia; Calvert, Charles, Frederick, Montgomery, and Prince George's counties, all in Maryland; District 7 in Anne Arundel County, Maryland; the Clarksville and Savage districts in Howard County, Maryland; Arlington, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Stafford, and Warren counties in Virginia; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, all in Virginia; and Jefferson County, West Virginia. The Fredericksburg market is defined as the city of Fredericksburg, Virginia; and Caroline, King George, Orange, Spotsylvania, and Westmoreland counties, all in Virginia.

[19] Deposit and market share data are as of June 30, 2016, 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).

[20] 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.

[21] UBI operates the 8th largest depository institution in the Washington market, controlling approximately $5.5 billion in deposits, which represent approximately 2.9 percent of market deposits. Cardinal operates the 11th largest depository institution in the same market, controlling deposits of approximately $3.2 billion, which represent 1.7 percent of market deposits. On consummation of the proposed transaction, UBI would become the 7th largest depository organization in the market, controlling deposits of approximately $8.7 billion, which represent approximately 4.6 percent of market deposits. The HHI for the Washington market would increase by 10 points to 995, and 81 competitors would remain in the 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 Washington and Fredericksburg markets. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Washington or Fredericksburg banking 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 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.[22] 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 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.

UBI and Cardinal are 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 share exchange, with a subsequent merger of United Bank-Virginia and Cardinal Bank.[23] The asset quality, earnings, and liquidity of United Bank-Virginia and Cardinal Bank are consistent with approval, and United 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

UBI operates the 9th largest depository institution in the Fredericksburg market, controlling approximately $55.4 million in deposits, which represent approximately 1.8 percent of market deposits. Cardinal operates the 10th largest depository institution in the same market, controlling deposits of approximately $43.9 million, which represent 1.4 percent of market deposits. On consummation of the proposed transaction, UBI would become the 8th largest depository organization in the market, controlling deposits of approximately $99.3 million, which represent approximately 3.2 percent of market deposits. The HHI for the Fredericksburg market would increase by 5 points to 1749, and 16 competitors would remain in the market.

[22] 12 U.S.C. §§ 1842(c)(2), (5), and (6); and 1828(c)(5) and (11).

[23] Applicants would merge Cardinal with and into UBV (with UBV as the survivor). At the time of the merger, each share of Cardinal common stock would be converted into a right to receive UBI common stock, based on an exchange ratio; holders of fractional shares would be entitled to a cash equivalent. United has the financial resources to fund the cash portion of the exchange.

of United, Cardinal, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by United; 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.

UBI, UBV, Cardinal, and their subsidiary depository institutions are considered to be well managed. United has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. United's directors and senior executive officers have knowledge of and experience in the banking and financial service sectors, and United's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered United's plans for implementing the proposal. United 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. With certain exceptions, United would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, United's management has the experience and resources to operate the combined organization in a safe and sound manner, and United plans to integrate Cardinal's existing management and personnel in a manner that augments United's management.[24]

Based on all the facts of record, including United'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 United and Cardinal in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[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, 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,[26] 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,

[24] On consummation, the UBI board of directors would be increased by one, and an individual currently serving as an executive director on the board of directors of Cardinal and Cardinal Bank would serve on the UBI board. Additionally, the United Bank-Virginia board of directors would be increased by two individuals that would be chosen by Cardinal.

[25] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[26] 12 U.S.C. § 2901(b).

including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[27]

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

Public Comments Regarding the Proposal

The Board received comments from two commenters opposing the proposal.[28] Both commenters objected to the proposal on the basis of alleged disparities in the number of residential real estate loans made to minority borrowers, as compared to white borrowers, by United Bank-Virginia in the Washington, District of Columbia, Metropolitan Statistical Area ("Washington MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[29] for the years 2013 through 2015. One commenter also asserted that, in the Washington MSA, United Bank-Virginia made a disproportionately low number of home purchase loans to majority-minority and LMI census tracts, and United Bank-West Virginia made a disproportionately low number of home purchase loans to LMI borrowers, as reported under HMDA for 2013 through 2015. Additionally, a commenter criticized the rate at which George Mason Mortgage, LLC ("George Mason"), a subsidiary of Cardinal Bank, denied applications by African Americans and Hispanics, compared to the rate of denials for whites, for conventional home purchase loans in the Washington MSA, as reported under HMDA for 2015.

One commenter also generally alleged that United Bank-Virginia and United Bank-West Virginia have inadequate records of helping to meet the convenience and needs of the communities where they do business because United Bank-Virginia received a "Low Satisfactory" rating on its Service Test in the Commonwealth of Virginia and United Bank-West Virginia received a "Low Satisfactory" rating on its Investment Test for the overall bank and in the Wheeling, West Virginia-Ohio Multistate Metropolitan Statistical Area, the State of West Virginia, and the Commonwealth of Pennsylvania, in the banks' most recent CRA examinations, both as of 2015.

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[27] 12 U.S.C. § 2903.

[28] One commenter requested that the Board not approve the proposal until United enters into a community benefits plan that outlines how the bank plans to help meet the convenience and needs of the communities it serves. 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 organizations. *See, e.g., Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *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.

[29] 12 U.S.C. §2801 *et seq*.

Business of the Involved Institutions and Response to Comments

United Bank-Virginia offers a broad range of retail and commercial banking products and services to consumers and businesses. Through its network of 54 branches located in the District of Columbia, Maryland, and Virginia, United Bank-Virginia offers a variety of banking products, including commercial, residential, agricultural, and consumer loans.

Cardinal Bank offers a similar range of retail and commercial products through 29 branches located in the District of Columbia, Maryland, and Virginia. Its products include checking and savings accounts, certificates of deposit, residential mortgages, treasury management services, commercial and consumer loans, and brokerage services. Cardinal Bank also provides residential mortgages through its subsidiary, George Mason.

In response to the comments, United represents that United Bank-Virginia and Cardinal Bank are currently meeting the credit needs of their communities, including LMI and minority individuals, that the proposal would benefit the existing customers of both United Bank-Virginia and Cardinal Bank, and that the combined institution would continue to meet the credit needs of its entire community following consummation of the proposal. United represents that both United Bank-Virginia and Cardinal Bank have instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations.

With respect to United Bank-Virginia's lending in the Washington MSA, United represents that it has taken a number of steps, including creating a position solely dedicated to its fair lending program, to better serve minority communities. United also notes that United Bank-Virginia's record of lending in the Washington MSA shows a positive trend in the number of home purchase loans located in majority-minority census tracts. Additionally, United notes that, when United Bank-Virginia's lending in all HMDA categories is considered, the bank outperformed peer lenders in lending in LMI areas in 2014. United also asserts that the housing market is relatively expensive in the Washington MSA, which hinders the ability of low-income borrowers to purchase homes in the area, meaning that United Bank-Virginia has few potential low-income mortgage customers. In addition, United represents that a substantial amount of its small business lending within the Washington MSA is made to businesses located in majority-minority census tracts.

United argues that United Bank-Virginia's overall CRA rating of "Outstanding" and United Bank-West Virginia's overall CRA rating of "Satisfactory" are consistent with approval, notwithstanding the specific ratings noted by a commenter. United notes that United Bank-Virginia received an overall bankwide "High Satisfactory" rating on the Service Test and that, in the Commonwealth of Virginia, examiners found that the bank's delivery systems and branch locations were accessible to all segments of the assessment areas and that the bank had an adequate level of participation in qualified community development services that generally benefit affordable housing and micro-enterprise development.

With respect to a commenter's allegation regarding United Bank-West Virginia's record of lending to LMI individuals within the Washington MSA, United notes that United Bank-West Virginia outperformed peer lenders, when considering all categories of HMDA loans, in LMI areas within the Washington MSA. Additionally, United notes that United Bank-West Virginia's distribution of HMDA loans by level of borrower income for the years 2013 through 2015 was similar to that of the aggregate of lenders in the Washington MSA, and that the bank's lending to LMI borrowers in the Washington MSA as reported in 2015 HMDA data outperformed peer lenders.

In response to one commenter's criticism of United Bank-West Virginia's "Low Satisfactory" CRA rating on the Investment Test for the overall bank and in several of the bank's assessment areas, United notes that United Bank-West Virginia has significantly increased its level of community development investment since the bank's most recent CRA examination. United also represents that United Bank-West Virginia is taking steps to improve its investment performance in Pennsylvania and West Virginia, including creating new partnerships with community development finance institutions, starting a relationship with a company that is awaiting a Small Business Investment Company designation from the United States Small Business Administration, and making an investment in a school district in which a majority of students qualify for a free or reduced-price lunch.

With respect to George Mason's lending in the Washington MSA, United represents that George Mason outperformed peer lenders in lending in LMI areas. Additionally, United asserts that George Mason conducts various activities that are focused on serving minority and LMI communities, including marketing and outreach to historically underserved neighborhoods and populations; periodic reviews of George Mason's policies, procedures, and lending outcomes to ensure that lender discretion is clearly outlined and to confirm compliance with fair lending laws; and community outreach efforts to support lending in LMI and minority areas. United represents that George Mason's fair lending policies with respect to first mortgage lending would be adopted in the combined entity.

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 applicant's response to comments. In particular, the Board evaluates an institution's performance 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.[30] In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of Richmond ("Reserve Bank") and 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.[31] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation 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

[30] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[31] 12 U.S.C. § 2906.

farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution 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;[32] (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.[33]Consequently, HMDA data must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of United Bank-Virginia

United Bank-Virginia was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the Reserve Bank, as of October 19, 2015 ("United Bank-Virginia Evaluation").[34] The bank received an "Outstanding" rating for the Lending Test, and "High Satisfactory" ratings for both the Investment Test and the Service Test.

Examiners concluded that the bank's overall lending activity was excellent relative to the bank's capacity to lend and the economic conditions within the bank's market areas. Examiners noted that a substantial majority of the bank's loans were made to borrowers within its assessment areas. Overall, examiners found that the geographic distribution of the bank's loans reflected good penetration throughout its assessment areas and that the distribution of its borrowers reflected good penetration among borrowers of different income levels and businesses of different sizes. Additionally, examiners found that United Bank-Virginia was a leader in community development lending.

In the Washington, D.C., assessment area, an area of concern for the commenters, United Bank-Virginia's performance under the Lending Test was rated "Outstanding." Examiners found that the bank's lending activity in the assessment area was consistent with the bank's capacity and helped to meet identified community credit needs. Additionally, examiners found that the geographic distribution of the bank's loans in the Washington, D.C., assessment area was excellent, while the overall borrower distribution was good. Examiners also

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[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] 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.

[34] The United Bank-Virginia Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage loans reported, pursuant to HMDA, and small business and small farm loans reported under CRA data collection requirements for 2013 and 2014. The evaluation period for community development lending, investments, and services was June 4, 2013, through October 19, 2015.

The United Bank-Virginia Evaluation included full-scope evaluations of the Washington-Baltimore-Arlington, D.C.-Maryland-Virginia-West Virginia-Pennsylvania, Combined Statistical Area ("Washington CSA") and the Harrisonburg-Staunton-Waynesboro, Virginia, CSA. Limited scope evaluations were performed in the Charlottesville, Virginia, MSA and in Shenandoah County, Virginia.

noted that United Bank-Virginia was a leader in providing community development loans in the assessment area.

In the Commonwealth of Virginia, another area of concern to a commenter, United Bank-Virginia's performance under the Lending Test was rated "High Satisfactory." Examiners found that the bank's lending activity within the statewide market was consistent with the bank's capacity and that the bank offered a broad range of loan products to meet the needs of the statewide area. Examiners also noted that the bank's borrower distribution throughout the state was good and the geographic distribution of its loans was adequate.

With respect to the Investment Test, examiners found that the bank had a high level of participation in community development investments, showing responsiveness to community credit needs. Examiners noted that the bank made a number of investments to support affordable housing initiatives, as well as charitable donations to a variety of community development organizations that facilitate small business development, revitalize or stabilize LMI geographies, and focus on local job creation within the bank's assessment areas. In both the Washington, D.C., assessment area and Virginia, United Bank-Virginia's performance under the Investment Test was rated "High Satisfactory." Examiners in both areas found that the bank maintained a significant level of qualified investments that benefit the bank's market areas.

Examiners found United Bank-Virginia's delivery systems and branch locations to be accessible to all segments of the bank's assessment areas. Examiners noted that branch closings by the bank had not adversely affected LMI neighborhoods. Additionally, examiners noted that the bank engaged in a high level of community development services within its primary market areas. Overall, examiners noted that the bank showed a high level of support for affordable housing efforts, community services, and economic development within its assessment areas.

In the Washington, D.C., assessment area, examiners rated United Bank-Virginia's performance on the Service Test as "High Satisfactory." Examiners noted that the bank's delivery systems and branch locations were accessible to all segments of the assessment area and that the bank had a relatively high level of participation in qualified community development services benefiting the assessment area.

In Virginia, United Bank-Virginia's performance on the Service Test was rated as "Low Satisfactory." Examiners found that the bank's delivery systems in Virginia were reasonably accessible to all portions of United Bank-Virginia's market areas and to people of various income levels. Additionally, examiners noted that the products and services offered by United Bank-Virginia within Virginia were representative of those offered by the institution overall and that the bank's employees participated in an adequate level of community development activities involving the provision of financial expertise to organizations assisting in small business funding.

United Bank-Virginia's Efforts since the 2015 CRA Evaluation

United represents that United Bank-Virginia has taken steps to further strengthen its CRA performance since the United Bank-Virginia Evaluation. United Bank-Virginia asserts that it has continued to offer several special loan programs throughout its assessment areas that benefit LMI borrowers, small businesses, affordable housing projects, and other community development initiatives. Additionally, United Bank-Virginia represents that it has increased the number and dollar amount of donations to community development activities and social service organizations in its assessment areas, and that the bank's employees have volunteered by teaching financial literacy to students at 75 local schools.

CRA Performance of United Bank-West Virginia

United Bank-West Virginia received a "Satisfactory" CRA performance rating on its most recent CRA examination by the Reserve Bank, as of October 19, 2015 ("United Bank-West Virginia Evaluation").[35] The bank received ratings of "High Satisfactory" for the Lending Test, "Low Satisfactory" for the Investment Test, and "Outstanding" for the Service Test.

Examiners found that United Bank-West Virginia's overall lending levels were consistent with the bank's capacity and market presence. According to examiners, a high percentage of the institution's reported HMDA and small business loans was originated within the bank's assessment areas. Additionally, examiners noted that the geographic distribution of the bank's lending was excellent overall. Examiners also found that the bank's borrower distribution performance was good overall.

In the Washington, D.C., assessment area, Wheeling assessment area, the State of West Virginia, and the Commonwealth of Pennsylvania, examiners rated United Bank-West Virginia's performance on the Lending Test as "High Satisfactory." In the Washington, D.C., assessment area, examiners found that the bank's lending activity was consistent with the bank's capacity and helped to meet identified community credit needs. Additionally, examiners noted that the geographic distribution of the bank's lending was excellent, while the borrower distribution of loans was good. Examiners also noted that the bank originated a relatively high level of community development loans.

In the Wheeling assessment area, examiners found that the bank's lending activity was good and consistent with the bank's capacity and that it helped to meet identified credit needs. Examiners noted that the geographic and borrower lending distributions within the assessment area was good for each lending product reviewed. Additionally, examiners found that the bank originated an adequate level of community development loans within the assessment area.

In West Virginia and Pennsylvania, examiners found that the bank's lending activity in both states was consistent with the bank's capacity and that the bank offered a broad spectrum of loan products in an effort to meet local credit needs. Examiners noted that the geographic distribution of the bank's lending within the states was excellent and adequate, respectively, while borrower lending distribution was good. Additionally, examiners found that the bank was a leader in providing community development loans within the states.

As noted, United Bank-West Virginia's overall performance under the Investment Test was rated "Low Satisfactory." Examiners noted that the bank maintained an adequate level of qualified community development investments when considering the available opportunities for such investments. Examiners also noted that the bank had made charitable donations supporting organizations whose operations primarily support LMI individuals.

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[35] The United Bank-West Virginia Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage loans reported, pursuant to HMDA, and small business and small farm loans reported under CRA data collection requirements for 2013 and 2014. Examiners reviewed qualified community development loans that were originated from June 3, 2013, through October 19, 2015. The evaluation period for investments and services was June 3, 2013, through October 19, 2015.

The United Bank-West Virginia Evaluation included full-scope evaluations of the Washington CSA; the Wheeling, West Virginia-Ohio, CSA ("Wheeling assessment area"); the Charleston-Huntington-Ashland, West Virginia-Ohio-Kentucky, CSA; the Morgantown, West Virginia, MSA; the Braxton, West Virginia, nonmetropolitan statistical area; and the Pittsburgh, Pennsylvania, MSA. Limited scope evaluations were performed in the Beckley, West Virginia, MSA; the Parkersburg-Marietta-Vienna, West Virginia-Ohio, MSA; the Weirton-Steubenville, West Virginia-Ohio, MSA; and the Jackson, West Virginia, nonmetropolitan statistical area.

Examiners rated United Bank-West Virginia's performance under the Investment Test as "High Satisfactory" within the Washington, D.C., assessment area. Examiners found that the bank's level of qualified investments maintained good responsiveness in the assessment area. In the Wheeling assessment area, the State of West Virginia, and the Commonwealth of Pennsylvania, examiners rated the bank's performance under the Investment Test as "Low Satisfactory." In each of these geographical areas, examiners found that the bank maintained an adequate level of qualified investments.

Examiners found that United Bank-West Virginia's delivery systems and branch locations were readily accessible to all segments of the bank's assessment areas. Additionally, examiners noted that the bank was a leader in supporting community development services throughout its assessment areas.

In the Washington, D.C., assessment area and the Wheeling assessment area, examiners rated United Bank-West Virginia's performance in the Service Test as "High Satisfactory." Examiners noted that, in both areas, the bank's delivery systems and branch locations were readily accessible to all segments of the assessment area and that the bank had an adequate level of participation in qualified community development services benefiting the assessment area. In West Virginia, examiners rated the bank's performance in the Service Test as "Outstanding." Examiners found that the bank's delivery systems and branch locations were readily accessible to all segments of the bank's assessment area within the state. Additionally, examiners noted that the bank was a leader within its market areas in the state in providing community development services. In Pennsylvania, examiners rated the bank's performance in the Service Test as "High Satisfactory." Examiners found that the bank's delivery systems and branch locations were accessible to all segments of the bank's assessment area within the state. Additionally, examiners noted that the bank and its employees participated in a relatively high level of community development activities.

United Bank-West Virginia's Efforts since the 2015 CRA Evaluation

United represents that, since the United Bank-West Virginia Evaluation, the bank has significantly increased its community development investment levels. As noted, United Bank-West Virginia has formed partnerships in West Virginia to explore new investment opportunities and has made, or is in the process of finalizing, investments in West Virginia to support rural health development and in Pennsylvania to support the education of local LMI students.

CRA Performance of Cardinal Bank

Cardinal Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 28, 2015 ("Cardinal Bank Evaluation").[36] The bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.

Examiners found that the bank's overall lending levels reflected good responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of the bank's loans were made to borrowers within its assessment area. Overall, examiners found that the geographic distribution of the bank's loans reflected adequate penetration throughout the assessment area. Examiners found that the bank's distribution of

[36] The Cardinal Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed the bank's loans reported pursuant to the HMDA and the CRA for 2013, 2014, and the first two quarters of 2015. The evaluation period for the Investment Test and the Service Test was April 30, 2013, through September 29, 2015. The Cardinal Bank Evaluation included a full-scope evaluation of the Washington CSA.

borrowers reflected a good penetration among retail customers of different income levels. Additionally, examiners found that the bank used flexible lending practices in order to serve the assessment area's credit needs. Examiners noted that the bank made a relatively high level of community development loans and that these loans were responsive to the community's credit needs.

Examiners found that Cardinal Bank had a significant level of qualified community development investments and grants and that the bank occasionally acted in a leadership position for such investments. Examiners noted that the bank exhibited a good responsiveness to the credit and community economic development needs of its assessment area.

Examiners found Cardinal Bank's delivery systems to be accessible to essentially all portions of the bank's assessment area. Examiners noted that the bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems. Additionally, examiners noted that the bank's services did not vary in a way that inconvenienced portions of its assessment area or any group of individuals. Examiners also noted that the bank provided a relatively high level of community development services in its assessment area.

Additional Supervisory Reviews

The Board has considered the results of the most recent consumer compliance examinations of United Bank-Virginia and United Bank-West Virginia conducted by Reserve Bank examiners, which included a review of the banks' compliance risk-management program and the banks' compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated United Bank-Virginia's and United Bank-West Virginia's fair lending compliance management program, including the banks' fair lending-related policies, procedures, and limits; board and senior management oversight of the banks' fair lending management program; fair lending risk-monitoring and management information systems; and internal controls relating to fair lending.

The Board also has considered the results of a recent consumer compliance examination of Cardinal Bank conducted by FDIC examiners, which included a review of the bank's compliance risk-management program and the bank's compliance with consumer protection 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. United represents that it plans to continue its current offering of products and services upon consummation of the proposal. United also represents that existing customers of Cardinal Bank would have access to a more extensive complement of products and services than those currently available to them, including new or enhanced products and services in areas such as brokerage services, custody, trust and estate services, business checking products and services, cash management, government contract lending, and nonprofit services. Additionally, United asserts that customers of Cardinal Bank would benefit from a more expansive branch and ATM network. United also represents that existing customers of United Bank-Virginia would benefit from access to products and services offered by George Mason. United represents that the proposal would create an expanded product offering for first-time home buyers and provide additional opportunities for United Bank-Virginia's LMI customers.

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 provided by United, 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 considerations are consistent with approval.

The Board also expects United to continue to improve its performance under the investment tests in West Virginia and Pennsylvania and to ensure that its efforts to help meet the convenience and needs of the communities it serves are commensurate with its size, activities, and prominence in its communities.

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."[37]

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.[38] 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.[39]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that results in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[40]

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[37] 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).

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

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

[40] *See People's United Financial, Inc*., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Both the acquirer and the target are predominately engaged in a variety of retail commercial banking activities.[41] 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.

Establishment of Branches

United Bank-Virginia has applied under section 9 of the FRA to establish branches at the current locations of Cardinal Bank.[42] The Board has assessed the factors it is required to consider when reviewing an application under that section.[43] Specifically, the Board has considered United Bank-Virginia'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.[44] For the reasons discussed in this order, the Board finds these factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.[45]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

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[41] In each of the activities in which it engages, United 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.

[42] 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, 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 United Bank-Virginia's branches would be permissible under applicable state law. *See* D.C. Code §26-735(b); Md. Code, Com. Law §5-1003(a)(3); Va. Code Ann. §6.2-831.

[43] 12 U.S.C. § 322; 12 CFR 208.6.

[44] Upon consummation of the proposed transaction, United Bank-Virginia's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

[45] 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. 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. Notice of the proposal was published in the *Federal Register*on October 27, 2016, and in a relevant newspaper of general circulation (*The Washington Post*) on October 20, October 27, and November 10, 2016. The comment period ended on November 25, 2016. 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

Act, the Bank Merger Act, the FRA, and other applicable statutes. Approval of this proposal is specifically conditioned on compliance by UBI and UBV 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.

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 Reserve Bank acting under delegated authority.

By order of the Board of Governors, effective April 6, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix
Branches to Be Established by United

District of Columbia Branches

- 1776 K Street, NW
  Washington, DC 20006
- 1825 Wisconsin Avenue, NW
  Washington, DC 20007

Maryland Branches

- 7315 Wisconsin Avenue
  Bethesda, Maryland 20814
- 1807 Rockville Pike
  Rockville, Maryland 20852

Virginia Branches

- 1737 King Street
  Alexandria, Virginia 22207
- 4115 Annandale Road
  Annandale, Virginia 22207
- 5335 Lee Highway
  Arlington, Virginia 22207
- 2100 North Glebe Road
  Arlington, Virginia 22207
- 2505 Wilson Boulevard
  Arlington, Virginia 22201
- 6402 Williamsburg Boulevard
  Arlington, Virginia 22207
- 4300 Wilson Boulevard
  Suite 102
  Arlington, Virginia 22203

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.

Community Bank System, Inc.
DeWitt, New York

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2017-12 (April 26, 2017)

Community Bank System, Inc. ("Community"), Dewitt, New York, 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 Act[2] to acquire Merchants Bancshares, Inc. ("Merchants"), and thereby indirectly acquire Merchant's subsidiary bank, Merchants Bank, both of South Burlington, Vermont. Following the proposed acquisition, Merchants Bank would be merged into Community's subsidiary bank, Community Bank, N.A. ("Community Bank"), Canton, New York.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 92814 (December 20, 2016)).[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.

Community, with consolidated assets of approximately $8.7 billion, is the 142nd largest insured depository organization in the United States. Community controls approximately $7.1 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]Community controls Community Bank, which operates in New York and Pennsylvania.

Merchants, with consolidated assets of approximately $2.0 billion, is the 406th largest insured depository organization in the United States, controlling approximately $1.5 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Merchants controls Merchants Bank, which operates in Vermont and Massachusetts.

On consummation of the proposal, Community would become the 122nd largest insured depository organization in the United States, with consolidated assets of approximately $10.7 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Community would control total deposits of approximately $8.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Vermont, Community would become the 3rd largest insured depository organization, controlling deposits of approximately $1.3 billion, which represent approximately 11.1 percent of the total deposits of insured depository institutions in that state.[6] In Massachusetts, Community would become the 84th largest insured depository organization, controlling deposits of approximately $92.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. §§ 1842.

3 The merger of Merchants Bank into Community Bank is subject to 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 merger on April 6, 2017.

4 12 CFR 262.3(b).

5 Nationwide asset and deposit data are as of September 30, 2016, unless otherwise noted.

6 State deposit data are as of June 30, 2016, unless otherwise noted.

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, upon consummation of the proposed transaction, would 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 upon consummation would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[9]

For purposes of the BHC Act, the home state of Community is New York, and Merchants Bank's home state is Vermont.[10] Merchants Bank also operates in Massachusetts. Community is well capitalized and well managed under applicable law, and Community Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[11] Vermont has no statutory minimum age requirement,[12] and Massachusetts has none that applies to the proposed acquisition.[13]

On consummation of the proposed transaction, Community would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, there are no states in which Community and Merchants have overlapping banking operations, such that a state deposit cap would apply. The Board has considered all other requirements under section 3(d) of the BHC Act, including Community's record of meeting the credit needs of the communities it serves. 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.[14] 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 anticompetitive effects of the proposal are clearly outweighed in

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[7] 12 U.S.C. § 1842(d)(1)(A).

[8] 12 U.S.C. § 1842(d)(1)(B).

[9] 12 U.S.C. § 1842(d)(2)(A) and (B). 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* Vt. Stat. Ann. tit. 8, §§ 1051-1064, 17101-17202.

[13] *See* Mass. Gen. Laws ch. 167A, § 2.

[14] 12 U.S.C. § 1842(c)(1).

the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[15]

Community Bank and Merchants Bank do not compete directly in any banking market. Based on 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 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 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.

Community and Merchants are both well capitalized and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.[16] The asset quality, earnings, and liquidity of both Community Bank and Merchants Bank are consistent with approval, and Community 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 Community, Merchants, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Community, the Board's supervisory experiences with Community and Merchants 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.

Community, Merchants, and their subsidiary depository institutions are each considered to be well managed. Community has a record of successfully integrating organizations into its

[15] 12 U.S.C. § 1842(c)(1)(B).

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

operations and risk-management systems after acquisitions. The directors and senior executive officers of Community 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 Community's plans for implementing the proposal. Community 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. Community would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Community's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Community plans to integrate Merchants' existing management and personnel in a manner that augments Community's management.[17]

Based on all of the facts of record, including Community'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 Community and Merchants 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.[18] 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 currently 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,[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 records 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 institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

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[17] On consummation, two individuals currently serving as directors of Merchants will be added to the boards of directors of Community and Community Bank, and the current president and chief executive officer of Merchants will serve as the New England regional president of Community Bank.

[18] 12 U.S.C. § 1842(c)(2).

[19] 12 U.S.C. § 2901(b).

[20] 12 U.S.C. § 2903.

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 Merchants Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC, confidential supervisory information, information provided by Community, and the public comment received on the proposal.

Public Comment Regarding the Proposal

In this case, a commenter objected to the proposal on the basis of alleged disparities in the number of conventional home purchase loans, refinance home purchase loans, or home improvement loans offered to African American or Hispanic borrowers, as compared to white borrowers, by Community Bank in the Buffalo-Cheektowaga-Niagara Falls, New York, Metropolitan Statistical Area ("Buffalo/Niagara MSA") and the Syracuse, New York, Metropolitan Statistical Area ("Syracuse MSA") as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[21] for 2015. The OCC considered the same adverse comment in connection with its review of the underlying bank merger application.[22]

Business of the Involved Institutions and Response to Comment

Community Bank is a community banking franchise 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's lending portfolio includes residential mortgage loans, 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 and investment products, and trust services. Community Bank's branches are generally located in smaller towns and cities within its geographic market areas.

Merchants Bank maintains 31 full-service offices in Vermont and one full-service office in Springfield, Massachusetts. Merchants Bank offers products and services for business and retail consumers, including residential and commercial real estate loans, commercial business loans and leases, wealth management products, and other financial services.

In response to the comment, Community 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. Community 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, including 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.

Community argues that its lending record to minorities in the Buffalo/Niagara and Syracuse MSAs, as reflected in the 2015 HMDA data, is attributable to the low population of minorities in the communities in which its branches are located and is consistent with the

[21] 12 U.S.C. § 2801 *et seq*.

[22] 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.

fairly low level of minority mortgage loan applications that are processed by all HMDA reporting institutions in those MSAs generally. Community points to the CRA Performance Evaluation, conducted by the OCC in mid-2016, which reviewed the Buffalo/Niagara and Syracuse MSAs on a limited-scope basis and found that Community's lending performance in those areas was "not inconsistent" with Community's "good" lending performance in the assessment areas ("AAs") receiving a full-scope review. Community asserts that a comment on Community's acquisition of Oneida Financial Corp. ("Oneida") in 2015[23] raised the same issues, citing 2013 HMDA data with respect to the same areas.

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.[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 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 AAs; (2) the geographic distribution of the company's lending, including the proportion and dispersion of the institution's lending in its AAs 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;[26] (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.

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[23] *See Community Bank System, Inc*., FRB Order No. 2015-34 (November 18, 2015).

[24] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg*. 48506, 48548 (July 25, 2016).

[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 CFR228.22(b)(3).

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[27] 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 July 27, 2016 ("Community Bank Evaluation").[28] Community Bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.[29] 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 originated inside its AAs to loans originated outside its AAs. 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 Community Bank's flexible lending activity had a positive impact on the evaluation of its lending performance in New York. Specifically, in the Buffalo/Niagara and Syracuse MSAs, which were areas of concern for the commenter, examiners conducted a limited-scope review and found that Community Bank's lending performance was not inconsistent with its performance in the AAs receiving a full-scope review.

Examiners found Community Bank to have investments that reflected good responsiveness to the credit and community development needs of the bank's AAs. Examiners noted that the bank's investments in its AAs included investments in mortgaged-backed securities comprised of mortgage loans made to LMI individuals or to finance residences located in LMI neighborhoods, as well as investments in municipal bonds that supported the revitalization and stabilization of LMI tracts, middle-income census tracts designated as distressed or underserved, or designated federal disaster areas. In their limited-scope review of the Buffalo/Niagara and Syracuse MSAs, examiners found that Community Bank's investment performance was stronger in those areas than in the AAs receiving a full-scope review.

Examiners found that the bank's delivery systems were accessible to census tracts and individuals of different income levels throughout its AAs. Examiners also found that Community Bank's hours and services offered throughout its AAs were good, and services

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[27] Other data relevant to credit decisions could include credit histories, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners may analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[28] The Community Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and CRA data collection requirements from January 1, 2012, through December 31, 2015. The evaluation period for community development loans, investments, and services was from March 12, 2012, through July 26, 2016. As of the evaluation date, 14 of the bank's 17 AAs 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.

[29] Examiners conducted full-scope reviews of the Northern Region Non-MSA and Southern Region Non-MSA AAs 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 AAs, including the Buffalo/Niagara and Syracuse MSAs.

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. In their limited-scope review of the Community Bank's MSA AAs, examiners found that Community Bank's overall service test performance was weaker than in the non-MSA AAs receiving a full-scope review; however, in the Buffalo/Niagara and Syracuse MSAs, examiners found that Community Bank had branch distributions that were reasonably accessible to all portions of those AAs.

Community Bank's Activities since the Community Bank Evaluation

Community contends that, since the Community Bank Evaluation, it has made efforts to enhance its affordable housing products and programs designed to meet the needs of LMI individuals in its assessment areas. Specifically, Community asserts that it has recently expanded its U.S. Department of Agriculture ("USDA") Guaranteed Rural Housing Program coverage across its New York footprint, and it is making efforts to extend program coverage into Pennsylvania, Massachusetts, and Vermont, as well as Native American reservations. Community also asserts that it has expanded the number of loan officers it employs that are qualified to offer State of New York Mortgage Agency affordable housing program loans from five in 2015 to 39 at present. Additionally, Community represents that it is in the beginning stages of participating in lending programs through various community organizations.

Community asserts that it has expanded advertising efforts for its affordable housing programs across its footprint and specifically within the Syracuse MSA. Community represents that it has employed advertising campaigns across traditional media and with local Syracuse sports teams and transit systems in order to reach LMI and minority communities. In November 2016, Community Bank retained a mortgage loan originator whose focus is serving the credit needs in the Syracuse market, including local marketing and outreach.

Community also asserts that it has made efforts to strengthen its community development outreach, lending, and investments across its footprint. These efforts include developing relationships with and committing to make donations to LMI and minority community organizations. Community also asserts that it has made plans to continue offering the financial literacy programs that Merchants offers in Vermont after consummation of the proposal.

CRA Performance of Merchants Bank

Merchants Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of February 17, 2015 ("Merchants Bank Evaluation").[30]The bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.

Examiners found that Merchants Bank's lending levels reflected good responsiveness to credit needs within its AAs, considering the size of the institution, loan portfolio composi-

[30] The Merchants Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and CRA data collection requirements from January 1, 2013, through December 31, 2014. The evaluation period for community development loans, investments, and services was from November 14, 2011, through February 17, 2015. The Merchants Bank Evaluation included a full-scope review of Merchants Bank's combined AA, including the MSA and non-MSA portions. The bank's performance in its non-MSA AA received more weight in the overall performance conclusions and ratings since it represented a larger geographic area and contained a higher lending volume than the MSA AA.

tion, and level of competition within the combined AA. Examiners found that the bank had excellent distribution of home mortgage lending and a good distribution of small business lending among the AAs' low- and moderate-income census tracts. The bank demonstrated good penetration of loans to borrowers of different income levels, particularly low- and moderate-income individuals and businesses of different sizes, especially those with gross annual revenues of $1 million or less. Additionally, examiners noted that the bank made a relatively high level of community development loans. Overall, Merchants Bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its combined AA, consistent with safe and sound business practices.

Examiners found Merchants Bank to have made investments that reflected good responsiveness to the credit and community development needs of the bank's combined AA. Examiners noted that the bank's investments included a significant level of qualified community development investments and grants. In addition to making traditional equity investments, the bank made new investments in federal New Market Tax Credits and state affordable housing tax credits, partnered with a community development financial institution and a small business investment company, and made qualified donations to organizations involved in affordable housing and community and economic development.

Examiners found that the bank's delivery systems were accessible to essentially all portions of the bank's combined AA. Examiners also found that Merchants Bank's hours were comparable to other local institutions and its hours and services did not vary in a way that inconveniences any portion of the combined AA, particularly low- and moderate-income geographies and individuals. Examiners further noted that the bank provided a relatively high level of community development services, particularly in the area of financial literacy.

Views of the OCC

In its review of the proposal, the Board consulted with the OCC regarding Community Bank's CRA, consumer compliance, and fair lending records. The OCC reviewed the bank merger underlying this proposal, including the comment received by the Board.

The Board has considered the results of the most recent consumer compliance examination of Community Bank conducted by OCC examiners. The Board also has considered the results of the OCC's most recent examination of Community Bank's compliance with the Equal Credit Opportunity Act[31] and the Fair Housing Act.[32]

The Board also consulted with the OCC regarding Community Bank's compliance with conditions imposed by the OCC in connection with Community's 2015 acquisition of Oneida and the related merger of Oneida Savings Bank into Community Bank.[33] As a condition of approval of the bank merger application, the OCC required that Community Bank create a CRA AA Delineation Policy and modify its AAs in accordance with that policy.

The Board has taken these consultations with the OCC and the information discussed above into account in evaluating this proposal, including in considering whether Community has the experience and resources to ensure that the organization effectively implements

[31] 15 U.S.C. § 1692 *et seq*.

[32] 42 U.S.C. § 3601 *et seq*.

[33] In its order approving the Oneida acquisition, the Board conveyed its expectation that Community ensure that Community Bank comply with the conditions imposed by the OCC. *See Community Bank System, Inc*., FRB Order No. 2015-34 (November 18, 2015).

policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. Community represents that, as a result of the proposal, existing customers of Merchants Bank would have access to additional or expanded services, due to an expanded network of branch and ATM locations in its market areas. Upon consummation of the bank merger, Community Bank would offer the former depositors of Merchants Bank its products and services. Community Bank has represented that such products and services are enhanced with respect to areas such as consumer loans, overdraft lines of credit, agricultural lending, and small business lending. Community 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 communities in its market areas. Community Bank also represents that, on balance, no significant reductions in products or services would be expected as a result of the proposal.[34]

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, confidential supervisory information, information provided by Community, 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.

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 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,

[34] Merchants Bank currently offers affordable housing loans through the Federal Housing Administration and the Department of Veterans Affairs. While Community Bank does not plan to continue offering such loans after consummation of the proposal, it plans to offer affordable housing loans through Fannie Mae, the USDA, and its own affordable housing program.

[35] Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), 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.

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's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that results in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[38]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.[39] 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 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.[40] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the

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

[38] *See People's United Financial, Inc*., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

[39] Both Community and Merchants primarily engage in retail and commercial banking activities, and Community would continue to have a small market share following the proposed transaction.

[40] 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. 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. In addition, a commenter requested an extension of the comment period for 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

BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Community 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 New York, acting under delegated authority.

By order of the Board of Governors, effective April 26, 2017.

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

Ann E. Misback
Secretary of the Board

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 determines not to extend the comment period.

Simmons First National Corporation
Pine Bluff, Arkansas

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2017–13 (April 28, 2017)

Simmons First National Corporation ("Simmons"), Pine Bluff, Arkansas, 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 Act[2] to merge with Hardeman County Investment Company, Inc. ("Hardeman"), and thereby indirectly acquire First South Bank, both of Jackson, Tennessee.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 86714 (December 1, 2016)).[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.

Simmons, with consolidated assets of approximately $8.4 billion, is the 147th largest insured depository organization in the United States. Simmons controls 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.[4] Simmons controls Simmons Bank, Pine Bluff, Arkansas, which operates in Arkansas, Kansas, Missouri, and Tennessee. Simmons is the 12th largest insured depository organization in Tennessee, controlling deposits of approximately $1.9 billion in Tennessee, which represent 1.4 percent of the total deposits of insured depository institutions in that state.[5]

Hardeman, with consolidated assets of approximately $477.4 million, is the 1463rd largest insured depository organization in the United States, controlling approximately $396.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Hardeman controls First South Bank, which operates only in Tennessee. Hardeman is the 54th largest insured depository organization in Tennessee, controlling deposits of approximately $379.4 million, which represent less than 0.3 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Simmons would become the 140th largest insured depository organization in the United States, with consolidated assets of approximately $8.9 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Simmons would control consolidated deposits of approximately $7.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Tennessee, Simmons would become the 9th largest insured depository organization, controlling deposits of approximately $2.3 billion in Tennessee, which represent 1.7 percent of the total deposits of insured depository institutions in that state.

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 12 CFR 262.3(b).

4 National asset and deposit data are as of December 31, 2016, unless otherwise noted.

5 State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

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 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 any state in which the acquirer and target have overlapping banking operations.[8]

For purposes of the BHC Act, the home state of Simmons is Arkansas, and the home state of First South Bank is Tennessee.[9] Simmons is well capitalized and well managed under applicable law, and Simmons Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[10] Tennessee has a three-year minimum age requirement, and First South Bank has been in existence for more than three years.[11]

On consummation of the proposed transaction, Simmons would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Tennessee imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[12] The combined organization would control approximately 1.7 percent of the total amount of deposits of insured depository institutions in Tennessee, the only state in which Simmons and Hardeman have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including Simmons's record of meeting the credit needs of the communities it serves. 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 anticompetitive effects of the proposal are clearly outweighed in

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[6] 12 U.S.C. § 1842(d)(1)(A).

[7] 12 U.S.C. § 1842(d)(1)(B).

[8] 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C.§1841(o)(4)–(7).

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

[10] 12 U.S.C. § 2901 *et seq*.

[11] *See* Tenn. Code Ann. § 45-2-1403(a).

[12] *See* Tenn. Code Ann. § 45-2-1404.

the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[13]

Simmons and Hardeman have subsidiary depository institutions that compete directly in the Dyersburg, Tennessee, banking market ("Dyersburg market"), the Jackson, Tennessee, banking market ("Jackson market"), and the Memphis, Tennessee, banking market ("Memphis market").[14] 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 markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that Simmons 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 for the Dyersburg, Jackson, and Memphis markets. Although the Dyersburg market would remain highly concentrated on consummation of the proposal, the increase in the HHI would not be large (91 points). Simmons would become the third largest depository organization in the market, with a market share only about 4 percentage points higher than Hardeman, which is the third largest depository organization prior to consummation of the proposal. Five competitors would remain in the market, including two depository organizations with a higher market share than Simmons. The largest depository organization in the market would control over 50 percent of market deposits.

On consummation of the proposal, the Jackson and Memphis markets would remain moderately concentrated, as measured by the HHI. Numerous competitors would remain in the Jackson and Memphis markets.[17]

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[13] 12 U.S.C. § 1842(c)(1).

[14] The Dyersburg market is defined as Dyer and Lake counties, both of Tennessee. The Jackson market is defined as Chester, Crockett, Gibson, Haywood, Madison, and Henderson (minus District 7) counties, all of Tennessee. The Memphis market is defined as Fayette, Shelby, and Tipton counties, all of Tennessee; city of Grand Junction in Hardeman County, Tennessee; Crittenden County, Arkansas; Benton, De Soto, Marshall, Tate, and Tunica counties, all of Mississippi; the northern part of Coahoma County, Mississippi (including the cities of Friars Point, Coahoma, Lula, and Jonestown); Panola County, Mississippi (north of State Route 315 east to Sardis Lake, including the city of Sardis); and Quitman County, Mississippi (north of State Route 315, including the cities of Birdie and Sledge).

[15] Deposit and market share data are as of June 30, 2016, and unless otherwise noted, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors 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), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[17] Simmons operates the 5th largest depository institution in the Dyersburg market, controlling approximately $30.3 million in deposits, which represent approximately 4.3 percent of market deposits. Hardeman operates the 3rd largest depository institution in the same market, controlling approximately $75.3 million in deposits, which represent approximately 10.6 percent of market deposits. On consummation of the proposed transaction,

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 Dyersburg, Jackson, and Memphis markets. 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 Dyersburg, Jackson, or Memphis banking 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 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 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 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.

Simmons and Hardeman 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 share exchange.[18] The asset quality, earnings, and liquidity of Simmons Bank and First South Bank are consistent with approval, and Simmons appears to have adequate resources to absorb the costs of the

Simmons would become the 3rd largest depository institution in the market, controlling deposits of approximately $105.6 million, which represent approximately 15 percent of market deposits. The HHI for the Dyersburg market would increase by 91 points to 3934, and 5 competitors would remain in the market.

Simmons operates the 5th largest depository institution in the Jackson market, controlling approximately $274.0 million in deposits, which represent approximately 8 percent of market deposits. Hardeman operates the 7th largest depository institution in the same market, controlling approximately $191.5 million in deposits, which represent approximately 5 percent of market deposits. On consummation of the proposed transaction, Simmons would become the 3rd largest depository institution in the market, controlling deposits of approximately $465.6 million, which represent approximately 13 percent of market deposits. The HHI for the Jackson market would increase by 80 points to 1066, and 23 competitors would remain in the market.

Simmons operates the 40th largest depository institution in the Memphis market, controlling approximately $77.8 million in deposits, which represent less than 1 percent of market deposits. Hardeman operates the 53rd largest depository institution in the same market, controlling approximately $11.5 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Simmons would become the 37th largest depository institution in the market, controlling deposits of approximately $89.3 million, which represent less than 1 percent of market deposits. The HHI for the Memphis market would increase by less than one point, and 57 competitors would remain in the market.

[18] At the time of the merger, each share of Hardeman common stock would be converted into the right to receive cash and Simmons common stock based on an exchange ratio. Simmons has the financial resources to fund the transaction.

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 Simmons, Hardeman, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by Simmons; 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 the commenter.

Simmons, Hardeman, and their subsidiary depository institutions are each considered to be well managed. Simmons has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Simmons's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and Simmons's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Simmons's plans for implementing the proposal.[19] Simmons 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. Simmons does not anticipate making significant changes to its existing risk-management policies, procedures, and controls. These are considered acceptable from a supervisory perspective and would be implemented at the combined organization. In addition, Simmons's and Hardeman's management have the experience and resources to operate the combined organization in a safe and sound manner, and Simmons plans to integrate Hardeman's existing management and personnel in a manner that augments Simmons's management.[20]

Based on all the facts of record, including Simmons's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and public comments on the proposal,[21] 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 Simmons and Hardeman 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

[19] Simmons plans to operate First South Bank as a separate entity for an interim period following consummation of the holding company merger. After the interim period, Simmons anticipates merging First South Bank with and into Simmons Bank.

[20] On consummation, four individuals currently serving as senior management officials at Hardeman or First South Bank will serve as senior management officials at the Simmons banking organization. These individuals include Hardeman's current president and chief executive officer, who will be retained as the Jackson community chairman of Simmons Bank.

[21] A commenter questioned how Simmons plans to reduce Hardeman's annual non-interest expenses upon consummation of the proposal. As explained above, the Board considered Simmons's plans for operating the combined organization upon consummation and determined that those plans would not present financial, managerial, or safety and soundness concerns.

[22] 12 U.S.C. § 1842(c)(2).

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,[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, in evaluating bank expansionary proposals.[24]

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 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 Simmons Bank and First South Bank, the fair lending and compliance records of both banks, the supervisory views of the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, information provided by Simmons, and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

In this case, the Board received comments from a commenter objecting to the proposal on the basis of alleged disparities in the rates at which Simmons denied applications for conventional home purchase loans by Africans Americans, as compared to whites, in the Little Rock, Arkansas, Metropolitan Statistical Area ("Little Rock MSA") and the Memphis, Tennessee-Mississippi-Arkansas, Metropolitan Statistical Area ("Memphis MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA") for 2015. In addition, the commenter alleged that Simmons's HMDA reporting record is not credible and does not accurately reflect its loan denial rates.[25]

Businesses of the Involved Institutions and Response to Comments

Simmons Bank offers a broad range of retail and commercial banking products to consumers and businesses. Through its network of branches across Arkansas, Kansas, Missouri, and Tennessee, the bank offers a variety of banking products including commercial, residential, agricultural, and consumer loans, personal checking and savings accounts, business checking and savings accounts, money market accounts, cash management products and services, credit cards, merchant services, and wealth management services.

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[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

[25] The commenter also cited an anonymous customer complaint posted to a public online forum in 2015 that alleged problems with Simmons Bank's overdraft and return policies and expressed concern over the fees that were allegedly charged by the bank on the customer's account. As part of its review of this proposal, the Board considered information collected by the Federal Reserve Bank of St. Louis regarding the customer complaint and Simmons Bank's overdraft and return fee programs.

First South Bank offers a more limited range of retail and commercial products through 10 branches in Tennessee, including deposit and loan products, debit cards, mobile phone banking, bill pay, and internet banking.

In response to the comments, Simmons represents that its HMDA and CRA data integrity are regularly verified through internal auditing reviews and regulatory examinations, and that regulatory compliance is an integral component of Simmons Bank's operating plan. Simmons also represents that an analysis of Simmons Bank's geographic and demographic lending activity is performed at least once annually and Simmons Bank retains appropriate documentation relating to its CRA program.

In addition, Simmons argues that the 2015 HMDA data referenced by the commenter does not fairly represent Simmons Bank's lending activities in the Little Rock MSA and the Memphis MSA, and that the bank's lending is fully compliant with all applicable CRA and fair lending requirements. Simmons asserts that the denial rates referenced by the commenter reflect determinations based on an applicant's credit history, debt-to-income ratios, insufficient collateral, and other nondiscriminatory factors. Simmons asserts that the bank continues to enhance its CRA program by increasing its marketing efforts toward LMI borrowers and developing more lending products, such as the Affordable Advantage Mortgage program (the "Mortgage Program"). The Mortgage Program, designed by Simmons Bank in 2015, has flexible qualifying and underwriting guidelines that target LMI census tracts and LMI borrowers, including those in the Little Rock and Memphis MSAs.

Simmons states that, in the Little Rock MSA, it has significantly increased its conventional home purchase lending to African Americans from 2015 to 2016, as reflected in Simmons Bank's 2016 HMDA data. Simmons represents that the number of conventional home purchase loan applications received and originated from African Americans during the 2016 HMDA review period increased substantially, as compared to the prior year. Simmons attributes these increases to the Mortgage Program, which it began offering in certain markets in 2015. Simmons represents that the Mortgage Program features flexible qualifying and underwriting guidelines and is specifically designed to increase the bank's home purchase and home refinance lending to LMI borrowers and communities.

In the Memphis MSA, Simmons asserts that disparities in Simmons Bank's lending record to African Americans, as reflected in 2015 HMDA data, are attributable to the bank entering the MSA in 2015 through an acquisition. As a result, Simmons asserts that it had a limited presence in the MSA during the 2015 HMDA review period and received few conventional home purchase loan applications from African Americans. However, Simmons represents that it has since taken steps to increase its lending to LMI and minority borrowers by extending the availability of its Mortgage Program to the Memphis MSA.

As part of Simmons's efforts to continue to enhance its CRA program, Simmons represents that it has established lending benchmarks for its full-scope and limited-scope markets, including community development lending benchmarks, and diversified investment goals and community development service goals at the branch level. To assist in the marketing of its products to LMI borrowers, Simmons represents that it has employed CRA mortgage lenders in the Little Rock and Memphis MSAs.

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 applicant's response to the comments. 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.[26] In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of St. Louis ("Reserve Bank"), the FDIC, and 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.[27] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's 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 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;[28] (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.[29] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

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[26] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[27] 12 U.S.C. § 2906.

[28] 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).

[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.

CRA Performance of Simmons Bank

Simmons Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of January 2, 2013 ("Simmons Bank Evaluation").[30] The bank received "Low Satisfactory" ratings for both the Lending Test and Investment Test and a "High Satisfactory" rating for the Service Test.[31]

Examiners found that Simmons Bank's overall lending levels reflected adequate responsiveness to credit needs in its assessment areas. According to examiners, the bank originated a substantial majority of loans within its assessment areas, and the distribution of its loans across income levels and businesses of different sizes was adequate. In particular, examiners found that the bank's overall distribution of home mortgage loans to geographies of different income levels was adequate.

In Arkansas, Simmons Bank's performance under the Lending Test was rated "Low Satisfactory." Examiners found that the bank's overall geographic distribution of home mortgage loans was adequate, and its overall geographic distribution of small loans to businesses and farms was good. The bank was found to offer flexible loan programs, including for home mortgage and farm loans. In the Little Rock MSA, an area of concern for the commenter, the bank's lending volume was considered adequate.

With respect to the Investment Test, examiners found that Simmons Bank had an overall adequate level of qualified investments based on the investment opportunities and dollar volume of investments made in its assessment areas. In Arkansas, the bank received a "Low Satisfactory" rating for the Investment Test. In the Little Rock MSA, examiners concluded that the bank's level of qualified investments was poor.

As noted, Simmons Bank received a "High Satisfactory" rating for the Service Test. Examiners found the bank's delivery systems to be accessible to all sections of its assessment areas, including to individuals of different income levels. Examiners noted that, overall, the bank provided a good level of community development services in the areas in which the bank maintained an ongoing presence, including by providing technical assistance to programs that support affordable housing, small businesses, and economic development in LMI geographies.

In Arkansas, Simmons Bank received a "High Satisfactory" rating for the Service Test. Examiners noted that the bank's retail branch distribution in Arkansas was good and that the bank provided a good level of community development services. In the Little Rock MSA, examiners found the bank's branch delivery systems to be adequate and reasonably accessible to geographies and individuals of different income levels.

Simmons Bank's Efforts since the Simmons Bank Evaluation

Simmons represents that, since the Simmons Bank Evaluation, Simmons Bank has made significant efforts to enhance its ability to serve the credit needs of the communities it

[30] The Simmons Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The examiners reviewed home purchase, home improvement, and home refinance mortgage loans reported pursuant to the HMDA, and small loans made to businesses and farms reported under CRA data-collection requirements, for 2009 through 2011. The evaluation period for community development lending, investments, and services was September 30, 2008, through January 2, 2013.

[31] The Simmons Bank Evaluation included full-scope evaluations of the Fort Smith, Arkansas-Oklahoma Multistate MSA; the Little Rock-North Little Rock, Arkansas MSA; the Pine Bluff, Arkansas MSA; non-Metropolitan Arkansas (comprised of Searcy, Stone, and Van Buren counties); the Kansas City, Kansas-Missouri Multistate MSA; the Wichita, Kansas MSA; and the Springfield, Missouri MSA. Limited-scope evaluations were performed in Fulton and Sharp counties, both of Arkansas, and Saline County of Kansas.

serves. These efforts include hiring a full-time, experienced, CRA officer, completing two self-assessment examinations, offering a wider variety of Small Business Administration loans, and enhancing its CRA performance monitoring compliance systems. In addition, Simmons notes that it created a Community Development Department and established a CRA Strategic Plan in 2014 to better address its expanding CRA obligations.

The CRA Strategic Plan applies to all markets in which Simmons Bank operates, including the Little Rock and Memphis MSAs. Simmons represents that it reviews and revises its CRA Strategic Plan annually to reflect the bank's expanding line of financial products as well as the increased number of deposit and loan products being offered by Simmons within its markets. For example, Simmons notes that in 2015 it created internal CRA performance benchmarks and in 2016 it enhanced the bank's CRA goals by establishing specific lending benchmarks, community development lending benchmarks, a diversified investment goal, and community development services goals at the branch level.

In addition, Simmons represents that it has established community advisory committees across Arkansas, Tennessee, and Missouri. These committees are comprised of LMI service providers that represent a variety of groups, including public housing authorities and non-profit organizations. Simmons further represents that these advisory committees provide it with an additional platform to identify ways to serve the communities in which Simmons serves.

In the Little Rock MSA, Simmons represents that it has expanded its CRA activities as part of broader improvements to its CRA program. Simmons further represents that its employees actively support a variety of community development initiatives in the Little Rock MSA, including through efforts to promote affordable housing, community economic development, and financial literacy. Furthermore, Simmons notes that, in 2015 and 2016, Simmons Bank provided several grants to support affordable housing initiatives in the Little Rock MSA. With respect to the Memphis MSA, Simmons notes that it entered the market in 2015 through an acquisition and first developed CRA performance goals for the market in 2016. These initiatives include developing an affordable home-improvement mortgage product that will be marketed to communities in Memphis and providing financial literacy training to small businesses. Simmons states that it expects to continue its existing CRA activities in the Little Rock and Memphis MSAs after consummation of the proposal. Simmons notes that it continues to evaluate its marketing activities in an effort to identify more effective ways to reach LMI individuals and communities.

CRA Performance of First South Bank

First South Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 12, 2016 ("First South Bank Evaluation"),[32] with ratings of "Satisfactory" for the Lending Test and "Outstanding" for the Community Development Test.[33]

Examiners concluded that First South Bank exhibited a satisfactory overall record with respect to the Lending Test. Examiners noted that a majority of the bank's small business

[32] The First South Bank Evaluation was conducted using the Interagency Intermediate Small Institution Examination Procedures. Examiners reviewed small business loans from the 2015 calendar year. Examiners reviewed home mortgage loans reported pursuant to HMDA data-collection requirements (geographic distribution and borrower distribution) from 2014 through June 30, 2016. The evaluation period for community development loans, investments, and services was from March 4, 2014, through September 12, 2016.

[33] The First South Bank Evaluation included a full-scope evaluation of the Madison County assessment area in the Jackson, Tennessee MSA, and a limited-scope evaluation of the Tennessee Non-MSA (consisting of Dyer, Hardeman, and Haywood counties).

and home mortgage loans, by number and dollar volume, were made in its assessment areas. Examiners found that the distribution of the bank's borrowers reflected reasonable penetration among individuals of different income levels and businesses of different sizes, and the geographic distribution of its loans reflected reasonable dispersion for the bank as a whole.

In addition, examiners concluded that First South Bank demonstrated excellent responsiveness to community development needs in its assessment areas through a combination of community development loans, qualified investments, and community development services. Examiners found that the bank's community development loans demonstrated adequate responsiveness to the community development needs of its assessment areas. In addition, examiners found that the bank demonstrated an excellent record of making qualified investments, as reflected in the relative volume of its investments and the responsiveness of those investments in meeting community development needs. Examiners also found that the bank provided an excellent level of community development services relative to its resources, including to community organizations that primarily provide services to LMI individuals. Examiners noted that First South Bank maintained banking hours and services that are typical for the industry and areas that it serves. In addition, the bank offered alternative delivery systems such as mobile and online banking.

Additional Supervisory Views

In 2016, Simmons Bank changed from a national bank to a state member bank, resulting in the Reserve Bank becoming the bank's primary supervisor. As part of Simmons Bank's conversion, the Reserve Bank carried out a pre-membership examination. Since Simmons Bank became a state member bank, the Reserve Bank has performed targeted exams of the bank's consumer compliance program. The Board has considered the results of these examinations as well as Simmons Bank's record of complying with fair lending and other consumer protection laws.

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. Simmons represents that it plans to continue its current offering of products and services after consummation of the proposal. In addition, Simmons represents that it plans to operate First South Bank as a separate entity for an interim period of time prior to scheduling the merger of First South Bank with and into Simmons Bank. During the interim period, Simmons anticipates that both banks would continue to offer their legacy products and services. Simmons notes that customers of First South Bank could be referred to branches of Simmons Bank for access to Simmons's broader offering of products and services. According to Simmons, such referrals could occur upon a customer's request or if a customer is identified as a candidate for products and services only offered by Simmons.

Upon completion of the bank merger and systems conversion, Simmons represents that its products and services would become available to customers of First South Bank at that bank's former locations. Simmons represents that many of these products and services have more flexible features than those currently offered by First South Bank. These include credit card products, signature guarantees, and Simmons Bank's "Positive Pay" anti-fraud account reconciliation service. In addition, Simmons asserts that customers of First South Bank would benefit from a more expansive branch and ATM network located across four states.

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 provided by Simmons, 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 a proposal's risk "to the stability of the United States banking or financial system."[34]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[35] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[36]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that results in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[37]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that has less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of retail commercial

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

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

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

[37] *See People's United Financial, Inc*., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

banking activities.[38] 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.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal 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 and other applicable statutes. Approval of this proposal is specifically conditioned on compliance by Simmons 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.

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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective April 28, 2017.

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

Ann E. Misback
Secretary of the Board

[38] In each of the activities in which it engages, Simmons 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.

[39] The commenter requested that the Board hold a public hearing or meeting 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 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 on the proposal is denied.

Sunflower Reincorporation Sub, Inc.
Salina, Kansas

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. 2017-14
(June 2, 2017)

Sunflower Reincorporation Sub, Inc. ("FirstSun"),[1] a wholly owned subsidiary of Sunflower Financial, Inc. ("Sunflower"), a financial holding company, has requested the Board's approval under section 3 of the Bank Holding Company Act of 1956 ("BHC Act")[2] to become a bank holding company by merging with Sunflower and thereby indirectly acquiring Sunflower Bank, National Association ("Sunflower Bank"), all of Salina, Kansas.[3]

In addition, FirstSun has requested the Board's approval under section 3 of the BHC Act to acquire Strategic Growth Bank Incorporated and Strategic Growth Bancorp Incorporated (collectively, "Strategic"), both financial holding companies of El Paso, Texas, and thereby indirectly acquire Capital Bank, SSB ("Capital Bank"), El Paso, Texas, and First National Bank of Santa Fe ("First National Bank"), Albuquerque, New Mexico. Following the proposed holding company mergers, Capital Bank and First National Bank would be merged into Sunflower Bank.[4] FirstSun 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.[5]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 72055 (October 19, 2016)) in accordance with the Board's rules.[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 section 3 of the BHC Act.

Sunflower, with consolidated assets of approximately $1.9 billion, is the 411th largest insured depository organization in the United States. Sunflower controls approximately $1.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] Sunflower controls Sunflower Bank, which operates in Colorado, Kansas, and Missouri. Sunflower Bank is the 32nd largest insured depository institution in Colorado, controlling deposits of approximately $349.7 million, which represent 0.29 percent of the total deposits of insured depository institutions in that state.[8]

Strategic, with consolidated assets of approximately $2.2 billion, is the 374th largest insured depository organization in the United States. Strategic controls approximately

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1 The application was submitted, and notice of the proposal published, under the name Sunflower Reincorporation Sub, Inc. Subsequently, the name of this entity was changed to FirstSun Capital Bancorp.

2 12 U.S.C. § 1842.

3 FirstSun would survive the merger.

4 The merger of Capital Bank and First National Bank with and into Sunflower 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). The OCC approved the merger on November 10, 2016.

5 12 U.S.C. §§ 1843(k) and (*l*); 12 CFR 225.82.

6 12 CFR 262.3(b).

7 National asset and deposit data are as of December 31, 2016, unless otherwise noted.

8 State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

$1.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Strategic controls Capital Bank, which operates in Texas, and First National Bank, which operates in Colorado and New Mexico. First National Bank is the 31st largest insured depository institution in Colorado, controlling deposits of approximately $356.6 million, which represent 0.29 percent of the total deposits in that state.

On consummation of this proposal, FirstSun would become the 240th largest depository organization in the United States, with consolidated assets of approximately $4.0 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. FirstSun would control consolidated deposits of approximately $3.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Colorado, FirstSun would become the 25th largest depository institution, controlling deposits of approximately $706.2 million, which represent 0.58 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.[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 less than 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, upon consummation of the proposed transaction, would 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 upon consummation would 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 FirstSun is Kansas, the home state of Capital Bank is Texas, and the home state of First National Bank is New Mexico.[12] Upon consummation of the transactions, FirstSun would be well capitalized and well managed under applicable law, and Sunflower Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[13] There are no minimum age requirements under the laws of Texas or New Mexico that apply to FirstSun's acquisition of Strategic's subsidiary banks.[14]

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[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 national bank's home state is the state in which the main office of the bank is located.

[13] 12 U.S.C. § 2901 *et seq*.

[14] *See* Tex. Fin. Code Ann. § 203.003; N.M. Stat. Ann. § 58-26-4.

On consummation of the proposed transactions, FirstSun 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 Colorado, the only state in which FirstSun and Strategic have overlapping banking operations. The Board has considered all other requirements applicable under section 3(d) of the BHC Act, including Sunflower's record of meeting the convenience and needs of the communities it serves. 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.[15] 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 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]

Sunflower and Strategic have subsidiary depository institutions that compete directly in the Denver-Boulder, Colorado, banking market ("Denver market").[17] The Board has considered the competitive effects of the proposal in this banking market. 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 FirstSun 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 market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Denver market. On consummation of the proposal, the Denver market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in this market would be small, and numerous competitors would remain in the banking market.[20]

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[15] 12 U.S.C. § 1842(c)(1).

[16] 12 U.S.C. § 1842(c)(1)(B).

[17] The Denver market is defined as the Denver metropolitan area in Boulder County, portions of Adams and Arapahoe counties, and the towns of Frederick and Keenesburg in Weld County, all in Colorado.

[18] Local deposit and market share data are as of June 30, 2016, 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).

[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), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[20] Sunflower operates the 48th largest depository institution in the Denver market, controlling approximately $56.6 million in deposits, which represent 0.07 percent of market deposits. Strategic operates the 23rd largest

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. 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 Denver 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.[21] 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 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 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.

Sunflower and Strategic are both well capitalized, and FirstSun would become so on consummation of the proposed transactions. The proposed transactions are structured primarily as stock exchanges.[22] The asset quality, earnings, and liquidity of Sunflower Bank, Capital Bank, and First National Bank are consistent with approval, and FirstSun appears to have adequate resources to absorb the costs of the proposals 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, as well as public comments received on the proposals. In this case, the Board received two comments objecting to the proposals based on concerns regarding the management of Sunflower and Strategic and the future manage-

depository institution in the same market, controlling deposits of approximately $333.1 million, which represent about 0.40 percent of market deposits. On consummation of the proposed transaction, FirstSun would become the 23rd largest depository organization in the market, controlling deposits of approximately $389.7 million, which represent approximately 0.47 percent of market deposits. The HHI for the Denver market would increase by less than 1 point and remain at 1295, and 75 competitors would remain in the market.

[21] 12 U.S.C. §§ 1842(c)(2), (5), and (6).

[22] To effect the transactions, Sunflower would first merge with and into FirstSun, with shares of Sunflower primarily being converted into the right to receive shares of FirstSun, based on an exchange ratio. Immediately following Sunflower's merger with FirstSun, Strategic would merge with and into FirstSun. To effect this transaction, shares of Strategic will primarily be converted into the right to receive shares of FirstSun, based on an exchange ratio. Because the shares issued as part of the mergers will not be registered under the Securities Act of 1933, shareholders who are not accredited investors, as defined in section 4(a)(2) of the Act and Rule 506 of the Securities Exchange Commission's Regulation D, would receive cash rather than stock. FirstSun has the financial resources to fund the transaction.

ment of FirstSun. The commenters primarily focused on the roles and managerial abilities of two individuals, both of whom would be members of the future management of FirstSun.

In particular, commenters expressed concerns regarding an individual who currently serves as a consultant to Sunflower, alleging that this individual has exceeded their role as a consultant and has been responsible for major decisions at Sunflower. Based on this individual's experience with other financial institutions, commenters also expressed concerns regarding this individual's managerial abilities. Commenters also expressed concerns regarding the managerial abilities and character of a current executive officer of Sunflower. One commenter also expressed concern that the management of Sunflower has taken control of Strategic prior to the Board's approval.

In considering the managerial resources of the institutions involved, the Board considered information provided by commenters, the relevant institutions, and the individuals. Sunflower and Strategic represent that the officers and directors of Strategic have continued to carry out their duties at Strategic during the pendency of the application without control by Sunflower. The management of Sunflower also asserts that its management, and not the consultant, has retained all authority to make decisions at Sunflower, including the authority to commit Sunflower to any transactions and to approve risk management limits and controls. Sunflower represents that the consultant's role is confined to supporting operational and strategic planning at Sunflower.

In evaluating the managerial resources and character of the proposed management of FirstSun, the Board also has taken account of confidential supervisory information regarding Sunflower and Strategic and the individuals, as well as other regulators' supervisory experiences with the principals of Sunflower and Strategic. The Board also has considered the institutions' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws. In particular, the Board has reviewed the examination records of Sunflower, Strategic, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered both its supervisory experiences with the individuals referenced by the commenters, as well as the supervisory experiences of other relevant bank supervisory agencies with these individuals.

FirstSun's directors and officers would have the experience and resources to ensure that the combined organization operates in a safe and sound manner. Sunflower's directors and senior executive officers, who would fill the majority of the director and officer positions at FirstSun, have substantial knowledge of and experience in the banking and financial services sectors. Strategic's directors and senior officers, who would fill the remaining director and officer positions at First Sun, also have substantial knowledge of and experience in the banking and financial services sectors. Further, FirstSun's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered FirstSun's plans for implementing the proposal. FirstSun 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. FirstSun represents that, following consummation of the anticipated bank mergers, it would implement its risk-management policies, procedures, and controls at the combined organization. These policies, procedures, and controls are considered satisfactory from a supervisory perspective.

Based on all the facts of record, including the supervisory records of Sunflower, Strategic, and their subsidiary banks, managerial and operational resources, and plans for oper-

ating 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 Sunflower and Strategic 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.[23] 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,[24] 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.[25]

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 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 Sunflower Bank, Capital Bank, and First National Bank; the consumer compliance records of the involved banks; confidential supervisory information; and information provided by FirstSun.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.[26] The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[27] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications

[23] 12 U.S.C. § 1842(c)(2).

[24] 12 U.S.C. § 2901(b).

[25] 12 U.S.C. § 2903.

[26] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[27] 12 U.S.C. § 2906.

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.[28]

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 ("HMDA"),[29] 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 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;[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.

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 ("HMDA"),[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 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 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;[32] (4) the institution's community development lending, including the number and amount of community development loans and their

[28] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[29] 12 U.S.C. § 2801 *et seq*.

[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.*, 12 CFR 228.22(b)(3).

[31] 12 U.S.C. § 2801 *et seq*.

[32] Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

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 Sunflower Bank

Sunflower Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of March 31, 2014 ("Sunflower Bank Evaluation").[33] The bank received a "High Satisfactory" rating for the Service Test, a "Low Satisfactory" rating for the Lending Test, and a "Needs to Improve" for the Investment Test.

Examiners found that Sunflower Bank's overall home mortgage lending activity was good and that the borrower distribution of these loans was adequate. According to examiners, the bank's level and borrower distribution of small loans to farms was good, but the geographic distribution of these loans was poor. Examiners further noted that the bank's level of small loans to businesses was adequate and that the geographic distribution of these loans was excellent. Examiners observed that the borrower distribution of small loans to businesses was good. Although examiners observed an overall poor level of qualified investments and donations, examiners noted that the bank's delivery systems provided good access to LMI geographies and individuals. Examiners also noted that, overall, the bank's level of community development services was adequate.

Sunflower Bank was assigned an overall rating of "Satisfactory" in the state of Kansas, the area weighted most heavily by examiners due to Sunflower Bank's level of activity in that state. In Kansas, Sunflower Bank's performance on the Lending Test was rated "Satisfactory." Examiners found that the bank's overall lending activity in the bank's non-metropolitan assessment area was excellent and that the overall borrower distribution was adequate. On the Investment Test, Sunflower Bank was rated "Needs to Improve" based on the bank's level of qualified investments and donations, while on the Service Test, examiners rated the bank's performance as "High Satisfactory." In the bank's non-metropolitan assessment area, examiners noted that the bank's service delivery systems were readily accessible to geographies and individuals of different income levels and that the bank provided a good level of community development services.

CRA Performance of First National Bank

First National Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of March 31, 2016 ("First National Bank Evaluation").[34] The bank received "High Satisfactory" ratings for both the Service Test and Investment Test and a "Low Satisfactory" rating for the Lending Test.

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[33] The Sunflower Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans, and small business and small farm loans, for the period between January 1, 2010, and December 31, 2012. The evaluation period for community development lending, investments, and services was July 20, 2011, through March 31, 2014.

The Sunflower Bank Evaluation included full-scope evaluations of the bank's non-metropolitan assessment areas in Kansas, Missouri, and Colorado. In each of these states, data for non-metropolitan areas was aggregated to form one non-metropolitan assessment area for the purpose of analysis in that state. The Sunflower Bank Evaluation also included full-scope evaluations of the Pueblo, Colorado, Metropolitan Statistical Area ("MSA"). Limited-scope evaluations were performed in four metropolitan assessment areas in Kansas: Wichita, Manhattan, Lawrence; and Topeka.

[34] The First National Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans reported pursuant to HMDA, and small business loans reported under CRA data collection requirements, for the period between January 1, 2014, and December 31, 2015. The evaluation period for community development lending, investments, and services was March 31, 2013, through March 31, 2016.

The First National Bank Evaluation included full-scope reviews of the bank's Albuquerque (Bernalillo County), Santa Fe MSA and Denver-Aurora-Lakewood MSA assessment areas. Limited-scope reviews were

Examiners found that the First National Bank originated a substantial majority of loans inside its assessment areas. Examiners also found that the bank made a relatively high level of community development loans in the states of New Mexico and Colorado, which had a positive impact on the bank's CRA performance in those states. According to examiners, the volume of the bank's qualified investments was significant relative to the investment opportunities and identified needs of the bank's assessment areas. Examiners noted that the borrower distribution of HMDA loans in the bank's Albuquerque and Santa Fe assessment areas was poor. However, examiners found that First National Bank's branches were accessible to geographies and individuals of all income levels and that the bank provided a relatively high level of community development services.

Examiners weighted the First National Bank's performance in the Santa Fe assessment area most heavily, given the level of the bank's activities in that area. In the Santa Fe assessment area, examiners considered First National Bank's community development lending to be excellent. In addition, examiners considered the bank's branches in this area to be reasonably accessible to geographies and individuals of all incomes. Although examiners found the bank's lending activity in the Santa Fe assessment area to be poor, examiners also noted that the bank's poor record of lending activity throughout New Mexico was mitigated by the economic conditions and the bank's strategic initiatives during the evaluation period.

CRA Performance of Capital Bank

Capital Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of April 4, 2011 ("Capital Bank Evaluation").[35]

Examiners determined that Capital Bank's loan-to-deposit ratio was reasonable given the institution's size and financial condition. Examiners further noted that, despite economic conditions in the area, Capital Bank continued to meet the credit needs of its community by extending loans. According to examiners, the bank exhibited an excellent record of concentrating its loans inside its assessment area, particularly with respect to small business and residential mortgage loans. Examiners also found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout the bank's assessment area. In particular, examiners considered the bank's records of small business and home mortgage lending in LMI geographies to be reasonable. Likewise, examiners found that borrower distribution of small business and residential mortgage loans reflected a reasonable penetration to borrowers of different income levels. Further, examiners noted that Capital Bank did not receive any CRA complaints during the assessment period.

conducted of the bank's Las Cruces MSA, Boulder MSA, Fort Collins MSA, and of its Los Alamos County and Lincoln County assessment areas.

[35] The Capital Bank Evaluation was conducted using Small Institution CRA Examination Procedures, which evaluate (1) 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; (2) the percentage of loans and other lending-related activities located in the bank's assessment areas; (3) 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; (4) the geographic distribution of the bank's loans; and (5) 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). The Capital Bank Evaluation reviewed the bank's CRA activities for the period between July 17, 2006, and April 4, 2011. In particular, examiners also considered a sample of small business loans originated during the period between May 22, 2008, and January 27, 2011, as well as home mortgage loans recorded on the bank's 2009 and 2010 HMDA Loan Application Registers. The Capital Bank Evaluation included a full-scope review of the bank's El Paso MSA (El Paso County) assessment area.

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. FirstSun represents that upon consummation of the proposals, existing customers of Capital Bank and First National Bank would have access to a more expansive line of products and services. FirstSun also represents that the acquisition would make available expanded resources to the communities currently served by Sunflower Bank, Capital Bank, and First National Bank. FirstSun also represents that the proposed transactions would expand the retail outlets available to customers of all three institutions.

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 consumer protection laws, confidential supervisory information, information provided by FirstSun, 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 a proposal's risk "to the stability of the United States banking or financial system."[36]

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

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of

[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.

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

these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[39]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that has less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. The acquirer would be and the targets are predominately engaged in retail commercial banking activities.[40] 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 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, FirstSun has elected to become a financial holding company in connection with the proposals. FirstSun has certified that, upon consummation of the proposals, FirstSun and the depository institutions it would control would be 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 FirstSun's election will become effective upon consummation of the proposal if, on that date, FirstSun 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. 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 FirstSun 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 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.

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[39] *See People's United Financial, Inc*., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding these presumptions, the Board has the authority to review the financial stability implications of any proposal. For example, any acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

[40] Sunflower primarily offers commercial and retail banking services, mortgage banking services, commercial real estate lending, investment advisory and management services, trust services and operations, wealth management services, and treasury services. Strategic also offers commercial and retail banking services, as well as treasury management services, private banking, mortgage banking services, and wealth management services. In each of these activities, the involved institutions have, 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.

[41] *See* Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(*l*)(1).

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 Kansas City, acting under delegated authority.

By order of the Board of Governors, effective June 2, 2017.

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

Canadian Imperial Bank of Commerce
Toronto, Canada

CIBC Holdco Inc.
New York, New York

Order Approving the Formation of a Bank Holding Company and the Acquisition of a Bank Holding Company
FRB Order No. 2017-15
(June 7, 2017)

Canadian Imperial Bank of Commerce ("CIBC"), Toronto, Canada, a foreign banking organization that has elected to be treated as a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] and its subsidiary, CIBC Holdco Inc. ("CIBC Holdco," and together with CIBC, "Applicants"), New York, New York, have requested the Board's approval under section 3 of the BHC Act[2] to acquire PrivateBancorp, Inc. ("PrivateBancorp"), and thereby indirectly acquire The PrivateBank and Trust Company ("PrivateBank"), both of Chicago, Illinois. As part of the proposal, CIBC Holdco would become a bank holding company.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 60355 (September 1, 2016)).[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.

CIBC, with consolidated assets of approximately $381 billion, is the fifth largest insured depository organization in Canada.[4] CIBC provides retail and commercial banking, wealth management, insurance, and investment banking products and services, and it operates in North America (including the United States), Europe, and Asia. In the United States, CIBC also operates branches in New York and Illinois and representative offices in Texas and California. CIBC does not control a bank within the United States.[5]CIBC 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.[6]

PrivateBancorp, with consolidated assets of approximately $20.1 billion, is the 82nd largest insured depository organization in the United States, controlling approximately $16.1 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] PrivateBancorp controls PrivateBank, which operates in Illinois, Michigan, Missouri, and Wisconsin.

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 12 CFR 262.3(b).

4 Asset and ranking data for CIBC on a consolidated basis are as of April 30, 2016, and are based on the exchange rate as of that date.

5 CIBC also controls Atlantic Trust Company, National Association, Atlanta, Georgia, a nondepository trust company that is not a "bank" for purposes of the BHC Act. *See* 12 U.S.C. § 1841(c)(2)(D).

6 12 CFR 211.23(a).

7 U.S. asset and deposit data are as of December 31, 2016, unless otherwise noted.

On consummation of this proposal, CIBC's U.S. operations would have assets that represent less than 1 percent of the total assets of insured depository institutions in the United States.[8]

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.[9] 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.[10]

CIBC does not currently control a commercial bank in the United States, and CIBC and PrivateBancorp do not directly compete in any retail banking 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 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.[11] 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

[8] Under the Board's Regulation YY, a foreign banking organization with U.S. non-branch assets of $50 billion or more is required to establish a U.S. intermediate holding company ("IHC"). 12 CFR 252.153. On consummation of this proposal, CIBC would have less than $50 billion in U.S. non-branch assets and therefore would not be required to establish a U.S. IHC.

[9] 12 U.S.C. § 1842(c)(1)(A).

[10] 12 U.S.C. § 1842(c)(1)(B).

[11] 12 U.S.C. § 1842(c)(2), (5), and (6).

responsibility for the supervision and regulation of federally registered Canadian banking organizations, including CIBC.

The capital levels of CIBC 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.[12] The proposed transaction is a merger that is structured as a cash and share exchange.[13] The asset quality, earnings, and liquidity of both CIBC and PrivateBancorp are consistent with approval, and CIBC 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 CIBC's U.S. operations, PrivateBancorp, and PrivateBank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by CIBC, 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 the OSFI.

CIBC, PrivateBancorp, and PrivateBank are each considered to be well managed. CIBC's directors and senior executive officers have 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 CIBC's plans for implementing the proposal. CIBC 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. CIBC would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, the management of CIBC and PrivateBancorp have the experience and resources to operate the combined organization in a safe and sound manner, and CIBC plans to integrate PrivateBancorp's existing management and personnel in a manner that augments CIBC's management.[14]

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.[15] The Board has

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[12] 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 CIBC and CIBC Holdco.

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

[14] On consummation, CIBC will add one director, nominated by PrivateBancorp, to its board. The board of CIBC Holdco will be composed of nine directors, of which three independent directors and one nonindependent director will be selected by PrivateBancorp and the other five directors selected by CIBC. Similarly, the board of PrivateBank will be composed of nine directors, of which three independent directors and one nonindependent director will be selected by PrivateBancorp and the other five directors selected by CIBC. In addition, certain key executives of PrivateBancorp and PrivateBank will be employed by CIBC and CIBC Holdco after consummation of the proposal.

[15] 12 U.S.C. § 1842(c)(3)(A).

reviewed the restrictions on disclosure of information in the relevant jurisdictions in which CIBC operates and has communicated with relevant government authorities concerning access to information. In addition, CIBC 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,[16] and other applicable federal laws. CIBC 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 CIBC'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 CIBC and PrivateBancorp in combatting money-laundering activities, are consistent with approval.

Supervision or Regulation on a Consolidated Basis

As required by section 3 of the BHC Act, the Board considers whether CIBC is subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in its home country.[17] The Board previously has determined that CIBC is subject to comprehensive supervision on a consolidated basis by its home country supervisor, the OSFI.[18] CIBC 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 CIBC 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.[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

[16] 12 U.S.C. § 3101 *et seq*.

[17] 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 regulation 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.

[18] *Canadian Imperial Bank of Commerce*, 87 *Federal Reserve Bulletin* 678 (2001); *Canadian Imperial Bank of Commerce*, 85 *Federal Reserve Bulletin* 733 (1999). In addition, in 2009 and 2013, it was determined that CIBC was subject to comprehensive supervision on a consolidated basis by the OSFI. Board letter to David R. Sahr, Esq., Mayer Brown LLP (March 26, 2013); *Canadian Imperial Bank of Commerce*, 95 *Federal Reserve Bulletin* B 101 (2009).

[19] 12 U.S.C. § 1842(c)(2).

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 of 1977 ("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, in evaluating bank expansionary proposals.[22]

In addition, the Board considers the banks' overall compliance records and their 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 PrivateBank and Juniper Bank, Wilmington, Delaware;[23] the fair lending and compliance records of PrivateBank; the supervisory views of the Federal Deposit Insurance Corporation ("FDIC"); confidential supervisory information; information provided by CIBC; and the public comments received on the proposal.

The Board placed additional emphasis on PrivateBank's record in meeting the convenience and needs of the communities it serves because PrivateBank will remain a separate entity and continue its existing CRA program after consummation of the proposed transaction.

Public Comments Regarding the Proposal

In this case, the Board received comments from two commenters expressing concerns about the proposal. One commenter criticized PrivateBank's record of lending to small businesses in LMI communities within the St. Louis, Missouri, area. The commenter also alleged that PrivateBank's bank services are not sufficiently accessible to LMI communities in the St. Louis area, as well as throughout the bank's footprint in Illinois and other areas.

One commenter expressed concerns regarding whether PrivateBank's lending to LMI borrowers and communities would continue to increase at its prior rate after consummation of the proposal. Two commenters urged CIBC to develop a community reinvestment plan,[24] and these commenters urged the Board to approve the application on the condition that CIBC successfully implement such a plan.[25]

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[20] 12 U.S.C. § 2901 *et seq*.

[21] 12 U.S.C. § 2901(b).

[22] 12 U.S.C. § 2903.

[23] CIBC controlled Juniper Bank from 2001 until 2004.

[24] Following CIBC's submission of the applications, PrivateBank developed a community benefits plan in consultation with commenters and other organizations.

[25] 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*

Businesses of the Involved Institutions and Response to Comments

CIBC provides retail and commercial banking, wealth management, insurance, and investment banking products and services, and it operates in North America, Europe, and Asia. In the United States, many of CIBC's activities are conducted through Atlantic Trust Group, LLC, Atlanta, Georgia, which provides wealth management services; CIBC Inc., New York, New York, a commercial finance company; and CIBC World Markets Corp., New York, New York, a registered broker-dealer providing capital markets and investment banking services. CIBC maintains two branches in New York, New York, which provide corporate banking products and services, and a branch in Chicago, Illinois, which engages in the origination and servicing of real estate credit facilities. CIBC Holdco does not currently engage in any activities.

PrivateBank's primary focus is on commercial lending, including to medium-sized companies with annual revenues between $10 million and $2 billion. PrivateBank also provides private banking, residential mortgage banking, financial advisory, wealth management, and asset-management services to its customers. Although PrivateBank does offer traditional retail deposit and credit products, the majority of the bank's business is generated from commercial clients.

In response to the commenters' allegations, CIBC states that it will be committed to continuing to support the communities within the CRA assessment areas of PrivateBank. CIBC represents that, in recent years, PrivateBank has significantly increased its lending to small businesses in LMI census tracts in the St. Louis area as a percentage of its total small business lending in that area. CIBC also represents that, in recent years, PrivateBank has increased the percentage of its home mortgage lending in the St. Louis area that was originated in LMI census tracts, as well as the percentage that was originated to LMI borrowers. With regard to the accessibility of PrivateBank's services to LMI communities in the St. Louis area, CIBC represents that, although PrivateBank does not have a branch presence in LMI census tracts in the St. Louis area, PrivateBank leases office space in a low-income census tract that provides client meeting space for the bank's Community Development Lender team in St. Louis.

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.[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.

Reserve Bulletin 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 8412 (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.

[26] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg*. 48506, 48548 (July 25, 2016).

[27] 12 U.S.C. § 2906.

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,[28] 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 amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of such loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[29] (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.

CRA Performance of PrivateBank

PrivateBank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of August 17, 2015 ("PrivateBank Evaluation"),[30] with ratings of "High Satisfactory" for the Lending Test, Investment Test, and Service Test.

Examiners found that PrivateBank's lending levels reflected good responsiveness to credit needs in 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 of small business and home mortgage loans throughout the assessment areas. Further, examiners noted that PrivateBank was a leader in making community development loans and that the bank made extensive use of innovative and flexible lending practices in order to serve credit needs in its assessment areas.

In the St. Louis assessment area, an area of concern for commenters, examiners found that PrivateBank's lending levels reflected good responsiveness to assessment area credit needs. Examiners also noted that the geographic distribution of PrivateBank's loans reflected good penetration throughout the St. Louis assessment area, and that the distribution of loans reflected adequate penetration among borrowers of different income levels. However, examiners found that the distribution of loans reflected poor penetration among busi-

[28] 12 U.S.C. § 2801 *et seq*.

[29] Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22 (b)(3).

[30] The PrivateBank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test, Investment Test, and Service Test was from April8, 2013, through August 17, 2015. The PrivateBank Evaluation included a full-scope review of the bank's assessment areas within the following areas: the Chicago–Naperville–Elgin, Illinois–Indiana–Wisconsin, Metropolitan Statistical Area ("MSA"); the Detroit–Warren–Dearborn, Michigan, MSA; the St. Louis, Missouri–Illinois, MSA ("St. Louis assessment area"); and the Milwaukee–Waukesha–West Allis, Wisconsin, MSA.

nesses of different sizes within the assessment area. Examiners noted that the bank made a relatively high level of community development loans in the St. Louis assessment area during the review period.

Examiners found that PrivateBank made a significant level of qualified community development investments and grants, occasionally in a leadership position. Examiners noted that PrivateBank exhibited good responsiveness to the credit and community economic development needs of its assessment areas. Additionally, examiners noted that PrivateBank made significant use of innovative and complex investments to support community development initiatives. In the St. Louis assessment area, examiners noted that the bank had an excellent level of qualified community development investments and grants, often in a leadership position, particularly those that are not provided by private investors.

Examiners found that the bank's retail delivery systems were accessible to limited portions of its assessment areas, but that its opening and closing of branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Examiners noted that the bank was a leader in providing community development services. Additionally, examiners noted that PrivateBank's services did not vary in a way that inconvenienced portions of its assessment areas, particularly LMI geographies and individuals.

In the St. Louis assessment area, examiners found that PrivateBank's delivery systems were accessible to limited portions of the assessment area. Examiners noted that the bank's branches in the assessment area were located in upper-income census tracts, but that the bank's loan production office in the assessment area was located in a low-income census tract. Additionally, examiners found that PrivateBank's services did not vary in a way that inconvenienced portions of the assessment area, particularly LMI geographies and individuals.

In Illinois, another area of concern for commenters, examiners found that PrivateBank's delivery systems were accessible to limited portions of the assessment area, including one moderate-income geography, and did not arbitrarily inconvenience any portions of the assessment area. Examiners also noted that PrivateBank was a leader in providing community development services.

PrivateBank's Efforts since the 2015 CRA Evaluation

CIBC represents that PrivateBank has taken steps to improve its identification of and responsiveness to community needs. CIBC represents that PrivateBank has begun offering a new suite of small business loan products designated for small businesses located in LMI geographies. Additionally, CIBC represents that PrivateBank has made additional investments in low-income housing tax credit funds and job-creation projects in LMI geographies and has made additional community development loans.

In the St. Louis assessment area, CIBC represents that PrivateBank has continued to increase the percentage of its home mortgage lending that is originated in LMI census tracts and the percentage that is originated to LMI borrowers. CIBC represents that PrivateBank has continued to increase the percentage of the bank's small business lending in the St. Louis area that is originated to small businesses in LMI census tracts. Additionally, CIBC represents that PrivateBank's ability to lend to small businesses in LMI census tracts in the St. Louis area was strengthened by the introduction in 2016 of a suite of proprietary affordable small business loan programs. CIBC represents that PrivateBank has taken steps to expand the marketing and outreach for its home mortgage and small business lending programs in the St. Louis area, including through newspaper advertisements

and community business events. CIBC also represents that PrivateBank has continued to support the credit needs of the St. Louis assessment area through community development loans, investments, and donations.

CRA Performance of Juniper Bank

CIBC does not currently control a bank in the United States. The most recent CRA performance evaluation of a U.S. bank controlled by CIBC was the evaluation of Juniper Bank by the FDIC, as of May 13, 2003 ("Juniper Bank Evaluation"), in which Juniper Bank was assigned an overall "Satisfactory" rating.[31] Examiners noted that the bank originated an adequate amount of community development loans and qualified community development investments. Examiners also found that Juniper Bank employees provided a high level of community development services that demonstrated an excellent responsiveness to available opportunities. While CIBC no longer controls Juniper Bank, CIBC's record of maintaining satisfactory CRA ratings and performance at Juniper Bank indicates that CIBC has experience and resources to ensure that PrivateBank is operated in a manner that helps serve the credit and other banking needs of its communities in a satisfactory manner.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding PrivateBank's CRA, consumer compliance, and fair lending records. The Board has considered the results of a recent consumer compliance examination of PrivateBank conducted by FDIC examiners, which included a review of the bank's compliance risk-management program and the bank's compliance with consumer laws and regulations. The Board also has considered the results of a recent examination of PrivateBank's compliance with the Fair Housing Act ("FHA"),[32] which included a review of the bank's lending data and its policies and procedures to ensure compliance with the FHA.

The Board has taken these consultations with the FDIC and the information discussed above into account when evaluating this proposal, including in considering whether CIBC has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's assessment areas.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. CIBC represents that the proposal would provide customers of the combined organization access to additional or expanded services, including retail banking services not currently offered to customers of CIBC's U.S. subsidiaries and an expanded range of wealth management and advisory services not offered to current PrivateBank customers. In addition, CIBC states that the combined organization will be strengthened by the complementary aspects of the two entities' businesses, as well as the combined experience and expertise of their respective management and employees, resulting in a stronger and more diversified financial institution.

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[31] Juniper Bank was a limited purpose bank for purposes of the Juniper Bank Evaluation and was evaluated under the Community Development Test. The evaluation period for the Juniper Bank Evaluation was from May 24, 2001, through May 12, 2003. Examiners reviewed the level of Juniper Bank's qualified community development loans, investments, grants, and services in the bank's designated assessment area of New Castle County, Delaware.

[32] 42 U.S.C. § 3601 *et seq.*

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 provided by CIBC, 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.

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 provided by CIBC, 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."[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]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. In the United States, CIBC primarily engages in securities brokerage and wealth management through various entities under CIBC USA Holdings, Inc., and in corporate banking through its U.S. branches. PrivateBancorp primarily engages in commercial banking and wealth management. In each of its activities, CIBC has, and as a result of the proposal would continue to have, a small market share on a

[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 2012-2 (February 14, 2012).

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. There is little evidence that this proposal would materially increase the extent of CIBC's cross-border linkages. In addition, the organization would not be a critical services provider or be so interconnected with other firms or 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.

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 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 Chicago, acting under delegated authority.

By order of the Board of Governors, effective June 7, 2017.

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

Order Issued Under Federal Reserve Act

United Bankshares, Inc.
Charleston, West Virginia

Order Approving the Acquisition of a Bank Holding Company, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017–10 (April 6, 2017)

United Bankshares, Inc. ("UBI"), Charleston, West Virginia, and its subsidiary, UBV Holding Company, LLC ("UBV", and together with UBI, "United"), Fairfax, Virginia, both bank holding companies within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] have requested the Board's approval under section 3 of the BHC Act[2] to acquire Cardinal Financial Corporation ("Cardinal") and thereby indirectly acquire Cardinal Bank, both of McLean, Virginia.

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

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 74803 (October 27, 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").

UBI, with consolidated assets of approximately $14.3 billion, is the 99th largest insured depository organization in the United States.[6] UBI controls approximately $10.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] UBI controls two subsidiary banks, United Bank-Virginia and United Bank, Inc. ("United Bank-West Virginia"), Parkersburg, West Virginia,[8] which operate in the District of Columbia, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia. UBI is the 10th largest insured depository organization in the District of Columbia, controlling deposits of approximately $1.1 billion in the District of Columbia, which represent 2.4 percent of the total deposits of insured depository institutions in that jurisdiction. In addition, UBI is the 18th largest insured depository organization in Maryland, controlling deposits of approximately $761.1 million in Maryland, which

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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 the Appendix.

5 12 CFR 262.3(b).

6 National asset data, market share, and ranking data are as of September 30, 2016, unless otherwise noted. State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

7 In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

8 United Bank-Virginia is a wholly owned subsidiary of UBV, and UBV is a wholly owned subsidiary of UBI. UBI controls United Bank-West Virginia, a state member bank, through a separate mid-tier holding company, UBC Holding Company, Inc., Charleston, West Virginia.

represent 0.6 percent of the total deposits of insured depository institutions in that state, and the 8th largest insured depository organization in Virginia, controlling deposits of approximately $4.1 billion in Virginia, which represent 1.5 percent of the total deposits of insured depository institutions in that state.

Cardinal, with consolidated assets of approximately $4.2 billion, is the 228th largest insured depository organization in the United States. Cardinal controls approximately $3.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Cardinal controls Cardinal Bank, which operates in the District of Columbia, Maryland, and Virginia. Cardinal is the 19th largest insured depository organization in the District of Columbia, controlling deposits of approximately $133.8 million in the District of Columbia, which represent 0.3 percent of the total deposits of insured depository institutions in that jurisdiction. In addition, Cardinal is the 43rd largest insured depository organization in Maryland, controlling deposits of approximately $188.6 million in Maryland, which represent 0.2 percent of the total deposits of insured depository institutions in that state, and the 10th largest insured depository organization in Virginia, controlling deposits of approximately $3.0 billion in Virginia, which represent 1.1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, UBI would become the 86th largest insured depository organization in the United States, with consolidated assets of approximately $18.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. UBI would control consolidated deposits of approximately $13.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In the District of Columbia, UBI would become the 9th largest insured depository organization, controlling deposits of approximately $1.2 billion in the District of Columbia, which represent 2.7 percent of the total deposits of insured depository institutions in that jurisdiction. In Maryland, UBI would become the 16th largest insured depository organization, controlling deposits of approximately $949.7 million in Maryland, which represent 0.7 percent of the total deposits of insured depository institutions in that state. In Virginia, UBI would become the 7th largest insured depository organization, controlling deposits of approximately $7.1 billion in Virginia, which represent 2.6 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.[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[11] or, in certain circum-

[9] 12 U.S.C. § 1842(d)(1)(A).

[10] 12 U.S.C. § 1842(d)(1)(B).

[11] 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

stances, if the bank holding company would upon consummation control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[12]

For purposes of the BHC Act, the home state of UBI is West Virginia, and the home state of both UBV and Cardinal Bank is Virginia.[13] Cardinal Bank is also located in the District of Columbia and Maryland. UBI and UBV are well capitalized and well managed under applicable law, and United Bank-Virginia has an "Outstanding" Community Reinvestment Act ("CRA")[14] rating. There are no minimum age requirements under the laws of the District of Columbia, Maryland, or Virginia that would apply to United's acquisition of Cardinal, and Cardinal Bank has been in existence for more than five years.[15]

On consummation of the proposed transaction, UBI 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 the District of Columbia, Maryland, and Virginia, the only states in which United and Cardinal have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including United's record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.[16]

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.[17]

UBI and Cardinal have subsidiary depository institutions that compete directly in the Washington, District of Columbia, banking market ("Washington market") and the

States. 12 U.S.C. § 1828(c)(13). For purposes of the Bank Merger Act, the home state of both United Bank-Virginia and Cardinal Bank is Virginia. 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.

[12] 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).

[13] *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.

[14] 12 U.S.C. § 2901 *et seq*.

[15] *See* D.C. Code §26-737; Md. Code Ann., Fin. Inst. §§ 5-901 to 5-910; Va. Code Ann.§6.1-44.18.

[16] 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 United Bank-Virginia and Cardinal Bank is Virginia; therefore, section 102 of the Riegle-Neal Act does not apply to the proposed bank merger. *Id*.

[17] 12 U.S.C. § 1842(c)(1) and 1828(c)(5).

Fredericksburg, Virginia, banking market ("Fredericksburg market").[18] 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 markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that UBI would control;[19] 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");[20] 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 Washington and Fredericksburg markets. On consummation of the proposal, the Washington market would remain unconcentrated and the Fredericksburg market would remain moderately concentrated, as measured by the HHI. The change in the HHI in these markets would be small, and numerous competitors would remain in the markets.[21]

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 Washington and Fredericksburg markets. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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[18] The Washington market is defined as the District of Columbia; Calvert, Charles, Frederick, Montgomery, and Prince George's counties, all in Maryland; District 7 in Anne Arundel County, Maryland; the Clarksville and Savage districts in Howard County, Maryland; Arlington, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Stafford, and Warren counties in Virginia; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, all in Virginia; and Jefferson County, West Virginia. The Fredericksburg market is defined as the city of Fredericksburg, Virginia; and Caroline, King George, Orange, Spotsylvania, and Westmoreland counties, all in Virginia.

[19] Deposit and market share data are as of June30, 2016, 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).

[20] 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.

[21] UBI operates the 8th largest depository institution in the Washington market, controlling approximately $5.5 billion in deposits, which represent approximately 2.9 percent of market deposits. Cardinal operates the 11th largest depository institution in the same market, controlling deposits of approximately $3.2 billion, which represent 1.7 percent of market deposits. On consummation of the proposed transaction, UBI would become the 7th largest depository organization in the market, controlling deposits of approximately $8.7 billion, which represent approximately 4.6 percent of market deposits. The HHI for the Washington market would increase by 10 points to 995, and 81 competitors would remain in the market.

UBI operates the 9th largest depository institution in the Fredericksburg market, controlling approximately $55.4 million in deposits, which represent approximately 1.8 percent of market deposits. Cardinal operates the 10th largest depository institution in the same market, controlling deposits of approximately $43.9 million, which represent 1.4 percent of market deposits. On consummation of the proposed transaction, UBI would become the 8th largest depository organization in the market, controlling deposits of approximately $99.3 million, which represent approximately 3.2 percent of market deposits. The HHI for the Fredericksburg market would increase by 5 points to 1749, and 16 competitors would remain in the market.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Washington or Fredericksburg banking 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 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.[22] 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 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.

UBI and Cardinal are 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 share exchange, with a subsequent merger of United Bank-Virginia and Cardinal Bank.[23] The asset quality, earnings, and liquidity of United Bank-Virginia and Cardinal Bank are consistent with approval, and United 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 United, Cardinal, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by United; 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.

UBI, UBV, Cardinal, and their subsidiary depository institutions are considered to be well managed. United has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. United's directors and senior executive officers have knowledge of and experience in the banking and financial service sectors,

[22] 12 U.S.C. §§ 1842(c)(2), (5), and (6); and 1828(c)(5) and (11).

[23] Applicants would merge Cardinal with and into UBV (with UBV as the survivor). At the time of the merger, each share of Cardinal common stock would be converted into a right to receive UBI common stock, based on an exchange ratio; holders of fractional shares would be entitled to a cash equivalent. United has the financial resources to fund the cash portion of the exchange.

and United's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered United's plans for implementing the proposal. United 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. With certain exceptions, United would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, United's management has the experience and resources to operate the combined organization in a safe and sound manner, and United plans to integrate Cardinal's existing management and personnel in a manner that augments United's management.[24]

Based on all the facts of record, including United'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 United and Cardinal in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[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, 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,[26] 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.[27]

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

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[24] On consummation, the UBI board of directors would be increased by one, and an individual currently serving as an executive director on the board of directors of Cardinal and Cardinal Bank would serve on the UBI board. Additionally, the United Bank-Virginia board of directors would be increased by two individuals that would be chosen by Cardinal.

[25] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[26] 12 U.S.C. § 2901(b).

[27] 12 U.S.C. § 2903.

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

Public Comments Regarding the Proposal

The Board received comments from two commenters opposing the proposal.[28] Both commenters objected to the proposal on the basis of alleged disparities in the number of residential real estate loans made to minority borrowers, as compared to white borrowers, by United Bank-Virginia in the Washington, District of Columbia, Metropolitan Statistical Area ("Washington MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[29] for the years 2013 through 2015. One commenter also asserted that, in the Washington MSA, United Bank-Virginia made a disproportionately low number of home purchase loans to majority-minority and LMI census tracts, and United Bank-West Virginia made a disproportionately low number of home purchase loans to LMI borrowers, as reported under HMDA for 2013 through 2015. Additionally, a commenter criticized the rate at which George Mason Mortgage, LLC ("George Mason"), a subsidiary of Cardinal Bank, denied applications by African Americans and Hispanics, compared to the rate of denials for whites, for conventional home purchase loans in the Washington MSA, as reported under HMDA for 2015.

One commenter also generally alleged that United Bank-Virginia and United Bank-West Virginia have inadequate records of helping to meet the convenience and needs of the communities where they do business because United Bank-Virginia received a "Low Satisfactory" rating on its Service Test in the Commonwealth of Virginia and United Bank-West Virginia received a "Low Satisfactory" rating on its Investment Test for the overall bank and in the Wheeling, West Virginia-Ohio Multistate Metropolitan Statistical Area, the State of West Virginia, and the Commonwealth of Pennsylvania, in the banks' most recent CRA examinations, both as of 2015.

Business of the Involved Institutions and Response to Comments

United Bank-Virginia offers a broad range of retail and commercial banking products and services to consumers and businesses. Through its network of 54 branches located in the District of Columbia, Maryland, and Virginia, United Bank-Virginia offers a variety of banking products, including commercial, residential, agricultural, and consumer loans.

Cardinal Bank offers a similar range of retail and commercial products through 29 branches located in the District of Columbia, Maryland, and Virginia. Its products include checking and savings accounts, certificates of deposit, residential mortgages, treasury management services, commercial and consumer loans, and brokerage services. Cardinal Bank also provides residential mortgages through its subsidiary, George Mason.

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[28] One commenter requested that the Board not approve the proposal until United enters into a community benefits plan that outlines how the bank plans to help meet the convenience and needs of the communities it serves. 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 organizations. *See, e.g., Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *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.

[29] 12 U.S.C. §2801 *et seq*.

In response to the comments, United represents that United Bank-Virginia and Cardinal Bank are currently meeting the credit needs of their communities, including LMI and minority individuals, that the proposal would benefit the existing customers of both United Bank-Virginia and Cardinal Bank, and that the combined institution would continue to meet the credit needs of its entire community following consummation of the proposal. United represents that both United Bank-Virginia and Cardinal Bank have instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations.

With respect to United Bank-Virginia's lending in the Washington MSA, United represents that it has taken a number of steps, including creating a position solely dedicated to its fair lending program, to better serve minority communities. United also notes that United Bank-Virginia's record of lending in the Washington MSA shows a positive trend in the number of home purchase loans located in majority-minority census tracts. Additionally, United notes that, when United Bank-Virginia's lending in all HMDA categories is considered, the bank outperformed peer lenders in lending in LMI areas in 2014. United also asserts that the housing market is relatively expensive in the Washington MSA, which hinders the ability of low-income borrowers to purchase homes in the area, meaning that United Bank-Virginia has few potential low-income mortgage customers. In addition, United represents that a substantial amount of its small business lending within the Washington MSA is made to businesses located in majority-minority census tracts.

United argues that United Bank-Virginia's overall CRA rating of "Outstanding" and United Bank-West Virginia's overall CRA rating of "Satisfactory" are consistent with approval, notwithstanding the specific ratings noted by a commenter. United notes that United Bank-Virginia received an overall bankwide "High Satisfactory" rating on the Service Test and that, in the Commonwealth of Virginia, examiners found that the bank's delivery systems and branch locations were accessible to all segments of the assessment areas and that the bank had an adequate level of participation in qualified community development services that generally benefit affordable housing and micro-enterprise development.

With respect to a commenter's allegation regarding United Bank-West Virginia's record of lending to LMI individuals within the Washington MSA, United notes that United Bank-West Virginia outperformed peer lenders, when considering all categories of HMDA loans, in LMI areas within the Washington MSA. Additionally, United notes that United Bank-West Virginia's distribution of HMDA loans by level of borrower income for the years 2013 through 2015 was similar to that of the aggregate of lenders in the Washington MSA, and that the bank's lending to LMI borrowers in the Washington MSA as reported in 2015 HMDA data outperformed peer lenders.

In response to one commenter's criticism of United Bank-West Virginia's "Low Satisfactory" CRA rating on the Investment Test for the overall bank and in several of the bank's assessment areas, United notes that United Bank-West Virginia has significantly increased its level of community development investment since the bank's most recent CRA examination. United also represents that United Bank-West Virginia is taking steps to improve its investment performance in Pennsylvania and West Virginia, including creating new partnerships with community development finance institutions, starting a relationship with a company that is awaiting a Small Business Investment Company designation from the United States Small Business Administration, and making an investment in a school district in which a majority of students qualify for a free or reduced-price lunch.

With respect to George Mason's lending in the Washington MSA, United represents that George Mason outperformed peer lenders in lending in LMI areas. Additionally, United

asserts that George Mason conducts various activities that are focused on serving minority and LMI communities, including marketing and outreach to historically underserved neighborhoods and populations; periodic reviews of George Mason's policies, procedures, and lending outcomes to ensure that lender discretion is clearly outlined and to confirm compliance with fair lending laws; and community outreach efforts to support lending in LMI and minority areas. United represents that George Mason's fair lending policies with respect to first mortgage lending would be adopted in the combined entity.

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 applicant's response to comments. In particular, the Board evaluates an institution's performance 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.[30] In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of Richmond ("Reserve Bank") and 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.[31] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation 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 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;[32] (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.

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[30] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[31] 12 U.S.C. § 2906.

[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).

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.[33]Consequently, HMDA data must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of United Bank-Virginia

United Bank-Virginia was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the Reserve Bank, as of October 19, 2015 ("United Bank-Virginia Evaluation").[34] The bank received an "Outstanding" rating for the Lending Test, and "High Satisfactory" ratings for both the Investment Test and the Service Test.

Examiners concluded that the bank's overall lending activity was excellent relative to the bank's capacity to lend and the economic conditions within the bank's market areas. Examiners noted that a substantial majority of the bank's loans were made to borrowers within its assessment areas. Overall, examiners found that the geographic distribution of the bank's loans reflected good penetration throughout its assessment areas and that the distribution of its borrowers reflected good penetration among borrowers of different income levels and businesses of different sizes. Additionally, examiners found that United Bank-Virginia was a leader in community development lending.

In the Washington, D.C., assessment area, an area of concern for the commenters, United Bank-Virginia's performance under the Lending Test was rated "Outstanding." Examiners found that the bank's lending activity in the assessment area was consistent with the bank's capacity and helped to meet identified community credit needs. Additionally, examiners found that the geographic distribution of the bank's loans in the Washington, D.C., assessment area was excellent, while the overall borrower distribution was good. Examiners also noted that United Bank-Virginia was a leader in providing community development loans in the assessment area.

In the Commonwealth of Virginia, another area of concern to a commenter, United Bank-Virginia's performance under the Lending Test was rated "High Satisfactory." Examiners found that the bank's lending activity within the statewide market was consistent with the bank's capacity and that the bank offered a broad range of loan products to meet the needs of the statewide area. Examiners also noted that the bank's borrower distribution throughout the state was good and the geographic distribution of its loans was adequate.

With respect to the Investment Test, examiners found that the bank had a high level of participation in community development investments, showing responsiveness to community credit needs. Examiners noted that the bank made a number of investments to support affordable housing initiatives, as well as charitable donations to a variety of community

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[33] 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.

[34] The United Bank-Virginia Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage loans reported, pursuant to HMDA, and small business and small farm loans reported under CRA data collection requirements for 2013 and 2014. The evaluation period for community development lending, investments, and services was June 4, 2013, through October 19, 2015.

The United Bank-Virginia Evaluation included full-scope evaluations of the Washington-Baltimore-Arlington, D.C.-Maryland-Virginia-West Virginia-Pennsylvania, Combined Statistical Area ("Washington CSA") and the Harrisonburg-Staunton-Waynesboro, Virginia, CSA. Limited scope evaluations were performed in the Charlottesville, Virginia, MSA and in Shenandoah County, Virginia.

development organizations that facilitate small business development, revitalize or stabilize LMI geographies, and focus on local job creation within the bank's assessment areas. In both the Washington, D.C., assessment area and Virginia, United Bank-Virginia's performance under the Investment Test was rated "High Satisfactory." Examiners in both areas found that the bank maintained a significant level of qualified investments that benefit the bank's market areas.

Examiners found United Bank-Virginia's delivery systems and branch locations to be accessible to all segments of the bank's assessment areas. Examiners noted that branch closings by the bank had not adversely affected LMI neighborhoods. Additionally, examiners noted that the bank engaged in a high level of community development services within its primary market areas. Overall, examiners noted that the bank showed a high level of support for affordable housing efforts, community services, and economic development within its assessment areas.

In the Washington, D.C., assessment area, examiners rated United Bank-Virginia's performance on the Service Test as "High Satisfactory." Examiners noted that the bank's delivery systems and branch locations were accessible to all segments of the assessment area and that the bank had a relatively high level of participation in qualified community development services benefiting the assessment area.

In Virginia, United Bank-Virginia's performance on the Service Test was rated as "Low Satisfactory." Examiners found that the bank's delivery systems in Virginia were reasonably accessible to all portions of United Bank-Virginia's market areas and to people of various income levels. Additionally, examiners noted that the products and services offered by United Bank-Virginia within Virginia were representative of those offered by the institution overall and that the bank's employees participated in an adequate level of community development activities involving the provision of financial expertise to organizations assisting in small business funding.

United Bank-Virginia's Efforts since the 2015 CRA Evaluation

United represents that United Bank-Virginia has taken steps to further strengthen its CRA performance since the United Bank-Virginia Evaluation. United Bank-Virginia asserts that it has continued to offer several special loan programs throughout its assessment areas that benefit LMI borrowers, small businesses, affordable housing projects, and other community development initiatives. Additionally, United Bank-Virginia represents that it has increased the number and dollar amount of donations to community development activities and social service organizations in its assessment areas, and that the bank's employees have volunteered by teaching financial literacy to students at 75 local schools.

CRA Performance of United Bank-West Virginia

United Bank-West Virginia received a "Satisfactory" CRA performance rating on its most recent CRA examination by the Reserve Bank, as of October 19, 2015 ("United Bank-West Virginia Evaluation").[35] The bank received ratings of "High Satisfactory" for the Lending Test, "Low Satisfactory" for the Investment Test, and "Outstanding" for the Service Test.

[35] The United Bank-West Virginia Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage loans reported, pursuant to HMDA, and small business and small farm loans reported under CRA data collection requirements for 2013 and 2014. Examiners reviewed qualified community development loans that were originated from June 3, 2013, through October 19, 2015. The evaluation period for investments and services was June 3, 2013, through October 19, 2015.

The United Bank-West Virginia Evaluation included full-scope evaluations of the Washington CSA; the Wheeling, West Virginia-Ohio, CSA ("Wheeling assessment area"); the Charleston-Huntington-Ashland, West

Examiners found that United Bank-West Virginia's overall lending levels were consistent with the bank's capacity and market presence. According to examiners, a high percentage of the institution's reported HMDA and small business loans was originated within the bank's assessment areas. Additionally, examiners noted that the geographic distribution of the bank's lending was excellent overall. Examiners also found that the bank's borrower distribution performance was good overall.

In the Washington, D.C., assessment area, Wheeling assessment area, the State of West Virginia, and the Commonwealth of Pennsylvania, examiners rated United Bank-West Virginia's performance on the Lending Test as "High Satisfactory." In the Washington, D.C., assessment area, examiners found that the bank's lending activity was consistent with the bank's capacity and helped to meet identified community credit needs. Additionally, examiners noted that the geographic distribution of the bank's lending was excellent, while the borrower distribution of loans was good. Examiners also noted that the bank originated a relatively high level of community development loans.

In the Wheeling assessment area, examiners found that the bank's lending activity was good and consistent with the bank's capacity and that it helped to meet identified credit needs. Examiners noted that the geographic and borrower lending distributions within the assessment area was good for each lending product reviewed. Additionally, examiners found that the bank originated an adequate level of community development loans within the assessment area.

In West Virginia and Pennsylvania, examiners found that the bank's lending activity in both states was consistent with the bank's capacity and that the bank offered a broad spectrum of loan products in an effort to meet local credit needs. Examiners noted that the geographic distribution of the bank's lending within the states was excellent and adequate, respectively, while borrower lending distribution was good. Additionally, examiners found that the bank was a leader in providing community development loans within the states.

As noted, United Bank-West Virginia's overall performance under the Investment Test was rated "Low Satisfactory." Examiners noted that the bank maintained an adequate level of qualified community development investments when considering the available opportunities for such investments. Examiners also noted that the bank had made charitable donations supporting organizations whose operations primarily support LMI individuals.

Examiners rated United Bank-West Virginia's performance under the Investment Test as "High Satisfactory" within the Washington, D.C., assessment area. Examiners found that the bank's level of qualified investments maintained good responsiveness in the assessment area. In the Wheeling assessment area, the State of West Virginia, and the Commonwealth of Pennsylvania, examiners rated the bank's performance under the Investment Test as "Low Satisfactory." In each of these geographical areas, examiners found that the bank maintained an adequate level of qualified investments.

Examiners found that United Bank-West Virginia's delivery systems and branch locations were readily accessible to all segments of the bank's assessment areas. Additionally, examiners noted that the bank was a leader in supporting community development services throughout its assessment areas.

Virginia-Ohio-Kentucky, CSA; the Morgantown, West Virginia, MSA; the Braxton, West Virginia, nonmetropolitan statistical area; and the Pittsburgh, Pennsylvania, MSA. Limited scope evaluations were performed in the Beckley, West Virginia, MSA; the Parkersburg-Marietta-Vienna, West Virginia-Ohio, MSA; the Weirton-Steubenville, West Virginia-Ohio, MSA; and the Jackson, West Virginia, nonmetropolitan statistical area.

In the Washington, D.C., assessment area and the Wheeling assessment area, examiners rated United Bank-West Virginia's performance in the Service Test as "High Satisfactory." Examiners noted that, in both areas, the bank's delivery systems and branch locations were readily accessible to all segments of the assessment area and that the bank had an adequate level of participation in qualified community development services benefiting the assessment area. In West Virginia, examiners rated the bank's performance in the Service Test as "Outstanding." Examiners found that the bank's delivery systems and branch locations were readily accessible to all segments of the bank's assessment area within the state. Additionally, examiners noted that the bank was a leader within its market areas in the state in providing community development services. In Pennsylvania, examiners rated the bank's performance in the Service Test as "High Satisfactory." Examiners found that the bank's delivery systems and branch locations were accessible to all segments of the bank's assessment area within the state. Additionally, examiners noted that the bank and its employees participated in a relatively high level of community development activities.

United Bank-West Virginia's Efforts since the 2015 CRA Evaluation

United represents that, since the United Bank-West Virginia Evaluation, the bank has significantly increased its community development investment levels. As noted, United Bank-West Virginia has formed partnerships in West Virginia to explore new investment opportunities and has made, or is in the process of finalizing, investments in West Virginia to support rural health development and in Pennsylvania to support the education of local LMI students.

CRA Performance of Cardinal Bank

Cardinal Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 28, 2015 ("Cardinal Bank Evaluation").[36] The bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.

Examiners found that the bank's overall lending levels reflected good responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of the bank's loans were made to borrowers within its assessment area. Overall, examiners found that the geographic distribution of the bank's loans reflected adequate penetration throughout the assessment area. Examiners found that the bank's distribution of borrowers reflected a good penetration among retail customers of different income levels. Additionally, examiners found that the bank used flexible lending practices in order to serve the assessment area's credit needs. Examiners noted that the bank made a relatively high level of community development loans and that these loans were responsive to the community's credit needs.

Examiners found that Cardinal Bank had a significant level of qualified community development investments and grants and that the bank occasionally acted in a leadership position for such investments. Examiners noted that the bank exhibited a good responsiveness to the credit and community economic development needs of its assessment area.

Examiners found Cardinal Bank's delivery systems to be accessible to essentially all portions of the bank's assessment area. Examiners noted that the bank's opening and

[36] The Cardinal Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed the bank's loans reported pursuant to the HMDA and the CRA for 2013, 2014, and the first two quarters of 2015. The evaluation period for the Investment Test and the Service Test was April 30, 2013, through September 29, 2015. The Cardinal Bank Evaluation included a full-scope evaluation of the Washington CSA.

closing of branches had not adversely affected the accessibility of its delivery systems. Additionally, examiners noted that the bank's services did not vary in a way that inconvenienced portions of its assessment area or any group of individuals. Examiners also noted that the bank provided a relatively high level of community development services in its assessment area.

Additional Supervisory Reviews

The Board has considered the results of the most recent consumer compliance examinations of United Bank-Virginia and United Bank-West Virginia conducted by Reserve Bank examiners, which included a review of the banks' compliance risk-management program and the banks' compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated United Bank-Virginia's and United Bank-West Virginia's fair lending compliance management program, including the banks' fair lending-related policies, procedures, and limits; board and senior management oversight of the banks' fair lending management program; fair lending risk-monitoring and management information systems; and internal controls relating to fair lending.

The Board also has considered the results of a recent consumer compliance examination of Cardinal Bank conducted by FDIC examiners, which included a review of the bank's compliance risk-management program and the bank's compliance with consumer protection 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. United represents that it plans to continue its current offering of products and services upon consummation of the proposal. United also represents that existing customers of Cardinal Bank would have access to a more extensive complement of products and services than those currently available to them, including new or enhanced products and services in areas such as brokerage services, custody, trust and estate services, business checking products and services, cash management, government contract lending, and nonprofit services. Additionally, United asserts that customers of Cardinal Bank would benefit from a more expansive branch and ATM network. United also represents that existing customers of United Bank-Virginia would benefit from access to products and services offered by George Mason. United represents that the proposal would create an expanded product offering for first-time home buyers and provide additional opportunities for United Bank-Virginia's LMI customers.

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 provided by United, 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 considerations are consistent with approval.

The Board also expects United to continue to improve its performance under the investment tests in West Virginia and Pennsylvania and to ensure that its efforts to help meet the convenience and needs of the communities it serves are commensurate with its size, activities, and prominence in its communities.

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."[37]

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.[38] 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.[39]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that results in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[40]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Both the acquirer and the target are predominately engaged in a variety of retail commercial banking activities.[41] 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

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[37] 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).

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

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

[40] *See People's United Financial, Inc*., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

[41] In each of the activities in which it engages, United 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.

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

United Bank-Virginia has applied under section 9 of the FRA to establish branches at the current locations of Cardinal Bank.[42] The Board has assessed the factors it is required to consider when reviewing an application under that section.[43] Specifically, the Board has considered United Bank-Virginia'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.[44] For the reasons discussed in this order, the Board finds these factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.[45]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 UBI and UBV 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.

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 Reserve Bank acting under delegated authority.

By order of the Board of Governors, effective April 6, 2017.

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[42] 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, 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 United Bank-Virginia's branches would be permissible under applicable state law. *See* D.C. Code §26-735(b); Md. Code, Com. Law §5-1003(a)(3); Va. Code Ann. §6.2-831.

[43] 12 U.S.C. § 322; 12 CFR 208.6.

[44] Upon consummation of the proposed transaction, United Bank-Virginia's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

[45] 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. 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. Notice of the proposal was published in the *Federal Register* on October 27, 2016, and in a relevant newspaper of general circulation (*The Washington Post*) on October 20, October 27, and November 10, 2016. The comment period ended on November 25, 2016. 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.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix
Branches to Be Established by United

District of Columbia Branches

- 1776 K Street, NW
  Washington, DC 20006
- 1825 Wisconsin Avenue, NW
  Washington, DC 20007

Maryland Branches

- 7315 Wisconsin Avenue
  Bethesda, Maryland 20814
- 1807 Rockville Pike
  Rockville, Maryland 20852

Virginia Branches

- 1737 King Street
  Alexandria, Virginia 22207
- 4115 Annandale Road
  Annandale, Virginia 22207
- 5335 Lee Highway
  Arlington, Virginia 22207
- 2100 North Glebe Road
  Arlington, Virginia 22207
- 2505 Wilson Boulevard
  Arlington, Virginia 22201
- 6402 Williamsburg Boulevard
  Arlington, Virginia 22207
- 4300 Wilson Boulevard
  Suite 102
  Arlington, Virginia 22203

Order Issued Under International Banking Act

Nordea Bank AB
Stockholm, Sweden

Order Approving Establishment of a Branch
FRB Order No. 2017–11 (April 13, 2017)

Nordea Bank AB (publ) ("Nordea Bank Sweden"), Stockholm, Sweden, a foreign bank within the meaning of the International Banking Act of 1978 ("IBA"), has applied under section 7(d) of the IBA[1] to retain the state-licensed branch in New York, New York, of Nordea Bank's former wholly-owned subsidiary bank, Nordea Bank Finland plc ("Nordea Bank Finland"), Helsinki, Finland, following consummation of an internal reorganization of Nordea Bank Sweden and its consolidated subsidiaries ("Nordea Group"). 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*, December 1, 2015). The time for submitting comments has expired, and the Board has considered all comments received.

Nordea Bank Sweden is the parent company and top-tier banking organization of Nordea Group. Sampo plc ("Sampo"), a Finnish company, owns 21.3 percent of Nordea Bank Sweden's outstanding shares and is the largest individual shareholder of Nordea Bank Sweden.[2] No other shareholder owns more than 5 percent of the shares of Nordea Bank Sweden.

Nordea Bank Sweden proposes to retain the former New York branch of Nordea Bank Finland following an internal reorganization in which Nordea Bank Sweden's bank subsidiaries in Denmark, Finland, and Norway ("Nordic Bank Subsidiaries") were converted into branches of Nordea Bank Sweden by way of mergers between Nordea Bank Sweden and each of the Nordic Bank Subsidiaries.[3] Following the mergers, the banking business will be conducted through branches of Nordea Bank Sweden in Denmark, Finland, Norway, and the United States.

Nordea Bank Sweden has consolidated assets of approximately $739 billion.[4] It is an operating bank that engages directly in banking activities usual in connection with the business of banking in the countries in which it operates, including by offering retail and

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1 12 U.S.C. § 3105(d).

2 Sampo has two director interlocks with Nordea Bank Sweden and is considered to control Nordea Bank Sweden for purposes of the Bank Holding Company Act ("BHC Act"). 12 U.S.C. § 1841 *et seq*. Nordea Bank Sweden and Sampo have each committed to notify the Board if Sampo's ownership interest in Nordea Bank Sweden increases to more than 21.3 percent. The Finanssivalvota Finansinspektionen, the Finnish supervisory authority, is the primary supervisor of Sampo, which is regarded as a financial conglomerate under the European Union's Financial Conglomerates Directive. Sampo's holding of Nordea Bank Sweden is consistent with section 4 of the BHC Act.

3 On November 18, 2016, the Board's General Counsel approved, under delegated authority, a request pursuant to section 211.24(a)(6) of the Board's Regulation K from Nordea Bank Sweden to proceed with the proposed internal reorganization prior to Board action on Nordea Bank Sweden's application to establish a branch in the United States, but subject to the Board's action on the application. Nordea Bank Sweden executed its internal reorganization on January 2, 2017. These mergers are structured as transfers of all the assets and liabilities of the Nordic Bank Subsidiaries to Nordea Bank Sweden.

4 Asset data are as of September 30, 2016.

wholesale banking products to customers inside and outside of Sweden. In the United States, Nordea Bank Sweden operates the former New York branch of Nordea Bank Finland ("NY Branch"). Nordea Bank Sweden indirectly owns Nordea Investment Management North America, Inc., a U.S. asset management company incorporated in Delaware and registered with the U.S. Securities and Exchange Commission. Nordea Bank Sweden is a qualifying foreign banking organization under Regulation K.[5] Since the merger of Nordea Bank Finland into Nordea Bank Sweden, the NY Branch has serviced Nordea Bank Sweden's customers doing business in the United States, Canada, and elsewhere. The branch also offers loans and other credit services, cash management services, and markets services including foreign exchange.

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 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.[6] The Board also considers additional standards as set forth in the IBA and Regulation K.[7]

In this case, the Finansinspektionen, the Swedish financial supervisory authority ("SFA"), remains the primary supervisor of Nordea Bank Sweden on a consolidated basis after the Nordea Group's internal reorganization. The SFA also gained direct responsibility for supervising the branches that were formerly subsidiaries of Nordea Bank Sweden.

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[5] 12 CFR 211.23(a). Sampo and Nordea Bank Sweden would also together meet the standards to be a qualifying foreign banking organization. Nordea Bank Sweden has committed to inform the Board if either Sampo no longer qualifies as a qualifying foreign banking organization or Sampo engages in activities or makes investments in the United States that are not permissible under regulations promulgated by the Board, including section 211.23(f) of Regulation K. Separately, Sampo has committed to provide, on an annual basis, a written statement indicating whether it is, directly or indirectly, engaged in activities in the United States for purposes of the Board's Regulation K.

[6] 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, 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.

[7] 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).

The SFA is primarily responsible for the supervision of Swedish banking organizations and has authority to regulate the establishment and activities of banking institutions and to approve their business expansions, both domestically and abroad.[8] The SFA monitors Swedish banks' consolidated financial condition, compliance with laws and regulations, and internal controls through a combination of on-site examinations, off-site surveillance through the review of required regulatory reports and external audit reports, and interaction with senior management.

The SFA has established a risk classification system for determining an institution's supervision plan. The supervision includes an assessment of the institution's internal capital and liquidity and is supplemented by regular risk reviews, which include credit risk, market risk, operational risk, and liquidity risk. In addition, the SFA conducts on-site and off-site reviews of Nordea Bank Sweden and its Swedish subsidiaries. Examination findings and areas of concern are discussed with senior management of the bank, and corrective actions taken by the bank are monitored by the SFA. The off-site monitoring system requires all Swedish banks to submit monthly, quarterly, semi-annual, or annual reports relating to asset quality, lending concentrations, capital adequacy, earnings, liquidity, affiliate transactions, off-balance sheet exposures, and ownership and control. In addition, banks must file annual externally audited consolidated financial statements. New reports are added to permit collection and analysis of information as new issues develop and the focus of SFA oversight is adjusted.

The SFA is represented in the Swedish Financial Stability Council, which was established to discuss issues relating to financial stability.[9] The SFA has been participating in various European Banking Authority ("EBA") initiatives and has established a supervisory system for Swedish banks in line with the EU directives, including those related to capital adequacy and recovery and resolution frameworks. The SFA is also a full member of the Basel Committee of Banking Supervision, the Financial Stability Board, and global standard-setting bodies relating to securities and insurance businesses. Overall, the SFA's approach to supervision is risk-focused and its regulations and directives are intended to strengthen practices consistent with the Basel Core Principles for Effective Banking Supervision.

While the SFA is the consolidated primary supervisor, other regulators supervise the activities of particular subsidiaries or activities of Swedish banks. Nordea Bank Sweden states that it has retained local subsidiaries in Denmark, Finland, and Norway after the reorganization for the purpose of making residential mortgage loans and issuing covered bonds. These entities will be supervised by the local competent authorities. In the EU, colleges of supervisors are the vehicles for the coordination of supervisory activities. Under EU law, colleges of supervisors have to be established for European Economic Area ("EEA") banks with subsidiaries or significant branches in other EEA countries and, where relevant, may include supervisors from non-EEA countries. The EBA has issued regulatory and implementing technical standards on the functioning of colleges of supervisors.[10] The SFA regu-

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[8] Sweden is a European Union ("EU") member state but is not a euro area country and does not currently participate in the Single Supervisory Mechanism ("SSM") under the supervision of the European Central Bank ("ECB"). For the EU member countries that are in the euro area and non-euro area members that choose to participate, the ECB is now the competent authority for the supervision of all large internationally active banking organizations under the SSM. As Sweden has, for the time being, decided not to participate in the SSM, no supervisory responsibilities have been transferred from the SFA to the ECB.

[9] Other members of the council are the Swedish central bank, Sveriges Riksbank; the Swedish National Debt Office; and the Swedish Ministry of Finance.

[10] In 2008, the SFA and the national supervisory authorities of countries including Denmark, Norway, Finland, and Luxembourg entered into a Multilateral Cooperation and Coordination Agreement for the supervision of Nordea Bank Sweden and its subsidiaries and significant branches.

larly coordinates supervision with these agencies and shares and receives data and information from these agencies.

The Finanssivalvonta Finansinspektionen, the Finnish financial supervisory authority ("Finnish FSA"), remains the primary supervisor of Sampo on a consolidated basis following the Nordea Group's internal reorganization. The Finnish FSA is primarily responsible for the supervision of Finnish banking and insurance organizations. Sampo, which is headquartered in Finland and owns shares in companies engaged in banking, fund management, and insurance in several countries in the EEA, is considered a financial conglomerate under the EU's Financial Conglomerates Directive. Finnish regulations for supervising financial conglomerates are based on the directives issued by the European Parliament and the European Council. The main focus of conglomerate supervision is on capital adequacy, large common exposures, intra-conglomerate exposures, other similar business relationships, and internal risk management. The Finnish FSA requires reports on capital adequacy and on risk concentrations as they relate to single, or a group of related, counterparties or specific products. The Finnish FSA also requires reports on all significant inter-group transactions of regulated entities within the financial conglomerate. Transactions between Sampo and Nordea Bank Sweden are required to be on an arms-length basis. Nordea Bank Sweden's primary supervisor, the SFA, and other national competent authorities from jurisdictions in which Sampo has operations participate as host country supervisors in the Sampo financial conglomerate supervisory college.

Based on the facts of record and the supervisory system that the SFA and the Finnish FSA have in place, the Board has determined that Nordea Bank Sweden and Sampo are subject to comprehensive supervision on a consolidated basis

The Board has also considered the financial and managerial and other applicable factors in the case. The SFA and Finnish FSA have no objections to the establishment of the proposed branch. Sweden's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Basel Accord"). Nordea Bank Sweden'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 Nordea Bank Sweden are considered consistent with approval, and Nordea Bank Sweden appears to have the experience and capacity to support the proposed branch. In addition, Nordea Bank Sweden has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

Sweden 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, Sweden has enacted laws and regulations to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Sweden, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Nordea Bank Sweden has policies and procedures to comply with these laws and regulations, and Nordea Bank Sweden's compliance with applicable laws and regulations is monitored by governmental entities responsible for anti-money-laundering compliance.

Nordea Bank Sweden has committed to make available to the Board such information on its operations and on those of any of its affiliates, including Sampo, 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, Nordea Bank Sweden 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 Nordea Bank Sweden 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 Nordea Bank Sweden's activities, including the type of activities it proposes to conduct in the United States and the potential for these activities to increase or transmit financial instability, and (2) the framework in place for supervising Nordea Bank Sweden in its home jurisdiction. Based on these and other factors, financial stability considerations for this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by Nordea Bank Sweden as well as the terms and conditions set forth in this Order, Nordea Bank Sweden's application to establish a branch in New York is hereby approved. Should any restrictions on access to information on the operations or activities of Nordea Bank Sweden and its affiliates, including Sampo, subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Nordea Bank Sweden and its affiliates, including Sampo, with applicable federal statutes, the Board may require termination of any of Nordea Bank Sweden's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Nordea Bank Sweden with the commitments made in connection with this application and with the conditions in this Order.[12]

By order of the Board of Governors, effective April 13, 2017.

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

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

[12] The Board's authority to approve the establishment of a branch 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 Nordea Bank Sweden in accordance with any terms and conditions that the New York State Department of Financial Services may impose. The New York State Department of Financial Services approved Nordea Bank Sweden's application to establish the branch on November 29, 2016.

Order Issued Under Home Owners' Loan Act

TIAA Board of Overseers
New York, New York

Teachers Insurance and Annuity Association of America
New York, New York

TCT Holdings, Inc.
New York, New York

Order Approving the Acquisition and Merger of Savings and Loan Holding Companies
FRB Order No. 2017–16 (June 7, 2017)

TIAA Board of Overseers ("Overseers"), Teachers Insurance and Annuity Association of America ("TIAA"), and TCT Holdings, Inc. ("TCT") (collectively, "Applicants"), each of New York, New York, and each a savings and loan holding company ("SLHC") have requested the Board's approval under section 10(e) of the Home Owners' Loan Act, as amended ("HOLA"),[1] to acquire and merge with EverBank Financial Corp. ("EFC"), an SLHC, and indirectly acquire its subsidiary federal savings association, EverBank, both of Jacksonville, Florida.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 69530 (October 6, 2016)).[2] The time for submitting comments has expired, and the Board has considered the proposal, all comments received, and the factors set forth in section 10(e) of HOLA in light of all the information of record.[3] The Office of the Comptroller of the Currency ("OCC") has approved the related application under section 18(c) of the Federal Deposit Insurance Act[4] for TIAA-CREF Trust Company FSB ("TIAA FSB"), St. Louis, Missouri, to merge with and into EverBank.

Applicants, with total assets[5] of approximately $282.4 billion, control TIAA FSB and approximately $3.6 billion in deposits, which represent less than

1 percent of the total amount of deposits in the United States.[6] TIAA FSB conducts all of its banking activities through a nationwide Internet platform.

EFC, with consolidated assets of approximately $27.8 billion, is the 64th largest depository organization in the United States. EFC controls EverBank, the 6th largest depository institution in Florida, controlling approximately $18.9 billion in deposits, which represent 3.7 percent of the total deposits held by insured depository institutions in Florida.[7]

On consummation of the proposal, Applicants would have total assets of approximately $282.4 billion and would control deposits of approximately $23.3 billion, which represent

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1 12 U.S.C. § 1467a(e).

2 12 CFR 238.14(c)(2).

3 12 U.S.C. § 1467a(e)(2); *see also* 12 CFR 238.15.

4 12 U.S.C. § 1828(c).

5 As an insurance company, TIAA follows statutory accounting principles and does not prepare consolidated financial statements under U.S. generally accepted accounting principles. As used here, "total assets" includes only those assets of the insurer that are allowable or admitted under statutory accounting rules.

6 Deposit data are as of December 31, 2016, unless otherwise noted.

7 State deposit and ranking data are as of June 30, 2016.

less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[8] In Florida, Applicants would become the 6th largest depository organization, controlling deposits of approximately $18.9 billion, which represent 3.7 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 10(e)(2)(E) of HOLA generally provides that the Board may not approve an application by an SLHC to acquire an insured depository institution in a state other than the SLHC's home state if the SLHC controls, or upon consummation would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States, unless the acquisition involves an insured depository institution in default or danger of default.[9]

For purposes of HOLA, EverBank's home state is Florida, and Applicants' home state is Missouri.[10] 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. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 10(e)(2)(E) of HOLA.

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 if the proposal would substantially lessen competition, tend to create a monopoly, or in any other manner restrain trade in any section of the country, 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]

EverBank maintains ten retail branches, all of which are located in Florida, but operates primarily as an online depository institution. TIAA FSB does not operate any physical retail branches and interacts with customers through an Internet platform. Each bank controls a relatively small amount of deposits when compared to the amount of deposits taken over the Internet as a whole.[13] TIAA FSB and EverBank compete in local markets throughout the nation through their Internet platforms; however, both institutions solicit deposits from across the country, making it unlikely that either institution holds a high concentration of Internet deposits in any local market. Based on the size of the institutions, the large number of Internet-based competitors, and the diffuse geographic nature of the Internet deposits of EverBank and TIAA FSB, the proposed transaction would not result

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[8] TIAA utilizes equity method accounting for its investments in subsidiaries, as mandated under statutory accounting principles. Accordingly, Applicants' total assets would not be materially affected by the acquisition.

[9] 12 U.S.C. § 1467a(e)(2)(E).

[10] 12 U.S.C. § 1467a(e)(7)(B)(iii) and (iv). A federal savings association's home state is the state in which its home office is located. An SLHC's home state is the state in which the total deposits of all insured depository institution subsidiaries of such company were the largest on the date on which the company became an SLHC.

[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] Data concerning the total amount of deposits gathered over the Internet by all depository institutions are not available. However, data concerning the amount of deposits gathered by Internet-only depository institutions, a subset of depository institutions that take deposits over the Internet, are available. The resultant institution's share of all deposits of Internet-only depository institutions (including the share of deposits attributable to EverBank's retail branches that would survive the merger) would be less than 5 percent.

in a material increase in concentration in any single market, including any in which EverBank has a physical location.[14] Consummation of the proposal would be consistent with Board precedent and within the thresholds in the Department of Justice ("DOJ") Bank Merger Guidelines.

The DOJ 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 of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board 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 public and supervisory 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.[15] In this evaluation, the Board considers a variety of information regarding capital adequacy 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 institution. In addressing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in light of their financial and managerial resources and the proposed business plan. The Board has consulted with the OCC and the Consumer Financial Protection Bureau ("CFPB") regarding this proposal.

Applicants and EFC are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is an SLHC acquisition that is structured as an exchange of cash for shares followed by a merger.[16] The asset quality, earnings, and liquidity of Applicants, EFC, and their subsidiary depository institutions are consistent with approval, and Applicants appear 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.

[14] EverBank has 10 physical branches in locations across Florida. Even assuming that all of the deposits of the resultant institution would be located in Florida, the resultant institution would control less than 5 percent of the total deposits in that state.

[15] As of the date of this order and based on information provided by Applicants, Applicants meet the requirements of section 10(c)(9)(c) of HOLA and therefore are not required to obtain the Board's prior approval to engage in any business activities resulting from the merger and acquisition of EFC and EverBank.

[16] To effect the holding company merger, all outstanding shares of EFC will be converted into the right to receive cash from Applicants. Applicants have the resources to fund the proposed transaction.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization.[17] This consideration included an evaluation of the competence, experience, and integrity of the officers, directors, and principal shareholders of Applicants and TIAA FSB; their record of compliance with laws and regulations; and the record of the Applicants and TIAA FSB and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.[18] The Board has reviewed the examination records of Applicants, EFC, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Applicants; 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 the commenters.

Applicants' existing risk-management program and their directors and senior management are considered to be satisfactory. The directors and senior executive officers of Applicants have knowledge of and experience in the banking and financial services sectors. Applicants have conducted comprehensive due diligence and are devoting significant financial and other resources to address all aspects of the post-integration process for this proposal.

The Board also has considered Applicants' plans for implementing the proposal. Applicants plan to leverage much of EverBank's existing risk-management framework and program, compliance-management framework, and related corporate support functions, and these are considered satisfactory from a supervisory perspective. Applicants intend for EverBank's risk-management and compliance framework and program to serve as the operating framework and program at the resultant depository institution following the transaction. In addition, the management of Applicants, EFC, and their depository institution subsidiaries have the experience and resources to operate the combined organization in a safe and sound manner, and Applicants plan to integrate EverBank's existing management and personnel in a manner that augments Applicants' management.[19]

Based on all the facts of record, including the supervisory records of Applicants, EFC, and their subsidiary depository institutions; their managerial and operational resources; Applicants' plans for operating the institution after consummation; and the 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 Applicants and EFC in combatting money laundering activities, are consistent with approval.

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[17] 12 CFR 238.15(b)(2).

[18] *See* 12 U.S.C. § 1467a(e)(1)(B); 12 CFR 238.15(b)(2).

[19] A commenter asserted that Applicants do not have sufficient banking experience to acquire EFC and EverBank. Applicants represent that management of the resultant depository institution would consist of banking professionals with extensive experience drawn from the current management of TIAA FSB and EverBank. For the reasons discussed above, management of both TIAA FSB and EverBank are considered satisfactory from a supervisory perspective.

The commenter also alleged that Applicants have improperly invested heavily in agricultural expansion in Brazil that contributed to the depletion of the Brazilian rainforest, which reflects poorly on management. Applicants represent that their investments in Brazil follow the U.N. Principles for Responsible Investment in Farmland. This allegation does not reflect on the competence, experience, or integrity of management with respect to the control and operation of a depository institution.

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.[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 Community Reinvestment Act ("CRA").[21] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[22] and requires the appropriate federal financial supervisory agency to 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 expansionary proposals.[23]

In addition, the Board considers the institutions' 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 institutions' business models, their marketing and outreach plans, the combined 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 TIAA FSB and EverBank, the fair lending and compliance records of both savings associations, the supervisory views of the OCC and the CFPB, confidential supervisory information, information provided by Applicants, and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

A commenter objected to the proposal alleging that, based on data reported under the Home Mortgage Disclosure Act ("HMDA") for 2015, TIAA FSB lent only to white borrowers in the St. Louis, Missouri-Illinois Metropolitan Statistical Area ("St. Louis MSA"). The commenter also criticized the rate at which EverBank denied applications by African Americans in the Miami-Fort Lauderdale-West Palm Beach, Florida Metropolitan Statistical Area ("Miami MSA") and the Tampa-St. Petersburg-Clearwater, Florida Metropolitan Statistical Area ("Tampa MSA"), based on 2015 HMDA data.

The Board also received comments from 10 community groups and nonprofit organizations in support of the proposal. Supporting commenters praised the community outreach efforts of both TIAA FSB and EverBank and expressed confidence that the proposal would allow the combined organization to expand its community development activities.

[20] 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(3).
[21] 12 CFR 238.15(b)(3).
[22] 12 U.S.C. § 2901(b).
[23] 12 U.S.C. § 2903.

Businesses of Involved Institutions and Response to Comments

TIAA is a New York life insurance company focusing on consumers that work in not-for-profit fields, including academia, research, medicine, and government. TIAA is wholly owned by Overseers, a New York not-for-profit, non-stock membership corporation. TCT is a wholly owned subsidiary of TIAA and has no operations outside its ownership of TIAA FSB. TIAA FSB is a federal savings association that does not operate physical branches but offers deposit products, investment management and trust services, and residential real estate lending throughout the United States through an Internet platform under the brand name "TIAA Direct."

EFC, a publicly traded Delaware corporation, operates primarily through EverBank. EverBank is a federal savings association that serves customers in Florida through 10 branches and customers throughout the United States through a nationwide Internet platform. EverBank offers consumer products including deposit services, loans, residential lending, and loan servicing, as well as products targeted primarily to business customers, such as business deposit services, commercial real estate lending, lender finance, equipment finance and leasing, and mortgage warehouse financing. EverBank operates a home lending network in all 50 states and markets to customers nationwide through its Internet platform.

Applicants assert that the allegations in the comment letter with respect to TIAA FSB do not fully represent TIAA FSB's lending record, which consists of nationwide activity. Applicants noted that TIAA FSB does not operate any physical branches and markets to consumers nationwide through its Internet platform and other broad-based distribution channels, and therefore argue that lending data focused on a single market do not reflect TIAA FSB's broader lending record or strategy. Applicants assert that the denial rates cited by the commenter are based on a small number of originations and do not take into account factors, such as credit history and existing debt levels, that TIAA FSB uses to underwrite loans.

With respect to the allegations related to EverBank, Applicants similarly assert that the denial rates cited by the commenter are based on a small number of applications and do not take into account legitimate underwriting factors, such as credit history and existing debt levels. Applicants assert that the denials underlying the data cited by the commenter were properly made because the applications did not satisfy EverBank's underwriting criteria. Applicants also assert that lending data focused on operations in a small number of specific markets do not reflect EverBank's broader lending record or strategy.

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 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 OCC and the CFPB.[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

[24] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg*. 48506, 48548 (July 25, 2016).

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 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 institution's lending, 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; (3) the distribution of such loans based on borrower characteristics, including for home mortgage loans the number and amount of loans to low-, moderate-, middle-, and upper-income individuals;[26] (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.[27] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of TIAA FSB

TIAA FSB was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of January 13, 2014 (the "TIAA FSB Evaluation").[28] TIAA FSB received "Low Satisfactory" ratings for the Lending Test and the Service Test and a "High Satisfactory" rating for the Investment Test.

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[25] 12 U.S.C. § 2906.

[26] Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See*, *e.g.*, 12 CFR 228.22(b)(3).

[27] Other data relevant to 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.

[28] The TIAA FSB Evaluation was conducted using Large Bank CRA Examination Procedures. The Lending Test evaluation period was January 1, 2012, through December 31, 2013, for home mortgage loans originated and purchased. Examiners reviewed community development activities from August 21, 2010, through June 2, 2014. The assessment area reviewed was defined as the city of St. Louis, St. Charles, St. Louis, and Warren counties in Missouri, and Madison and St. Clair counties in Illinois. These five counties and the city of St. Louis are contiguous geographies located within the St. Louis MSA.

Examiners found that TIAA FSB's lending levels reflected adequate responsiveness to the credit needs of TIAA FSB's assessment area. Examiners also noted that the geographic distribution of home mortgage loans reflected good penetration and that the distribution of home mortgage loans among borrowers of different income levels reflected excellent penetration. Examiners also found that TIAA FSB's geographic distribution of home refinance loans was excellent. Examiners further found that TIAA FSB had a relatively high level of community development loans, including loans to a low-income credit union focused specifically on meeting the financial service needs of underserved communities. Examiners noted that TIAA FSB's loan-product offering was varied and that TIAA FSB made use of several community development financial institutions that supported affordable housing and community development projects in order to provide innovative and flexible credit products to address credit needs in its assessment area.

Examiners noted that TIAA FSB purchased a significant level of qualifying mortgage-backed securities and that its parent company, TIAA, had a significant level of qualified investments to minority-owned institutions and community development financial institutions. In addition, examiners noted that TIAA FSB made a donation to a St. Louis credit union that met an identified community need.

Examiners concluded that TIAA FSB's delivery systems were accessible to geographies and individuals of different income levels. Examiners noted that TIAA FSB was an Internet-based depository institution with no traditional banking offices or deposit-taking ATMs, instead relying on the Internet, mobile banking, and telephone banking for loans and deposit accounts. Examiners stated that it was unproven whether or not these alternative delivery systems specifically met the need of LMI families in TIAA FSB's assessment area. Examiners found that TIAA FSB provided an adequate level of community development services. Examiners noted that TIAA FSB's community development services included credit and homebuyer seminars primarily targeted toward LMI individuals residing in its assessment area and financial literacy training to LMI students within its assessment area.

TIAA FSB's Efforts Since the 2014 CRA Evaluation

TIAA FSB represents that since the TIAA FSB Evaluation, it has originated or renewed high-impact community development loans and has developed partnerships with a variety of community organizations in its assessment area to facilitate affordable housing and other loans to LMI individuals. TIAA FSB also represents that it has purchased mortgage-backed securities collateralized by mortgages to LMI individuals and is participating in a five-year Enterprise Community Impact note.

CRA Performance of EverBank

EverBank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of October 14, 2015 (the "EverBank Evaluation").[29] EverBank received "High Satisfactory" ratings for the Lending, Investment, and Service Tests.

Examiners found that EverBank had an overall adequate dispersion of loans in geographies of different income levels. Although the examiners considered EverBank's geographic distribution of home purchase loans to be good and its geographic distribution of home improvement loans to be excellent, they found EverBank's geographic distribution of home

[29] The EverBank Evaluation was conducted using Large Bank CRA Examination Procedures. The Lending Test evaluation period was January 1, 2012, through December 31, 2014, for home mortgage loans and small business loans. Examiners reviewed community development activities from May 1, 2012, through August 31, 2015. The assessment area receiving a full-scope review for the EverBank Evaluation was defined as Duval County, Florida, within the Jacksonville, Florida Metropolitan Statistical Area.

refinance loans to be poor. Examiners noted that EverBank had a good distribution of loans to borrowers of different income levels. Examiners further found a good level of geographic distribution of lending for loans to small businesses and a good level of overall lending activity and community development lending. Examiners noted that EverBank's community development loans supported affordable housing initiatives, economic development in EverBank's assessment area, and the revitalization or stabilization of LMI census tracts.

Examiners found EverBank to have community development investments that exhibited excellent responsiveness to community development needs within its assessment area. Examiners noted that EverBank's investments included government-sponsored mortgage-backed securities, in which the underlying mortgages were to LMI borrowers. Investments also included grants to the local Habitat for Humanity and other affordable housing organizations as well as a contribution to a financial literacy program targeted to high school students in LMI communities.

Examiners noted that telephone and Internet are the primary means used by EverBank to deliver services to its customers. Examiners found that EverBank's physical branches were reasonably accessible to people and geographies of different income levels and that no significant differences in hours existed among branches located in geographies of different income levels. Examiners found that EverBank offered an adequate level of services through alternate delivery systems. Examiners also found that EverBank's record of opening or closing offices had not adversely impacted access to banking services. Examiners stated that EverBank provided an excellent level of community development services that were highly responsive to community needs. Examiners specifically highlighted EverBank's efforts to provide technical assistance on financial and banking-related matters to community groups, which represented an excellent responsiveness to the affordable housing and community development needs within EverBank's assessment area.

EverBank's Efforts Since the 2015 CRA Evaluation

Applicants represent that since the EverBank Evaluation, EverBank has continued to provide products and services tailored to the convenience and needs of LMI individuals. Applicants represent that EverBank continues to originate and purchase community development loans within its assessment area. Applicants also represent that EverBank has made qualified investments within its assessment area, including investments in affordable housing units, scholarship programs serving low-income students, and grants to community organizations that provide affordable housing, community services, and education opportunities. Applicants represent that EverBank continues to participate in affordable lending programs and that EverBank supports the mission of Habitat for Humanity both by originating loans for the program and providing continuing mortgage-servicing support for loans owned by Habitat for Humanity organizations, as well as for loans sold by Habitat for Humanity organizations to other investors. EverBank also offers banking products, such as affordable savings and checking accounts, designed to provide an array of services throughout its assessment area at a minimal cost, as well as additional lending products and services aimed at extending banking services to smaller savers and borrowers and an online business-payroll service for small businesses.

Views of the OCC and the CFPB

In its review of the proposal, the Board consulted with the OCC regarding the CRA, consumer compliance, and fair lending records of TIAA FSB and EverBank. The Board also consulted with the CFPB regarding EverBank's record of compliance with consumer protection laws. The OCC approved the bank merger underlying this proposal. The OCC

was provided with the comments on the proposal received by the Board and considered them in connection with its review of the bank merger application.

The Board has considered the results of a recent consumer compliance examination of TIAA FSB conducted by OCC examiners, which included a review of TIAA FSB's policies and procedures for complying with fair lending and other consumer compliance laws.

The Board also has considered the results of a recent consumer compliance examination of EverBank conducted by OCC examiners, which included reviews of EverBank's consumer compliance policies and procedures, internal controls, compliance testing, monitoring, training, and the compliance-risk assessment process. Examiners also reviewed third-party risk management; management in response to changes in laws, regulations, systems, and products; due diligence for new products and services; and areas of potential unfair or deceptive acts or practices.

The Board has taken these consultations into account in evaluating this proposal, including in considering whether Applicants have the experience and resources to ensure that the organization would effectively implement policies and programs that would allow the combined organization to effectively serve the credit needs of all the communities within the firm'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. Applicants represent that the resultant depository institution will leverage the strengths of TIAA FSB and EverBank to focus on meeting community needs throughout the geographic footprint of the combined savings association. Planned efforts include, but are not limited to, financing for acquisition, renovation, or construction of affordable housing for sale or rent to LMI individuals or families; revolving loan funds for nonprofit organizations for the purpose of acquiring, rehabilitating, and selling affordable homes; financing for the acquisition, renovation, or construction of affordable multifamily housing; loans for owner-occupied, nonresidential properties owned by community development organizations; investments in pre-development or permanent financing for affordable housing and community development projects that benefit LMI geographies; working capital lines of credit to community development corporations; financial literacy programs related to credit repair and foreclosure alternatives; and direct investments in nonprofit programs and related community services. Applicants represent that as a result of the proposed transaction, the resultant depository institution will have the capability to offer a wider array of banking products through expanded distribution channels. These banking products include credit cards and small business loans, which TIAA FSB does not currently offer to its customers, as well as broader residential lending and commercial lending operations.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of TIAA FSB and EverBank under the CRA; their records of compliance with fair lending and other consumer protection laws; consultations with the OCC and the CFPB; confidential supervisory information; information provided by Applicants; 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.

Effect of the Transaction on the Savings Association 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.[30] As discussed above, the financial and managerial resources and the future prospects of the combined organization are consistent with approval. The Board has considered the likely effect of the transaction on the resultant depository institution and believes that it is consistent with approval. In view of Applicants' and EFC's current resources, capital, and future prospects; the significant financial and other resources being devoted to support the proposed combined organization; the managerial resources of Applicants, EFC, TIAA FSB, and EverBank; and the likely effect of the transaction on the proposed combined organization, 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.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[31] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under HOLA. 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 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 Boston, acting pursuant to delegated authority.

By order of the Board of Governors, effective June 7, 2017.

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

[30] 12 U.S.C. § 1467a(e)(2).

[31] A commenter requested that the Board hold public hearings or meetings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. 12 CFR 238.14(e) and 262.3(e). 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.

In addition, a commenter requested an extension of the comment period for 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 determines not to extend the comment period.

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Legal Developments: Third Quarter, 2017

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Veritex Holdings, Inc.
Dallas, Texas

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017–18 (July 6, 2017)

Veritex Holdings, Inc. ("Veritex Holdings"), Dallas, Texas, 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 Act[2] to merge with Sovereign Bancshares, Inc. ("Sovereign Bancshares"), and thereby indirectly acquire Sovereign Bank, both of Dallas, Texas.

In addition, Veritex Holdings' subsidiary state member bank, Veritex Community Bank ("Veritex Bank"), Dallas, Texas, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Sovereign Bank, with Veritex Bank as the surviving entity.[3] Veritex 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 Sovereign Bank.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 8425 (January 25, 2017)).[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").

Veritex Holdings, with consolidated assets of approximately $1.4 billion, is the 524th largest insured depository organization in the United States.[6] Veritex Holdings controls approximately $1.1 billion in consolidated deposits, which represent less than 1 percent of

[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 the Appendix.
[5] 12 CFR 262.3(b).
[6] National asset data, market share, and ranking data are as of December 31, 2016, unless otherwise noted.

the total amount of deposits of insured depository institutions in the United States.[7] Veritex Holdings controls Veritex Bank, which operates only in Texas. Veritex Holdings is the 64th largest insured depository organization in Texas, controlling deposits of approximately $1.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8]

Sovereign Bancshares, with consolidated assets of approximately $1.1 billion, is the 670th largest insured depository organization in the United States, controlling approximately $857.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sovereign Bancshares controls Sovereign Bank, which operates only in Texas. Sovereign Bancshares is the 80th largest insured depository organization in Texas, controlling deposits of approximately $814.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Veritex Holdings would become the 338th largest insured depository organization in the United States, with consolidated assets of approximately $2.5 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Veritex Holdings would control consolidated deposits of approximately $2.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. Veritex Holdings would become the 38th largest insured depository organization in Texas, controlling deposits representing 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.[9] Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any 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.[10]

Veritex Holdings and Sovereign Bancshares have subsidiary depository institutions that compete directly in the Dallas, Texas, banking market ("Dallas market").[11]The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") that Veritex Holdings would control;[12] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index

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[7] In this context, insured depository institutions include commercial banks, credit unions, savings and loan associations, and savings banks.

[8] State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

[9] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[10] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[11] The Dallas market includes Dallas and Rockwall counties; the southeastern quadrant of Denton County, including Denton and Lewisville; the southwestern quadrant of Collin County, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County; and Midlothian, Waxahachie and Ferris in Ellis County, all in Texas.

[12] Local deposit and market share data are as of June 30, 2016, 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.*,

("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[13] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Dallas market. On consummation of the proposal, the Dallas market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in this market would be small, and numerous competitors would remain in the market.[14]

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 Dallas 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 Dallas 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 and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[15] 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

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).

[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), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[14] Veritex Holdings operates the 23rd largest depository institution in the Dallas market, controlling approximately $1.0 billion in deposits, which represent less than 1 percent of market deposits. Sovereign Bancshares operates the 28th largest depository institution in the same market, controlling approximately $539.7 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Veritex Holdings would become the 16th largest depository organization in the market, controlling deposits of approximately $1.6 billion, which represent less than 1 percent of market deposits. The HHI for the Dallas market would increase by 1 point to 1792, and 121 competitors would remain in the market.

[15] 12 U.S.C. §§ 1842(c)(2), (5), and (6), and 1828(c)(5) and (11).

the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Veritex Holdings and Sovereign Bancshares 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, with a subsequent merger of Veritex Bank and Sovereign Bank.[16] The asset quality, earnings, and liquidity of both Veritex Bank and Sovereign Bank are consistent with approval, and Veritex Holdings 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 Veritex Holdings, Sovereign 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 Veritex Holdings; 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.

Veritex Holdings, Sovereign Bancshares, and their subsidiary depository institutions are considered to be well managed. Veritex Holdings has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Veritex Holdings' directors and senior executive officers have 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 Veritex Holdings' plans for implementing the proposal. Veritex Holdings 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. Veritex Holdings would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Veritex Holdings' management has the experience and resources to operate the combined organization in a safe and sound manner, and Veritex Holdings plans to integrate Sovereign Bancshares' existing management and personnel in a manner that augments Veritex Holdings' management.[17]

Based on all the facts of record, including the supervisory records of Veritex Holdings, Sovereign Bancshares, and their subsidiary banks, 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

[16] To effect the holding company merger, a wholly owned subsidiary of Veritex Holdings formed to facilitate the transaction would merge with Sovereign Bancshares, with Sovereign Bancshares as the surviving entity, and immediately thereafter Sovereign Bancshares would merge with Veritex Holdings, with Veritex Holdings as the surviving entity. Upon consummation of that merger, each share of Sovereign Bancshares common stock would be entitled to receive a portion of the aggregate merger consideration, which would consist of Veritex Holdings common stock and cash. Sovereign Bank would then merge with and into Veritex Bank, with Veritex Bank as the surviving entity. Veritex Holdings has the financial resources to effect the transaction.

[17] On consummation, Sovereign Bancshares' president and chief executive officer, as well as the chairman of its board of directors, will be appointed to the boards of directors of Veritex Holdings and Veritex Bank. Additionally, one of these individuals is expected to be appointed vice chairman of the board of directors of Veritex Holdings.

Veritex Holdings and Sovereign Bancshares in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[18] 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").[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, in evaluating bank expansionary proposals.[21]

In addition, the Board considers the banks' overall compliance records and their 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 Veritex Bank and Sovereign Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Veritex Holdings; and the public comments received on the proposal.

Public Comments Regarding the Proposal

The Board received comments from one commenter opposing the proposal. The commenter alleged that Veritex Bank discriminates against African Americans and "redlines" African American neighborhoods, particularly in the Dallas and Houston areas,[22] both in Texas, with respect to its branching, marketing, and lending activities.[23] The commenter also alleged that Veritex Bank has designated its CRA assessment area in a manner that excludes majority African American neighborhoods in Dallas. In addition,

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[18] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[19] 12 U.S.C. § 2901 *et seq.*; 12 CFR 225.13(b)(3).

[20] 12 U.S.C. § 2901(b).

[21] 12 U.S.C. § 2903.

[22] Veritex currently has no branch locations in Houston.

[23] 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. *See* Interagency Fair Lending Examination Procedures (August 2009), available at https://www.ffiec.gov/pdf/fairlend.pdf.

the commenter alleged that Sovereign Bank also discriminates against African Americans and redlines African American neighborhoods.

Businesses of the Involved Institutions and Response to Comments

Veritex Holdings and Veritex Bank offer a range of financial products and services to individual customers and businesses. Veritex Bank is a full-service retail bank offering agricultural, commercial, home purchase, home improvement, home equity, and vehicle loans. Through its network of 11 branches, Veritex Bank offers a wide range of deposit products including various checking accounts, savings accounts, certificates of deposit, individual retirement accounts, money market accounts, and NOW accounts. Veritex Bank also provides automated teller machines, debit cards, and internet banking.

Sovereign Bancshares and Sovereign Bank offer deposit and loan products and specialize in commercial banking activities. Sovereign Bank offers a range of financial products and services to individual customers and businesses, including business loans, commercial real estate lending, and consumer deposit products.

Veritex Holdings denies the commenter's allegations of discriminatory lending and redlining with respect to the branching, marketing, and lending activities of Veritex Bank. Veritex Holdings asserts that Veritex Bank maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations, and asserts that Veritex Bank designated the entirety of two counties in the Dallas area as its CRA assessment area,[24] in part to ensure that no LMI or high minority census tracts were excluded or neglected. Veritex Holdings further asserts that Veritex Bank's management is committed to ensuring that no geographic areas are excluded by branch location decisions. With respect to fair lending, Veritex Holdings asserts that the bank has implemented policies and procedures to ensure fair lending compliance, including an equal credit opportunity policy and a fair lending policy, among others. Veritex Holdings represents that Veritex Bank monitors and reviews loan policies and practices for the purpose of measuring compliance with fair lending laws and equal credit opportunity requirements, and that this monitoring includes internal and external audits, as well as training programs.

In response to the commenter's criticism that Veritex Bank has no advertising or marketing efforts directed at African American communities, Veritex Holdings asserts that Veritex Bank has directed advertising and marketing efforts towards individuals and small businesses in areas typically underserved by banks, including African American communities. Veritex Holdings represents that these marketing efforts include partnerships with various community organizations, including one that facilitates micro lending to low- and moderate-income individuals.

The commenter also noted that Sovereign Bank discriminates against African Americans and redlines in African American neighborhoods. Veritex Holdings notes that as part of its community development activities, a majority of Sovereign Bank's community development loans have been to borrowers in predominantly minority census tracts. Veritex Holdings represents that as part of Sovereign Bank's CRA efforts, it has made qualified donations to organizations that help to support financial literacy and money management to individuals in census tracts that are over 50 percent minority, as well as to organizations that focus on housing, ending homelessness, and providing other social services targeted to LMI individuals in the Dallas metropolitan area. Further, Veritex Holdings represents that, through Sovereign Bank branch locations, bank personnel provide community develop-

[24] These counties, the Dallas and Collin counties, are defined below.

ment services to organizations located in predominantly minority census tracts and meet with different community groups, including an alliance for the homeless, which helps the bank better understand the needs of the communities it serves. Veritex Holdings also represents that Sovereign Bank has implemented processes to comply with anti-discrimination requirements, including the establishment of a fair lending committee that reviews, among other things, high-rate loans and consumer loans with origination fees.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to the information provided by the public commenters and the applicant's response to comments. 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.[25] In this case, the Board considered the views of its supervisory staff and of examiners from the Federal Reserve Bank of Dallas ("Reserve Bank") and 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.[26] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.[27]

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")[28] 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.[29] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amount of their community development loans and qualified investments; the extent to which they provide community development services; and their responsiveness to community development lending, investment, and service needs.[30]

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[25] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[26] 12 U.S.C. § 2906.

[27] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[28] 12 U.S.C. § 2801 *et seq*.

[29] *See* 12 CFR 228.26(b).

[30] *See* 12 CFR 228.26(c).

CRA Performance of Veritex Bank

Veritex Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of January 23, 2017 ("Veritex Bank Evaluation").[31] The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test. The Veritex Bank Evaluation included full-scope evaluations of Dallas and Collin counties in the Dallas-Plano-Irving Metropolitan Division, an area of concern to the commenter.

Examiners concluded that the bank's performance demonstrated a reasonable responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of the bank's HMDA and small business loans were originated inside its assessment area. Examiners found that the bank's net loan-to-deposit ratio was considered reasonable, given the bank's size and financial condition, the credit needs of the assessment area, and the competitive local banking environment.

Examiners also found that the bank's distribution of lending to borrowers reflected a reasonable penetration among individuals of different income levels (including LMI borrowers) and that the geographic dispersion of the bank's lending was reasonable given the performance context. Examiners determined that the distribution of HMDA loans by borrower income level was reasonable given the high level of competition in the assessment area and low volume of loans originated to LMI borrowers by the aggregate lenders. Loans were generally made in close proximity to the bank's branches, and there were no conspicuous gaps or anomalies in the lending patterns. The distribution of the remainder of bank lending in middle- and upper-income geographies did not affect the conclusions about the bank's performance considering its lending in LMI geographies. With respect to small business lending, examiners found geographic distribution to be reasonable.

Examiners also determined that Veritex Bank's responsiveness to community development needs was adequate considering the bank's capacity and its primary focus as a commercial lender. Examiners noted that the bank applied its community development resources strategically to meet community needs, primarily through qualified loans and community services targeted to LMI individuals in its community, and that the bank provided community development services through its branches in LMI areas. Examiners found that the bank provided a high level of retail services in its assessment area. Specifically, examiners found Veritex Bank's delivery systems to be accessible to geographies and individuals of different income levels in its assessment area. Examiners also noted that the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and individuals, and that its services did not vary in a way that inconvenienced its assessment area, particularly LMI geographies and individuals.

CRA Performance of Sovereign Bank

Sovereign Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 30, 2015 ("Sovereign Bank Evaluation").[32] Sovereign Bank received a "Satisfactory" rating for the Lending Test and an

[31] The Veritex Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed HMDA loans reported by Veritex Bank in 2014 and 2015 and small business loans originated by the bank between April 1, 2016, and September 30, 2016. For the Community Development Test, examiners reviewed community development lending, investments, and services based on data from November 12, 2013, through January 23, 2017.

[32] The Sovereign Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed small business loans originated by the bank from January 1, 2014,

"Outstanding" rating for the Community Development Test. Although Sovereign Bank's overall rating took into consideration its performance in each of its MSA AAs, examiners gave significantly more weight to the bank's records in the Dallas, Texas MSA AA due to the higher volume of loans in that area.

For the Lending Test, examiners evaluated Sovereign Bank's small business loans. Based on this evaluation, examiners found that Sovereign Bank's loan-to-deposit ratio reflected reasonable responsiveness to credit needs in its assessment areas given its size and financial condition. Examiners found that Sovereign Bank originated a majority of its lending within the bank's assessment areas. Specifically, examiners noted that Sovereign Bank originated a majority of its small business loans by number and dollar volume inside of its assessment areas. Examiners found that Sovereign Bank displayed a reasonable level of penetration regarding its distribution of loans based on borrower profile and that the bank's record of lending to businesses of different sizes reflected a reasonable performance. Examiners also found that Sovereign Bank demonstrated a reasonable record of geographically distributing its loans throughout the assessment areas. Examiners found that the bank's lending in moderate-income areas reflected reasonable performance, but lending in low-income census tracts demonstrated poor performance. However, examiners noted that the geographic distribution of the bank's small business loans reflected a reasonable record of lending within the assessment areas when performance context factors that mitigate the bank's small business loan originations in LMI census tracts were considered. These performance context factors include (1) the bank's concentrated marketing efforts in LMI areas to increase small business loan volume through its Small Business Administration Loan Programs, such as by mailing out letters advertising the program in each assessment area, and (2) the bank's targeting of businesses, and specifically those with gross annual revenues of less than $1 million, in the bank's low-income census tracts. Overall, examiners noted that, considering efforts made to increase small business lending in LMI areas and the heavy concentration of bank competition in the Dallas MSA AA, the bank's geographic distribution of small business loans reflected reasonable dispersion.

With respect to community development, examiners considered Sovereign Bank's community development loans, community development investments, and community development services. Examiners found that Sovereign Bank demonstrated an excellent record regarding its community development lending. Examiners also found that Sovereign Bank exhibited an adequate record regarding its community development investments and donations. Specifically, examiners noted that the bank had adequate responsiveness to community development needs combined with an adequate level regarding the number and dollar volume of community development investments and donations. Examiners found that Sovereign Bank established an excellent record of providing community development services to LMI individuals through its contribution of financial expertise and involvement in activities directed at LMI individuals and families. Examiners further noted that Sovereign Bank provided a range of banking products and services to meet the needs of consumer and commercial customers and that its branch offices and delivery systems were readily accessible to LMI borrowers.

through December 31, 2014. Because commercial loans comprised approximately 49 percent of the bank's loan portfolio and its primary product line, examiners focused the Lending Test on small business loans. For the Community Development Test, examiners reviewed the bank's qualified community development lending, investments, and service activities from June 19, 2012, through March 30, 2015.

The Sovereign Bank Evaluation included a full-scope review of performance in the Dallas-Fort Worth-Arlington, Texas Metropolitan Statistical Area Assessment Area ("Dallas, Texas MSA AA"); and a limited-scope review of performance in the Austin-Round Rock, Texas MSA assessment area and the Houston-The Woodlands-Sugar Land, Texas MSA assessment area.

Sovereign Bank's Efforts since the Sovereign Bank Evaluation

Veritex Holdings represents that since the Sovereign Bank Evaluation, Sovereign Bank has worked to continue to serve its communities through its small business lending, community service activities, outreach efforts, investments, and donations. Specifically, Veritex Holdings represents that since its last evaluation, Sovereign Bank has continued to provide for community development services through non-profit organizations to LMI individuals and that the bank's employees have continued to serve its communities through work on the boards of directors of non-profit organizations. Veritex Holdings represents that Sovereign Bank's CRA committee meets with different community groups, which helps the bank understand the needs of the communities it serves.

Additional Supervisory Reviews

The Board has considered the results of the most recent consumer compliance examinations of Veritex Bank conducted by Reserve Bank examiners, which included a review of the compliance management program and the banks' compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated Veritex Bank's fair lending management program, including the bank's fair-lending-related practices, policies, procedures, and internal controls.

The Board also has considered the results of a recent consumer compliance examination of Sovereign Bank conducted by FDIC examiners, which included a review of the bank's compliance management system and the bank's compliance with consumer protection laws, including 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. Veritex Holdings represents that it has no plans to discontinue any significant product or service currently offered by Veritex Bank or Sovereign Bank. Specifically, Veritex Bank represents that it will continue to offer customers a range of deposit and credit products and services that benefit the communities in which Veritex Bank and Sovereign Bank each presently conduct business, including those credit products and services that fulfill the needs of LMI demographics. Veritex Bank represents that, following the proposed transaction, customers of Sovereign Bank would have access to a complement of products and services that are more expansive than those currently available to Sovereign Bank customers, including residential mortgage loan products, and that Sovereign Bank customers would also have increased access to Veritex Bank's offices by telephone and online applications, which may increase access to banking services. In addition, Veritex Bank asserts that customers of both institutions would benefit from a more expansive branch and ATM network. Following the proposed transaction, Veritex Bank represents that it will continue to provide a level of service consistent with Veritex Bank's current CRA performance.

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 provided by Veritex Bank, public comments 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.

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."[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's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that results in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[36]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.[37] 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.

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[33] Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

[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] *See Peoples United Financial, Inc*., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

[37] Veritex Holdings primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, and treasury management. Sovereign Bancshares primarily offers commercial and consumer banking services, commercial real estate lending, and treasury management. In each of the activities in which it engages, Veritex Holdings 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.

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

Veritex Bank has applied under section 9 of the FRA to establish branches at the current locations of Sovereign Bank.[38] The Board has assessed the factors it is required to consider when reviewing an application under that section.[39] Specifically, the Board has considered Veritex 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.[40] 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 proposal should be, and hereby is, approved.[41] 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 Veritex Holdings and Veritex Bank 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 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 Reserve Bank, acting under delegated authority.

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[38] *See* 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 that 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 Veritex Bank's branches would be permissible under applicable state law. *See* Tex. Fin. Code §§ 32.203; 32.301(c).

[39] 12 U.S.C. § 322; 12 CFR 208.6.

[40] Upon consummation of the proposed transaction, Veritex Bank's investments in bank premises would remain within legal requirements, under 12 CFR 208.21.

[41] The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 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 may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the *Federal Register* on January 25, 2017, and in the relevant newspaper of general circulation (*The Dallas Morning News*) on January 13, January 20, and February 10, 2017. The comment period ended on February 12, 2017. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

By order of the Board of Governors, effective July 6, 2017.

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

Appendix

Branches to Be Established by Veritex Bank

1. 600 West 5th Street, Austin, Texas 78701
2. 150 South Bell Boulevard, Cedar Park, Texas 78613
3. 17950 Preston Road, Suite 100, Dallas, Texas 75252
4. 6060 Sherry Lane, Dallas, Texas 75225
5. 7255 North State Highway 161, Irving, Texas 75039
6. 3800 Matlock Road, Arlington, Texas, 76015
7. 2438 East Southlake Boulevard, Southlake, Texas 76092
8. 2800 West 7th Street, Fort Worth, Texas 76107
9. 5111 San Felipe, Houston, Texas 77056
10. 777 Post Oak Boulevard, Suite 700, Houston, Texas 77056

PacWest Bancorp
Beverly Hills, California

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2017–24 (September 21, 2017)

PacWest Bancorp ("PacWest"), Beverly Hills, California, 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 Act[2] to acquire CU Bancorp and thereby indirectly to acquire CU Bancorp's subsidiary bank, California United Bank, both of Los Angeles, California. Following the proposed acquisition, California United Bank would be merged into PacWest's subsidiary bank, Pacific Western Bank, Beverly Hills, California.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 21,390 (May 8, 2017)).[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.

PacWest, with consolidated assets of approximately $22.2 billion, is the 77th largest insured depository organization in the United States. PacWest controls approximately $16.3 billion in consolidated deposits through Pacific Western Bank, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] Pacific Western Bank operates in California and North Carolina. Pacific Western Bank is the 15th largest insured depository institution in California, controlling approximately $11.2 billion in deposits, which represent approximately 0.9 percent of the total deposits held by insured depository institutions in that state.[6]

CU Bancorp, with consolidated assets of approximately $3.0 billion, is the 288th largest insured depository organization in the United States, controlling approximately $2.8 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. CU Bancorp controls California United Bank, which operates in California. California United Bank is the 40th largest insured depository institution in California, controlling approximately $2.4 billion in deposits, which represent less than 1 percent of the total deposits held by insured depository institutions in that state.

On consummation of the proposal, PacWest would become the 70th largest insured depository organization in the United States, with consolidated assets of approximately $25.4 billion,[7] which represent less than 1 percent of the total assets of insured depository organizations in the United States. PacWest would control total deposits of approximately $19.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In California, PacWest would become the 14th largest insured depository organization, controlling deposits of approximately $13.6 billion, which

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1 12 U.S.C. § 1841 *et seq.*

2 12 U.S.C. § 1842.

3 The merger of California United Bank into Pacific Western Bank is subject to 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).

4 12 CFR 262.3(b).

5 Nationwide asset data are as of June 30, 2017, and deposit data are as of March 31, 2017, unless otherwise noted.

6 State deposit data are as of June 30, 2016, unless otherwise noted.

7 Asset data are as of March 31, 2017.

represent approximately 1.1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[8] 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 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.[9]

PacWest and CU Bancorp have subsidiary depository institutions that compete directly in the Los Angeles, California, banking market ("Los Angeles market") and the Oxnard-Thousand Oaks-Ventura, California, banking market ("Oxnard market").[10] The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in each market; the relative share of total deposits in insured depository institutions in each market that PacWest would control;[11] 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");[12] 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 Los Angeles market and the Oxnard market. On consummation of the proposal, the Los Angeles market would remain unconcentrated and the Oxnard market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in these markets would be small, and numerous competitors would remain in each market.[13]

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[8] 12 U.S.C. § 1842(c)(1).

[9] 12 U.S.C. § 1842(c)(1)(B).

[10] The Los Angeles market is defined as the Los Angeles metropolitan area in Los Angeles and Orange Counties, the western portions of San Bernardino and Ventura Counties, and the southernmost edge of Kern County. The Oxnard market is defined as the Oxnard-Thousand Oaks-Ventura metropolitan area in Ventura County and the extreme western tip of Los Angeles County.

[11] Local deposit and market share data are as of June 30, 2016, 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).

[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 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.

[13] In the Los Angeles market, PacWest operates the 13th largest depository institution, controlling approximately $7.2 billion in deposits, which represent 1.43 percent of market deposits. CU Bancorp operates the 24th largest depository institution in the Los Angeles market, controlling deposits of approximately $2.1 billion, which represent 0.43 percent of market deposits. On consummation of the proposed transaction, PacWest would become the 11th largest depository organization in the Los Angeles market, controlling deposits of $9.3 billion, which represent approximately 1.86 percent of market deposits. The HHI for the Los Angeles market would increase 1 point to 923, and 124 competitors would remain in the 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 Los Angeles and Oxnard markets. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on 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 Los Angeles or Oxnard banking 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 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 information regarding capital adequacy, asset quality, liquidity, 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.

PacWest and CU Bancorp are both well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a combination of cash and share exchange, with a subsequent merger of the subsidiary depository institutions.[14] The asset quality, earnings, and liquidity of both Pacific Western Bank and California United Bank are consistent with approval, and PacWest appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. 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 PacWest, CU Bancorp, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the

In the Oxnard market, PacWest operates the 8th largest depository institution, controlling approximately $549.3 million in deposits, which represent 3.24 percent of market deposits. CU Bancorp operates the 10th largest depository institution in the Oxnard market, controlling approximately $265.6 million in deposits, which represent 1.57 percent of market deposits. On consummation of the proposed transaction, PacWest would become 7th largest depository institution in the Oxnard market, controlling deposits of $815.0 million, which represent approximately 4.81 percent of market deposits. The HHI for the Oxnard market would increase 10 points to 1506, and 23 competitors would remain in the market.

[14] As part of the proposed transaction, each share of CU Bancorp common stock would be converted into a right to receive a cash amount and PacWest common stock based on a fixed exchange ratio. PacWest has the financial resources to fund the acquisition.

Board has considered information provided by PacWest, the Board's supervisory experiences with PacWest and CU Bancorp 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 commenters.

PacWest and Pacific Western Bank are both considered to be well managed. PacWest's existing risk-management program and its directors 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 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. 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 management has the experience and resources to ensure that the combined organization operates in a safe and sound manner.

Based on all of 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 the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of PacWest and CU Bancorp 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.[15] 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 currently 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,[16] 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.[17]

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

[15] 12 U.S.C. § 1842(c)(2).
[16] 12 U.S.C. § 2901(b).
[17] 12 U.S.C. § 2903.

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 of the facts of record, including reports of examination of the CRA performance of Pacific Western Bank and California United Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Deposit Insurance Corporation ("FDIC"); confidential supervisory information; information provided by PacWest; and the public comments received on the proposal.

Public Comments Regarding the Proposal

In this case, three commenters objected to the proposal based on alleged deficiencies in the CRA performance of Pacific Western Bank. All three commenters alleged that Pacific Western Bank has displayed an inadequate record of serving low-income communities and minority-owned businesses, and two commenters asserted that Pacific Western Bank has been deficient in serving non-urban communities. Commenters criticized Pacific Western Bank's record of CRA investments, alleging that the bank's current CRA investments and future commitments, as detailed in its CRA plan, lag behind several of its peers and requested that Pacific Western Bank develop a new CRA plan with input from community groups.[18] Commenters expressed concerns about the number of Pacific Western Bank's loans to small businesses located in low-income census tracts. A commenter also alleged that Pacific Western Bank is unwilling to set quantitative goals to contract with minority-owned businesses. A commenter expressed concern that banks in California were engaged in the practice of providing "displacement mortgages"[19] and thereafter requesting CRA credit. The commenter requested that the Board investigate whether either Pacific Western Bank or California United Bank had engaged in this practice. The FDIC considered the same adverse comments in connection with its review of the underlying bank merger application.

The Board also received comments from four commenters supporting the application. These commenters generally described the benefits Pacific Western Bank provides to the communities it serves, including various projects and partnerships between Pacific Western Bank and community groups. For instance, these commenters noted the bank supports educational programs targeting underserved students and financial literacy programs for LMI youth.

Business of the Involved Institutions and Response to Comments

Pacific Western Bank is a full-service commercial bank headquartered in Beverly Hills, California, focusing on business banking for small, middle-market, and venture-backed businesses nationwide. It offers a broad range of loan and deposit products and services, including demand, money market, and time deposit accounts; savings and individual retirement accounts; and loan and lease originations, which encompass commercial real estate loans, equipment loans and leases, asset-based loans, loans to finance companies, cash flow

[18] 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*., FR Order No. 2015-20 at 24 fn. 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.

[19] The commenter used the term "displacement mortgages" to refer to the origination of mortgages to investors who purchase rent-controlled buildings and then invoke the Ellis Act, which allows them to evict all of the tenants of the buildings in order to exit the rental business and convert the buildings to condominiums or tenancies in common.

loans, and Small Business Administration-guaranteed and consumer loans. Pacific Western Bank has 73 full-service retail branches throughout California and one branch located in Durham, North Carolina. PacWest's principal business is to serve as the holding company for Pacific Western Bank.

California United Bank is a full-service commercial bank with headquarters in Los Angeles California. In addition to its headquarters office, it has eight additional full-service branches in southern California. California United Bank offers products and services for business consumers, including deposit services, lending and cash management to small and medium-sized businesses, nonprofit organizations, business principals, and entrepreneurs, as well as commercial, real estate construction, Small Business Administration-guaranteed, and personal loans.

In response to the comments, PacWest asserts that approval is justified based on Pacific Western Bank's most recent CRA performance evaluation. PacWest notes that Pacific Western Bank has a "Satisfactory" CRA rating and states that the bank has strived to obtain an "Outstanding" CRA rating since its most recent CRA performance evaluation. PacWest references the letters the Board received in support of the application as demonstrating the close working relationship the bank has with community organizations. PacWest also notes that there is no general requirement to submit a CRA plan as a prerequisite for approval of an application. PacWest further argues that the comments opposing the application mischaracterize Pacific Western Bank's current CRA plan and that the plan supports a balanced approach that takes into consideration a mix of innovative investment opportunities that allow the bank to have a greater impact on the communities it serves. PacWest represents that the bank's current CRA plan addresses community development activities throughout its markets in California, including those in non-urban areas.

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.[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 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

[20] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg*. 48506, 48548 (July 25, 2016).

[21] 12 U.S.C. § 2906.

an institution's data reported under the Home Mortgage Disclosure Act,[22] 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 ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs 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;[23] (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.

CRA Performance of Pacific Western Bank

Pacific Western Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation, as of October 27, 2014 ("Pacific Western Bank Evaluation").[24] Pacific Western Bank received "High Satisfactory" ratings for the Lending Test and the Investment Test and an "Outstanding" rating for the Service Test.

Examiners found that Pacific Western Bank's lending levels reflected good responsiveness to the credit needs of its AAs. Examiners also noted that a substantial majority of Pacific Western Bank's loans were originated within its AAs and that the distribution of borrowers, given the product lines offered by the bank, reflected adequate penetration among business customers of different revenue sizes. Examiners noted that the geographic distribution of loans reflected good penetration throughout Pacific Western Bank's AAs. Examiners also found that Pacific Western Bank made a relatively high level of community development loans and that it exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners found that the bank made limited use of innovative or flexible lending practices in serving the credit needs in its AAs.

Examiners found that Pacific Western Bank had a significant level of qualified community development investments and grants and was occasionally in a leadership position, particularly with regard to investments that were not routinely provided by private investors. Examiners noted that the bank exhibited good responsiveness to credit and community economic development needs and that it made significant use of innovative or complex investments to support community development initiatives.

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[22] 12 U.S.C. § 2801 *et seq*.

[23] Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of $1million 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 CFR228.22 (b)(3).

[24] The Pacific Western Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed small business loans originated from January 1, 2012, through June 30, 2014. The evaluation period for community development loans, investments, and services was from October 10, 2010, through October 27, 2014. As of the evaluation date, each of the bank's AAs was located in California.

Examiners conducted full-scope reviews of the Los Angeles and San Diego AAs of the bank. The examiners performed limited-scope reviews of the bank's performance in the bank's remaining AAs, including San Luis Obispo, Santa Barbara, San Francisco, Fresno, Kern, and Kings-Tulare.

Examiners found that Pacific Western Bank's delivery systems were accessible to essentially all portions of the bank's AAs. Examiners also found that Pacific Western Bank's record of opening and closing branches did not adversely affect the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals, and that the bank's services, including, where appropriate, business hours, did not vary in a way that inconvenienced certain portions of its AAs, particularly LMI geographies and individuals. Examiners noted that Pacific Western Bank was a leader in providing community development services.

Pacific Western Bank's Activities since the Pacific Western Bank Evaluation

PacWest asserts that, since the Pacific Western Bank Evaluation, the bank has established a multifamily-lending business unit and is making progress introducing this product within its AAs. PacWest further asserts that the bank is originating loans throughout each of its AAs in the same manner, including in LMI areas and communities with high minority composition. PacWest also states that Pacific Western Bank's community development lending has been robust, with year-over-year growth in response to a wide range of community needs, including creating and preserving affordable housing and supporting economic development. Examples included loans to purchase whole multifamily loans as a part of a recapitalization strategy of a minority-owned community development financial institution, a loan supporting the construction of a medical facility in a distressed community, and a loan for the construction of an affordable housing complex that will provide permanent homes for low-income veterans.

PacWest asserts that Pacific Western Bank has been strategic in growing its portfolio of investments with community development merit. For instance, the bank has provided financial support to a host of community projects, including affordable housing developments, capital for small businesses, and support for community organizations for the purpose of replacing or improving water wells in rural communities that experienced extreme drought. PacWest asserts that Pacific Western Bank is also participating in a campaign dedicated to helping individuals, including those from LMI households, save money, reduce debt, and build wealth. PacWest notes that the bank is also participating in a financial education program targeted to high schools with a high percentage of students on free or reduced-cost meal programs. PacWest also states that Pacific Western Bank participates in numerous small business technical assistance workshops. PacWest notes that a number of Pacific Western Bank's senior executives are actively involved in their communities through board memberships, supporting organizations that extend products and services to low-income communities.

CRA Performance of California United Bank

California United Bank was assigned an overall CRA rating of "Outstanding" at its most recent CRA performance evaluation by the FDIC, as of August 1, 2016 ("California United Bank Evaluation").[25] The bank received a "High Satisfactory" rating for the Lending Test and "Outstanding" ratings for the Investment and Service Tests.

Examiners found that California United Bank's lending levels reflected good responsiveness to credit needs within its AA and that a substantial majority of its small business loans

[25] The California United Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed small business loans from January 1, 2014, through December 31, 2015. The evaluation period for community development loans, qualified investments, and services was from June 24, 2013, through August 1, 2016. The California United Bank Evaluation included a full-scope review of the Los Angeles-Long Beach, California, Combined Statistical Area.

were made within its AA. Examiners further found that the geographic distribution of California United Bank's small business loans reflected good penetration throughout its AA. Examiners noted that, given the product lines offered by the institution, California United Bank's distribution of borrowers reflected poor penetration among business customers of different revenue sizes. However, examiners also found that the institution exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AA and very small businesses, consistent with safe and sound banking practices. Examiners stated that California United Bank used innovative and flexible lending practices in order to serve the credit needs of its AA and that the bank was a leader in making community development loans.

Examiners found that California United Bank had made an excellent level of qualified community development investments and grants, often in a leadership position, particularly those that were not routinely provided by private investors. Examiners further noted that the bank exhibited excellent responsiveness to credit and community economic development needs and that the institution made significant use of innovative or complex investments to support community development initiatives.

Examiners found that the bank's delivery systems were accessible to essentially all portions of the bank's AA. Examiners also found that California United Bank's hours did not vary in a way that inconvenienced any portion of its AA, particularly LMI geographies and individuals, and that, to the extent changes had been made, the institution's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners further noted that the bank was a leader in providing community development services within its AA.

California United Bank's Activities since the California United Bank Evaluation

PacWest asserts that, since the California United Bank Evaluation, California United Bank has continued its strong record of community development lending, making loans to small businesses that provided jobs to LMI individuals and loans that financed the acquisition and development of multifamily affordable housing units. PacWest asserts that California United Bank has continued to make CRA-qualified community development investments, for example an investment in a fund that established seven affordable housing projects, including within the bank's AA. PacWest asserts that California United Bank has continued to offer products and services within its AA, including administration payroll cards for LMI employees of many of the bank's borrowers. These cards do not assess fees for loading funds and include an online financial education model.

Views of the FDIC and the Consumer Financial Protection Bureau

In its review of the proposal, the Board consulted with the FDIC regarding Pacific Western Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed the bank merger underlying this proposal, including the comments received by the Board. Specifically, the Board has considered the results of the most recent consumer compliance examination of Pacific Western Bank conducted by FDIC examiners, which included a review of the bank's compliance-related policies and procedures and responses to consumer complaints, as well as transactional testing in areas exhibiting potential risk of consumer harm, new product or service offerings, and newly implemented regulations. Examiners also conducted a fair lending review with a focus on commercial lending.

The Board also consulted with the Consumer Financial Protection Bureau ("CFPB") regarding Pacific Western Bank's consumer compliance record.

The Board has taken these consultations with the FDIC and CFPB and the information discussed above into account in evaluating this proposal, including in considering whether PacWest has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to effectively serve the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. PacWest represents that, as a result of the proposal, it will not discontinue any of the services or products currently offered by either Pacific Western Bank or California United Bank. PacWest asserts that it will expand the availability of products offered to the communities currently served by California United Bank, both by increasing maximum loan limits for renewed lines of credit and by expanding offerings of direct small business loans and loans guaranteed by the Small Business Administration. In addition, PacWest represents that it would be able to offer customers of California United Bank increased credit availability and expanded access to financial products and services from an expanded branch network.

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, the supervisory views of the FDIC and CFPB, confidential supervisory information, information provided by PacWest, 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 risk to the stability of the United States banking or financial system."[26]

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[27] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the

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

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

resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[28]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[29]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Both the acquirer and the target are predominately engaged in retail commercial banking activities.[30] 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 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.[31] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by 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 connec-

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

[29] *See People's United Financial, Inc*., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

[30] Both PacWest and CU Bancorp primarily engage in retail and commercial banking activities, and PacWest would continue to have a small market share following the proposed transaction.

[31] Three 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, in its discretion, may 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, 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 material to the Board's decision that would be clarified by a public meeting. In addition, the requests did 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.

tion 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 San Francisco, acting under delegated authority.

By order of the Board of Governors, effective September 21, 2017.

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

Orders Issued Under Section 4 of the Bank Holding Company Act

Sterling Bancorp
Montebello, New York

Order Approving the Acquisition of a Savings and Loan Holding Company and Acquisition of a Saving Association
FRB Order No. 2017–21 (August 30, 2017)

Sterling Bancorp ("Sterling"), Montebello, 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 Act[1] to acquire Astoria Financial Corporation ("Astoria"), Lake Success, New York, a savings and loan holding company, and thereby indirectly acquire its subsidiary, Astoria Bank, Long Island City, New York, a federal savings association. Following the proposed acquisition, Astoria would be merged into Sterling, and Astoria Bank would be merged into Sterling's subsidiary bank, Sterling National Bank ("Sterling Bank"), Montebello, New York.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 19048 (2017)).[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 the BHC Act.

Sterling, with consolidated assets of approximately $15.4 billion, is the 100th largest insured depository organization in the United States, controlling approximately $10.1 billion in deposits.[4] Sterling controls Sterling Bank, which operates in New York and New Jersey. Sterling Bank is the 19th largest depository institution in New York, controlling deposits of approximately $9.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in New York. Sterling Bank is the 67th largest depository institution in New Jersey, controlling deposits of approximately $347.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in New Jersey.[5]

Astoria, with consolidated assets of approximately $14.1 billion, is the 97th largest insured depository organization in the United States, controlling approximately $9.1 billion in deposits. Astoria controls Astoria Bank, which operates solely in New York. Astoria Bank is the 20th largest insured depository institution in New York, controlling deposits of approximately $9.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Sterling would become the 62nd largest insured depository organization in the United States, with consolidated assets of approximately $29.0 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Sterling would control total deposits of approximately

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1 12 U.S.C. §§ 1843(c)(8) and (j).

2 The merger of Astoria Bank into Sterling Bank, which is expected to occur immediately after Sterling's acquisition of Astoria, 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). The OCC approved the bank merger on August 16, 2017.

3 12 CFR 262.3(b).

4 Consolidated asset data are as of June 30, 2017. Nationwide asset ranking and deposit data are as of December 31, 2016, unless otherwise noted.

5 State deposit data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

$19.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, Sterling would become the 14th largest depository organization, controlling deposits of approximately $18.6 billion, which represent less than 1.5 percent of the total deposits of insured depository institutions in New York.

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.[6] 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.[7] Sterling has committed that all of the activities of Astoria and its subsidiaries would 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, the Board has reviewed the transaction under section 4 of the BHC Act. Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Astoria "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."[8] 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.[9] The Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[10]

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.[11]

Sterling and Astoria have subsidiary depository institutions that compete directly in the Metro New York City, New York-New Jersey-Connecticut-Pennsylvania ("Metro New York City") banking market.[12] The Board has considered the competitive effects of the

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[6] 12 CFR 225.28(b)(4)(ii).

[7] 12 CFR 225.28(b)(4).

[8] 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.

[9] *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* C183 (2006).

[10] The proposal does not raise interstate issues under section 4(c)(8) of the BHC Act because New York is the home state of both Sterling and Astoria Bank. See *12* U.S.C. §1843(i)(8).

[11] 12 U.S.C. § 1843(j)(2).

[12] The Metro New York City market includes Fairfield County and portions of Litchfield and New Haven counties of Connecticut; Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties and portions of Columbia and Greene counties of New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties and portions of Burlington, Mercer, and Warren counties of New Jersey; and Pike County and portions of Monroe and Wayne counties of Pennsylvania.

proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market ("market deposits") that Sterling would control;[13] 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");[14] 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 Metro New York City banking market. On consummation of the proposal, the Metro New York City market would remain moderately concentrated, as measured by the HHI. The change in the HHI would be minimal, and numerous competitors would remain in the market following consummation of the proposal.[15]

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 Metro New York City 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 proposals under section 4 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[16] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both a parent-only and consolidated basis, as

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[13] Local deposit and market share data are as of June 30, 2016, 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).

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

[15] Sterling operates the 23rd largest depository institution in the Metro New York City market, controlling approximately $9.8 billion in deposits, which represent 0.6 percent of market deposits. For purposes of the HHI analysis, Astoria operates the 32nd largest depository institution in the same market and is treated as controlling approximately $4.6 billion in deposits (i.e. actual deposits weighted at 50 percent), which represent 0.3 percent of market deposits. On consummation of the proposed transaction, Sterling would become the 16th largest depository institution in the Metro New York City market, controlling deposits of approximately $19.0 billion, which represent 1.1 percent of market deposits. The HHI for the Metro New York City market would decrease by 6 points to 1316, and 237 competitors would remain in the market. For purposes of competitive analysis, once a savings association is acquired by a bank holding company, the Board weights the deposits controlled by the savings association at 100 percent, similar to a commercial bank.

[16] 12 U.S.C. § 1843(j)(4); 12 CFR 225.26(b).

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.

Sterling and Sterling 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 share exchange, with a subsequent merger of the subsidiary depository institutions.[17] The asset quality, earnings, and liquidity of Sterling Bank and Astoria Bank are consistent with approval, and Sterling appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institution's operations. In addition, the future prospects of the institution 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 Sterling, Astoria, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Sterling, the Board's supervisory experiences with Sterling and Astoria 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 commenters.

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

The Board also has considered Sterling's plans for implementing the proposal. Sterling is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Sterling would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Sterling's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Sterling plans to integrate Astoria's existing management and personnel in a manner that augments Sterling's management.[18]

Based on all of the facts of record, including Sterling's supervisory record, managerial and operational resources, and plans for operating the combined organization after consum-

[17] As part of the proposed transaction, each share of Astoria common stock would be converted into a right to receive Sterling common stock based on a fixed exchange ratio.

[18] On consummation, four individuals currently serving as directors and officers of Astoria and Astoria Bank will be added to the board of directors of Sterling and Sterling Bank.

mation, 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 Sterling and Astoria in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 4 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served in weighing the possible adverse effects against the public benefits of the transaction.[19] 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.[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 the institutions' 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 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 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 institution's business model, 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 of the facts of record, including reports of examination of the CRA performance of Sterling Bank and Astoria Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC, confidential supervisory information, information provided by Sterling, and the public comments on the proposal.

Public Comments Regarding the Proposal

In this case, the Board received comments from three commenters. One commenter objected to the proposal on the basis of alleged disparities in the number of conventional home purchase loans made by Sterling Bank to minorities in the New York-Jersey City-White Plains, NY-NJ Metropolitan Division ("New York City MD") and in the number of conventional home purchase and home improvement loans made by Sterling Bank to minorities in the Nassau County-Suffolk County, NY Metropolitan Division ("Nassau-Suffolk MD"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[23] for 2015 and 2013, respectively. This same commenter alleged that Sterling Bank has not complied with a CRA Plan that the OCC required it to develop in connection with a 2015 merger with Hudson Valley Bank, N.A. ("Sterling CRA Plan"). Other

[19] 12 U.S.C. § 1843(j)(2).
[20] 12 U.S.C. § 2901 *et seq.*
[21] 12 U.S.C. § 2901(b).
[22] 12 U.S.C. § 2903.
[23] 12 U.S.C. § 2801 *et seq.*

commenters praised many aspects of Sterling's and Astoria's CRA activities, but criticized other aspects of the CRA and fair lending records of Sterling Bank and/or Astoria Bank and requested that an updated CRA Plan, reflecting formal input from community organizations, be required as a condition of approval. These commenters asserted that the updated CRA plan should include specific goals in the areas of lending, investment, and services for each of the markets served by the combined organization, particularly with respect to LMI neighborhoods and LMI census tracts. One commenter further requested that Sterling Bank commit to sharing yearly outcomes under the CRA Plan that include the number and dollar amount of those goals by each lending category, both in its entire footprint and in Long Island.[24]

One commenter expressed concern about Sterling Bank's recent record of branch closures in New York City and also recommended certain best practices that Sterling should adopt with respect to multifamily housing lending. Another commenter stated that the merger should be conditioned on Sterling Bank retaining all of Astoria Bank's branches in Long Island.

The OCC considered the same adverse comments in connection with its review of the underlying bank merger application.[25]

Businesses of the Involved Institutions and Response to Comments

Sterling Bank is a regional banking franchise headquartered in Montebello, New York. It is a full-service bank that offers a wide range of financial services, with a primary focus on loans and deposit services to small and middle market commercial businesses. Sterling Bank's lending portfolio primarily consists of small business loans, commercial real estate loans, commercial and industrial loans, and one-to-four family residential real estate loans, with a limited residential mortgage loan and consumer loan operation.[26] In addition to traditional deposit and loan products, Sterling Bank offers investment products and wealth management services.

Astoria Bank, a federal savings association with 87 branches in New York, offers a full range of loans and deposit services to its customers. Astoria Bank traditionally has focused on residential real estate lending. Astoria Bank also has 10 operating subsidiaries, including a mortgage company, a broker-dealer, and single-purpose entities that manage bank-

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[24] 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 organizations. *See, e.g., United Bancshares, Inc*., FRB Order No. 2017-10 at 12 fn. 28 (April 6, 2017); *Huntington Bancshares Inc*., FRB Order No. 2016-13 at 32 fn. 50 (July 29, 2016); *CIT Group, Inc* ., FRB Order No. 2015-20 at 24 fn. 54 (July 19, 2015); *Citigroup Inc*., 88 *Federal Reserve Bulletin* 485 (2002). 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.

[25] A commenter stated that Sterling Bank's CRA data had been deemed unreliable, in addition to citing HMDA data disparities in Sterling Bank's conventional home purchase and home improvement lending to whites compared to African Americans and/or Hispanics. The OCC conducted reviews of the accuracy of Sterling Bank's HMDA and CRA data and assessed fair lending risk at Sterling Bank. In that regard, the OCC evaluated supervisory information as well as other information provided by Sterling Bank. Examiners noted in the Sterling Bank CRA evaluation as of January 18, 2017 ("Sterling Bank Evaluation"), that they found errors in the data related to small business lending, which subsequently were corrected by Sterling Bank. Examiners relied on the corrected data in conducting Sterling Bank's CRA performance evaluation.

[26] In 2016, Sterling Bank sold its residential mortgage division to Freedom Mortgage, and the bank generally refers individuals interested in home mortgages to Freedom Mortgage. One commenter indicated that Long Island community groups have concerns regarding Freedom Mortgage. Sterling represents that Sterling Bank has no role in the mortgage application process after a referral is made to Freedom Mortgage. Sterling Bank also represents that it continues to make residential mortgages to LMI individuals through its Community Banking team.

owned assets. In addition to Astoria Bank, Astoria operates AF Insurance Agency, Inc., which provides life insurance products primarily to Astoria Bank customers.

In response to comments, Sterling highlights the updated CRA Plan that the bank provided in connection with the proposed transaction. Sterling asserts that it consulted with a number of community groups in developing the updated CRA Plan and that the bank is aware of many of the concerns mentioned by the commenters.

In addition, Sterling asserts that its fair lending program extends to every phase of a transaction, including advertising, pre-application inquiries, loan disbursement, and ongoing servicing. Sterling asserts that all mortgage applications received by Sterling 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. Sterling further represents that Sterling Bank's lending practices are based on criteria that ensure both safe and sound lending and equal access to credit and that the bank has comprehensive procedures and policies in place to accomplish these goals, which include an established Fair Lending Program that is approved annually by the Management Enterprise Risk Management Committee. Sterling represents that the bank's Fair Lending Program includes a "second review" process for any loan denial, ongoing fair lending training for the bank's lending personnel, an annual fair lending risk assessment conducted by a Compliance Risk Management Department, and ongoing monitoring and testing to assess fair lending compliance. Sterling represents that Sterling Bank's existing consumer compliance program, including fair lending, would apply to the combined organization.

In response to commenters' concerns about its performance under its current CRA Plan, Sterling represents that Sterling Bank has achieved or exceeded its enhanced CRA goals for the first operational year under the CRA Plan. Sterling highlighted the bank's increased activities in mortgage lending through its Community Banking team, in small business lending, and in community development lending. Sterling argues that it is challenging to glean conclusions regarding the bank's record of lending to minorities in the New York-Newark-Jersey City, NY-NJ-PA, Multistate Metropolitan Statistical Area ("New York City MMSA") based on lending data because of the low number of overall applications and originations in the New York City MMSA and the limited nature of Sterling Bank's mortgage lending program. However, Sterling represents that Sterling Bank is very active in a number of outreach and marketing programs across the bank's footprint that focus on LMI census tracts and minority communities.

Sterling asserts that Sterling Bank is committed to continuing the existing partnerships of both it and Astoria Bank with organizations that support a variety of efforts to benefit local communities. Specifically, Sterling intends to maintain Astoria Bank's membership in the New York Mortgage Coalition and expand, to the extent possible, on its partnership with the State of New York Mortgage Agency.

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. 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.[27] In this case, the Board consulted with and considered supervisory information provided by the OCC.

[27] *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.[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 amounts 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 amounts of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amounts of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;[29] the institution's community development lending, including the number and amounts 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 commenters assert that HMDA data reflect disparities in the rates of loan applications, originations, or 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 information regarding the lending record of an institution.

CRA Performance of Sterling Bank

Sterling Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of January 18, 2017 ("Sterling Bank Evaluation").[31] Sterling Bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and

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[28] 12 U.S.C. § 2906.

[29] 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).

[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.

[31] The Sterling Bank Evaluation was conducted using the Large Bank Examination Procedures that include the Lending, Investment and Service tests. For the lending test, examiners reviewed loans reportable under HMDA and CRA data collection requirements from January 1, 2014, through December 31, 2016. The evaluation period for community development loans, investments, and services was from January 21, 2014, through January 21, 2017. As of the evaluation date, 38 of the bank's 40 branches were located within the New York City MMSA. Consequently, the greatest weight was given to the New York City MMSA in the determination

Service Test.[32] Moreover, examiners found that in 2016, the first of three years under the Sterling CRA Plan, Sterling Bank met or exceeded goals established by the CRA Plan for home mortgage and small business lending, as well as for qualified investments and community development services for the New York City MMSA.

Overall, examiners found that Sterling Bank originated and purchased a substantial majority of loans within the bank's assessment areas and that the distribution of the bank's loans was good when measured by geography and adequate when measured by the income level of borrowers. In the New York City MMSA, examiners found the bank's level of lending to be good, and examiners did not identify any unexplained, conspicuous gaps in lending. The distribution of the bank's loans across borrowers of different income levels and businesses of different sizes was found to be adequate in the New York City MMSA. In addition, examiners found that, although the bank's distribution of lending to small businesses reflected poor penetration, the bank exhibited a good level of small business lending activity in the New York City MMSA.

Also in the New York City MMSA, examiners found the bank's geographic distribution of home mortgage loans to be good, while its distribution of home mortgage loans across borrowers of different income levels reflected adequate penetration. Moreover, examiners concluded that home purchase, home refinance, and home improvement lending reflected adequate distribution to LMI borrowers. In evaluating Sterling Bank's home purchase lending to LMI borrowers, examiners noted that the median housing value in the New York City MMSA significantly limited home purchase opportunities for LMI borrowers. In addition, examiners highlighted that the bank's home purchase loans to LMI borrowers were significantly higher in 2016 than in 2014. Examiners considered this trend regarding Sterling Bank's home purchase loans, as well as the bank's responsiveness by increasing its home mortgage lending to LMI borrowers after meeting with local community organizations, as factors in concluding that Sterling Bank's borrower distribution of home mortgage loans was adequate. In addition, examiners noted that Sterling Bank introduced a loan program targeted to specific LMI co-op developments in Bronx County, New York.

Overall, examiners noted that Sterling Bank had a relatively high level of community development loans that exhibited good responsiveness to community needs. In the New York City MMSA, examiners found that the bank made a good level of community development loans. Examiners reported that, during the evaluation period, Sterling Bank originated or participated in community development loans in the New York City MMSA that generally provided loans for affordable housing and for healthcare services to LMI individuals, and that revitalized or stabilized LMI areas or designated disaster areas.

Examiners found that overall Sterling Bank made a significant level of qualified investments. In the New York City MMSA, examiners found that Sterling Bank made a relatively high level of qualified investments that demonstrated good responsiveness to community needs. Examiners noted that the majority of the bank's investments in the New York City MMSA were mortgaged-backed securities where the underlying home mortgages were

of the bank's overall CRA rating. Within the New York City MMSA, there is one branch office in New Jersey, in Bergen County, and the remaining MMSA branches are in Bronx County, Kings County, New York County, Orange County, Queens County, Rockland County and Westchester County, all in New York State.

[32] Examiners conducted full-scope reviews of the New York City MMSA and the non-MSA Sullivan County NY assessment areas of the bank, based, in part, on the level of deposits and lending activity within each assessment area. Examiners performed a limited-scope review of the bank's performance in the Kingston NY MSA. Although examiners assessed Sterling Bank's activities in the State of New York rating area, which consisted of the bank's performance in non-MSA Sullivan County and the Kingston NY MSA, and rated the bank "Needs to Improve" for that rating area, the bank's minimal presence (two branches) and activity in the State of New York rating area limited the influence of this area on the bank's overall CRA rating.

primarily to LMI borrowers, and that the remaining qualified investments represented an excellent level of responsiveness to the housing needs of the New York City MMSA. Examiners highlighted the bank's qualified investments in municipal bonds that supported affordable housing developments and the construction and rehabilitation of LMI multi-family rental developments.

Sterling Bank's retail branching services were found to be reasonably accessible in its assessment areas. Examiners found that overall Sterling Bank provided a relatively high level of community development services. In the New York City MMSA, examiners found that the bank's delivery systems were reasonably accessible to census tracts and individuals of different income levels. Examiners also found that Sterling Bank's services did not vary in a way that inconvenienced LMI geographies in the New York City MMSA. Examiners noted that the bank's performance in providing community development services was good. In addition, examiners found that Sterling Bank's opening and closing of branches in the New York City MMSA did not adversely affect the bank's delivery systems, particularly for LMI geographies.

Sterling Bank's Activities Since the Sterling Bank Evaluation

Sterling represents that Sterling Bank continues to build upon its strong CRA foundation in 2017, based on a review of Sterling Bank's second quarter CRA Plan performance. Sterling asserts that, among other activities, Sterling Bank has invested in a Low Income Housing Tax Credit participation fund, originated an affordable mortgage, and provided a financial literacy seminar through its branch located in Sullivan County.

CRA Performance of Astoria Bank

Astoria Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of December 3, 2012 ("Astoria Bank Evaluation").[33]The bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and Service Test.[34]

In evaluating the Lending Test, examiners found that the majority of Astoria Bank's lending occurred in its assessment areas. Examiners found that the bank's overall lending performance was good given the level of competition for reportable home mortgage loans and small loans to businesses in its assessment areas. In addition, examiners noted that the bank was able to achieve an overall good level of lending activity within its assessment areas even though an economic recession occurred during the evaluation period.

Overall, examiners found that Astoria Bank showed good responsiveness to the credit needs in its assessment areas and identified no conspicuous gaps in either the bank's home mortgage or small business lending. Examiners found that the bank's overall geographic

[33] The Astoria Bank Evaluation was conducted using the Large Bank Evaluation Procedures for the Lending, Investment, and Service tests. Examiners reviewed home mortgage loans reported pursuant to HMDA and small business loans reported under CRA data collection requirements from July 1, 2009, to December 31, 2011. The Lending Test evaluated the bank's loan originations and purchases of loans reportable under HMDA and small business loans from July 1, 2009, through December 31, 2011. The evaluation period for community development loans, qualified investments, and services was from July 1, 2009, to November 30, 2012. Examiners placed more weight on the bank's home mortgage lending, including purchases and refinancing, than on small loans to businesses and multifamily home mortgage loans. Examiners noted that home improvement and farm loans were not considered as none were originated during the relevant time period.

[34] The Astoria Bank Evaluation included a full-scope review of Astoria Bank's two assessment areas, both located within the State of New York: the New York MD assessment area and the Nassau-Suffolk MD assessment area. The New York MD assessment area was comprised of six counties in the New York-White Plains-Wayne, NY-NJ, MD. The Nassau-Suffolk MD assessment area was comprised of Nassau and Suffolk counties and is one of the four MDs that make up the New York-Northern New Jersey-Long Island, NY-NJ-PA, MSA.

distribution of home mortgage loans was poor, although the examiners noted that there were very limited opportunities to make home mortgage loans in low-income geographies in the Nassau-Suffolk MD assessment area and somewhat limited opportunities in the New York MD assessment area, given the low percentage of owner-occupied housing units in those geographies. In the New York MD assessment area, examiners found the bank's portion of multifamily lending in low-income geographies to be very poor, but found the multifamily lending in moderate-income geographies to be excellent. Examiners also found the bank's mortgage loan-to-deposit ratio to be good.

In addition, examiners found that the bank's overall distribution of lending to borrowers of different income levels was adequate. Examiners considered factors such as the cost of housing in the bank's assessment areas and the demographics of the population base in evaluating the bank's ability to make mortgage loans. Examiners also found the bank's overall geographic distribution of lending activity, including both home mortgage and small business lending, reflected adequate penetration throughout the assessment areas.

In evaluating the Investment Test, examiners found the grants provided by Astoria Bank in the Nassau-Suffolk MD assessment area to be responsive to community needs. Examiners also found the bank's grants and investments in the New York MD assessment area to be responsive to community needs.

In evaluating the Service Test, examiners found Astoria Banks's delivery systems to be reasonably accessible to essentially all portions of its assessment areas. Examiners noted that the bank's opening and closing of branches in the Nassau-Suffolk MD had not adversely affected the accessibility of its branches, including to LMI geographies and individuals, and that there were no material differences in the products and services offered in the bank's branches. Examiners further noted that, overall, the bank provided a good level of community development services in the areas in which the bank maintained an ongoing presence, including by promoting the development of affordable housing, promoting economic development within LMI geographies, or providing services that benefitted LMI individuals. Examiners found that Astoria Bank's personnel frequently took leadership positions in many of the organizations that provide community development services.

Astoria Bank's Activities Since the Astoria Bank Evaluation

Sterling represents that since the Astoria Bank Evaluation, Astoria Bank has maintained a strong CRA performance across its assessment areas. Specifically, Sterling represents that since its last evaluation, Astoria Bank has continued to originate multifamily and commercial real estate loans, primarily for rent-controlled and rent-stabilized apartment buildings in New York City and its surrounding metropolitan area, as well as residential mortgage loans. Sterling represents that Astoria Bank offers a number of mortgage products that serve LMI borrowers and communities within its assessment areas, including State of New York Mortgage Agency loans for 1-4 family residences, cooperatives, and condominiums, in addition to a portfolio of affordable mortgage loan products for persons with incomes either below 80 or below 100 percent of the area median income level. Sterling represents that, from 2013 to 2016, Astoria Bank's participation in the Federal Home Loan Bank of New York's First Home Club down payment assistance program resulted in a number of individuals receiving grants and achieving home ownership. Sterling also represents that, from 2013 to 2016, Astoria Bank sponsored two affordable housing projects that resulted in grants for 532 units of affordable housing in its assessment areas. Sterling states that the majority of Astoria Bank's mortgage originations are sourced through Astoria Bank's correspondent lending channel, through which Astoria Bank purchases mortgage loans from third-party originators. Sterling represents that Astoria Bank continues to offer Small

Business Administration loans as well as lines of credit, installment loans, standby letters of credit, and equipment financing to assist small business owners.

Sterling represents that since the Astoria Bank Evaluation, Astoria Bank has focused its community development lending, investments, and grant activities on supporting nonprofit organizations that, among other actions, expand opportunities for responsible and sustainable homeownership by minority and LMI individuals through affordable housing projects, develop affordable housing and services for special needs populations, and engage in economic development activities to assist LMI individuals or neighborhoods. Sterling also represents that Astoria Bank's community development service activities have included, among other services, providing financial-related technical assistance to nonprofit community organizations through board service and other engagements, offering technical and financial advice to small businesses, engaging in homeownership and first-time homebuyer counseling, and volunteering in affordable housing construction and renovation projects.

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance assessment of Sterling Bank conducted by OCC examiners, which incorporated a review of the bank's compliance risk-management program and the bank's compliance with consumer protection laws and regulations. The Board also has considered the results of a recent compliance examination of Astoria Bank conducted by OCC examiners, which included a review of the bank's consumer compliance function. The Board has conferred with the OCC regarding its review and has taken into consideration supervisory reviews and other relevant information. In addition, the Board has consulted with the Consumer Financial Protection Bureau.

Additional Convenience and Needs Considerations

In evaluating proposals under section 4 of the BHC Act, the Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Sterling 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. Sterling represents that, with the exception of changes to Astoria Bank's mortgage lending operation, it does not intend to eliminate any material retail products or services offered by Astoria and would provide Astoria customers with a broader suite of commercial products and services. With respect to mortgage lending, Sterling represents that Sterling Bank would continue to make available a full range of residential mortgage products to customers of the combined organization through Sterling Bank's relationship with Freedom Mortgage. Moreover, Sterling represents that Sterling Bank will continue to offer residential mortgages to LMI individuals through the bank's Community Banking team. Sterling expects that the merger also would enable it to compete more effectively with national financial institutions in its assessment areas and improve its ability to meet the needs of its customers and the communities in its assessment areas.[35]

[35] Sterling has committed to keep open all Astoria branches for a minimum of 90 days post consummation and will not make decisions regarding branch closures for 180 days in order to evaluate the combined branch network. Unrelated to the proposal, Sterling represents that Sterling Bank plans to relocate one branch and close two other branches, none of which are located in LMI census tracts. Sterling represents that Sterling Bank will comply with Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1) and the Joint Policy Statement Regarding Branch Closings (64 *Fed. Reg*. 34844 (1999)) in connection with any such closings.

Conclusion on Convenience and Needs

The Board has considered all of 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 obtained in consultations with the OCC, confidential supervisory information, information provided by Sterling, 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 Act amended section 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.[36]

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

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that results in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[39]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Sterling would have approximately $29 billion in consolidated assets and, by any of a number of alternative measures of firm size, would not be likely to pose systemic risks. Both the acquirer and the target are predominately engaged in a variety of retail and commercial banking activities. The pro-forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that

[36] Section 604(e) of the Dodd-Frank Act, codified at 12 U.S.C. § 1843(j)(2)(A) (with respect to the acquisition of savings associations).

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

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

[39] *See People's United Financial, Inc*., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

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.

Weighing of Public Benefits of the Proposal

As noted above, in connection with a proposal under section 4 of the BHC Act, the Board is required 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."[40] As discussed above, the Board has considered that the proposed transaction would provide greater services, product offerings, and geographic scope to customers of Astoria Bank. In addition, the acquisition would ensure continuity and strength of service to customers of Astoria 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. 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.[41]

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the notice 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

[40] 12 U.S.C. § 1843(j)(2).

[41] 12 U.S.C. § 1843(j)(2)(A).

[42] A commenter requested that the Board hold a public hearing on the proposal. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. 12 CFR 262.3(e). The Board has considered the request in light of all the facts of record. Notice of the proposal was published in relevant newspapers of general circulation on April 19, 2017. The comment period ended on May 19, 2017. 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.

Act. The Board's approval is specifically conditioned on compliance by Sterling with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on 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 August 30, 2017.

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

The Toronto-Dominion Bank
Toronto, Canada

TD Group US Holdings LLC
Wilmington, Delaware

TD Bank US Holding Company
Cherry Hill, New Jersey

Order Approving the Acquisition of a Savings and Loan Holding Company and Shares in Certain Nonbanking Subsidiaries
FRB Order No. 2017–23 (September 13, 2017)

The Toronto-Dominion Bank ("Toronto-Dominion"), Toronto, Canada, and its subsidiaries, TD Group US Holdings LLC, Wilmington, Delaware, and TD Bank US Holding Company (collectively and together with Toronto-Dominion, "TD"), Cherry Hill, New Jersey, all financial holding companies within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"), have requested the Board's approval under sections 4(c)(8) and (j) of the BHC Act and section 225.24 of the Board's Regulation Y[1] to acquire Scottrade Financial Services, Inc. ("Scottrade Financial"), Town and Country, Missouri, and to merge Scottrade Financial's wholly owned subsidiary, Scottrade Bank, Town and Country, Missouri, a savings association, into TD's wholly owned subsidiary, TD Bank, National Association ("TD Bank"), Wilmington, Delaware.[2] In addition, Toronto-Dominion and TD Group US Holdings LLC have requested the Board's approval under section 163(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act")[3] to acquire additional shares of its subsidiary, TD Ameritrade Holding Corporation ("Ameritrade HC"), Omaha, Nebraska, which is engaged in activities described in section 4(k) of the BHC Act.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 11221-11222 (February 21, 2017)).[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 4 of the BHC Act.

Toronto-Dominion, with consolidated assets of approximately $923.3 billion, is the second largest bank in Canada by asset size.[5] Toronto-Dominion provides retail and commercial banking, wealth management, insurance, and investment banking products and services, and operates in North America (including the United States), Europe, and Asia. In the United States, Toronto-Dominion controls TD Bank, with total assets of $268.2 billion, and TD Bank USA, National Association ("TD Bank USA"), Wilmington, Delaware, with

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

2 The merger of Scottrade Bank into TD Bank is subject to 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 merger on May 18, 2017.

3 Pub. L. No. 111-203, 124 Stat. 1376 (2010). This acquisition is part of a related transaction by Ameritrade HC to acquire Scottrade Financial's broker-dealer subsidiary, Scottrade, Inc., Town and Country, Missouri, under section 4(k) of the BHC Act. 12 U.S.C. § 1843(k).

4 12 CFR 262.3(b).

5 Asset data are as of June 30, 2017, and nationwide deposit-ranking data are as of March 31, 2017, unless otherwise noted. Asset and ranking data for Toronto-Dominion on a consolidated basis are as of April 30, 2017, and are based on the exchange rate as of that date.

total assets of $22.2 billion. Together, the banks have retail banking operations in fifteen states and the District of Columbia.[6]

Scottrade Financial, with consolidated assets of approximately $24.4 billion, is the 71st largest insured depository organization in the United States. Scottrade Financial controls deposits of approximately $15.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Scottrade Financial controls Scottrade Bank, with total assets of $17 billion, which operates in Missouri. Scottrade Financial is the third largest insured depository organization in Missouri, with approximately $14.7 billion in deposits, which represent 8.84 percent of the total deposits of insured depository institutions in that state.[7]

On consummation of the proposal, TD's U.S. operations would have approximately $391.8 billion in consolidated assets, which represent 1.8 percent of the total assets of insured depository organizations in the United States.[8] TD would control total U.S. deposits of approximately $265.6 billion, which represent 2.1 percent of the total deposits of insured depository institutions in the United States. TD would become the third largest insured depository organization in Missouri with approximately $14.7 billion in deposits, which represent 8.84 percent of the total deposits of insured depository institutions in that state.

Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[9] The Board requires that a savings association acquired by a bank holding company conform its direct and indirect activities to those permissible for a bank holding company under section 4 of the BHC Act. TD has committed that all the activities of Scottrade Financial and its subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.[10]

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Scottrade Financial "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."[11] As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the proposal.[12] In acting on a notice to acquire a savings association, the Board also reviews

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[6] TD's subsidiary banks have retail banking operations in Connecticut, Delaware, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and the District of Columbia. In addition, Toronto-Dominion operates a federal branch in New York and a state-licensed agency in Texas.

[7] State deposit and ranking data are as of June 30, 2016, unless otherwise noted.

[8] Asset data and nationwide deposit-ranking data for the combined organization are as of March 31, 2017.

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

[10] In this instance, TD will immediately merge Scottrade Bank into TD Bank and will not operate the savings association independently.

[11] 12 U.S.C. § 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects.

[12] *See* 12 CFR 225.26. *See e.g., M&T Bank Corporation*, FRB Order 2015-27 (September 30, 2015); *Southside Bancshares, Inc*., FRB Order 2014-21 (December 10, 2014); *Capital One Financial Corporation*, FRB Order

the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[13]

Section 163(b) of the Dodd-Frank Act requires prior Board approval of an acquisition by a bank holding company with assets of $50 billion or more of shares of any company with assets of at least $10 billion that is engaged in activities described in section 4(k) of the BHC Act. Toronto-Dominion, TD Group US Holdings LLC, and Ameritrade HC exceed these respective asset thresholds, and Ameritrade HC engages in activities under section 4(k) of the BHC Act. Accordingly, the proposed acquisition of shares of Ameritrade HC by Toronto-Dominion and TD Group US Holdings LLC requires the Board's prior approval under section 163(b) of the Dodd-Frank Act. In reviewing a notice under section 163(b) of the Dodd-Frank Act, the Board is required to consider the standards listed in section 4(j)(2) of the BHC Act.[14] In addition, section 163(b) requires the Board to consider "the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy."[15]

Interstate and Deposit Cap Analyses

The Dodd-Frank Act amended section 4 of the BHC Act[16] to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of the target insured depository institution is a state other than the home state of the 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, the home state of TD is Delaware and the home state of Scottrade Bank is Missouri.[17] Consummation of the proposal would result in TD controlling 2.1 percent of the total amount of deposits of insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under section 4(i) of the BHC Act.

Competitive Considerations

As part of the Board's consideration of the factors under section 4(j)(2) of the BHC Act, the Board evaluates the competitive effects of a proposal in light of all of the facts of the record.

TD, through its U.S. bank subsidiaries, operates approximately 1,300 retail branch locations in fifteen states and the District of Columbia and also has online operations. Scottrade Bank does not operate any physical retail branches; rather, it offers banking services exclusively through an internet platform, consisting primarily of sweep accounts to customers of Scottrade, Inc. TD Bank, TD Bank USA, and Scottrade Bank control a

2012-2 (February 14, 2012); *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).

[13] 12 U.S.C. § 2901 *et seq*.; 12 CFR 225.13(b)(3).

[14] Dodd-Frank Act § 163(b)(4), codified at 12 U.S.C. § 5363(b). *See Mitsubishi UFJ Financial Group, Inc.*(Board Order dated June 14, 2011).

[15] Dodd-Frank Act § 163(b)(4), codified at 12 U.S.C. § 5363(b).

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

[17] 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 the later of July 1, 1966, or the date on which the company became a bank holding company. 12U.S.C.§1841(o)(4)(C). 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).

relatively small amount of internet deposits when compared to the amount of deposits taken over the internet as a whole. TD Bank and TD Bank USA, on the one hand, and Scottrade Bank, on the other, compete in local banking markets in which TD Bank and TD Bank USA offer retail banking services through their branch locations and throughout the United States through their internet platforms. However, because Scottrade Bank solicits deposits from across the country online, it is unlikely that Scottrade Bank holds a high concentration of internet deposits in any local market, including those in which TD Bank and TD Bank USA have retail branches and internet operations. Based on the size of Scottrade Bank, the large number of internet-based competitors, and the diffuse geographic nature of Scottrade Bank's internet deposits, the proposed transaction would not result in a material increase in concentration in any single market, including any in which TD Bank and TD Bank USA have a physical location. Consummation of the proposal would be consistent with Board precedent and within the thresholds in the Department of Justice ("DOJ") Bank Merger Competitive Review guidelines.

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing proposals under section 4(j)(2) 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 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, liquidity, and earnings performance, as well as the public comment on the proposal. 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 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.

TD and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. As part of the transaction, Scottrade Bank would merge with and into TD Bank, and a merger subsidiary of Ameritrade HC would merge with and into Scottrade Financial. The holding company merger would be structured as a cash and

share exchange.[18] In addition, TD would exercise preemptive rights to purchase additional shares of Ameritrade HC in order to maintain its current level of ownership interest in Ameritrade HC. The asset quality, earnings, and liquidity of TD are consistent with approval. TD appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization.[19] The Board has reviewed the examination records of TD's U.S. operations, Scottrade Financial, and Scottrade Bank, including assessments of their management, risk-management programs, and operations. In addition, the Board has considered information provided by TD, 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 the commenter.

TD and its subsidiary depository institutions are each considered to be well managed. TD's existing risk-management program and its directors and senior management are considered to be satisfactory. TD's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors. TD has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions.

The Board also has considered TD's plans for implementing the proposal. TD 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. TD would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, TD's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all the facts of record, including TD'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, as well as the records of effectiveness of TD and Scottrade Financial in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

As part of weighing the possible adverse effects of a transaction against its public benefits as required by section 4(j)(2) 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

[18] As part of the transaction, all of the outstanding shares of Scottrade Financial would be exchanged for no more than 4.95 percent of Ameritrade HC's pro forma outstanding shares and $3.0 billion in cash. TD has the financial resources to effect the proposed transaction.

[19] The Board has previously determined that Toronto-Dominion is subject to comprehensive consolidated supervision by the Office of the Superintendent of Financial Institutions in Canada. *See The Toronto-Dominion Bank* (Board Order dated July 22, 2010).

[20] 12 U.S.C. § 1843(j)(2).

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 in evaluating bank expansionary proposals.[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 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 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 of the facts of record, including reports of examination of the CRA performance of TD Bank, TD Bank USA, and Scottrade Bank; the fair lending and compliance records of each bank; the supervisory views of the OCC and Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by TD; and the public comment received on the proposal.

Public Comment Regarding the Proposal

A commenter objected to the proposal, asserting that TD Bank has made inadequate home purchase and refinance loans to LMI and minority borrowers. Based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA")[23], the commenter argued that TD Bank did not adequately serve minority or LMI borrowers in New York City. The commenter also argued that TD Bank has made inadequate investments in multifamily residential real estate, community development loans and investments, and charitable gifts to neighborhood-based organizations. The commenter asserted that TD Bank should make investments in residential real estate other than through low-income housing tax credits. The commenter also alleged that TD Bank does not offer products that are affordable for LMI borrowers because its low-cost checking account product has a fee that cannot be waived, and another checking account product has a fee that can only be waived if a customer maintains a minimum balance that the commenter believes is too high. Finally, the commenter stated that TD Bank should accept New York City's municipal ID as a primary form of identification for customers seeking to obtain banking products.[24]

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[21] 12 U.S.C. § 2901(b).

[22] 12 U.S.C. § 2903.

[23] 12 U.S.C. § 2801 *et seq*.

[24] The commenter also stated that the Board should not approve the proposal until TD Bank submits a CRA plan with prospective commitments for community investments and lending activity. 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 organizations. *See, e.g., United Bancshares, Inc*., FRB Order No. 2017-10 at 12 fn. 28 (April 6, 2017); *Huntington Bancshares Inc*., FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc*., FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc*., 88 *Federal Reserve Bulletin* 485 (2002). 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.

Business of the Involved Institutions and Response to the Comment

TD, TD Bank, and TD Bank USA offer a broad range of financial services to consumers and businesses. Through their branch network, TD Bank and TD Bank USA offer a variety of banking products to their customers, including real-estate, commercial and consumer loans, and deposit products and services. In addition to traditional deposit and loan products, TD Bank also offers trust and financial advisory services to personal, business, corporate, and institutional clients.

Scottrade Bank offers online retail banking products and services, as well as commercial lending and commercial equipment financing. Scottrade Bank primarily provides deposit account products and services to customers of Scottrade Inc., including sweep accounts.

In response to the comment, TD asserts that the records of TD Bank and TD Bank USA in meeting the convenience and needs of the communities they serve are consistent with approval.

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.[25]

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.[26] An institution's most recent CRA performance evaluation is a particularly important consideration in the notice 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 amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the company's lending, including the proportion and dispersion of the institution's lending in its AAs 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

[25] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg*. 48506, 48548 (July 25, 2016).

[26] 12 U.S.C. § 2906.

loans to low-, moderate-, middle-, and upper-income individuals;[27] (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 CRA permits a bank to apply to its primary federal regulator to be designated as a wholesale or a limited-purpose bank.[28] The CRA performance of a wholesale or limited-purpose bank is assessed by evaluating the bank's community development activities.[29] This evaluation involves an assessment of (1) the number and amounts 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; (2) 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 (3) the bank's responsiveness to credit and community development needs.[30] Based on its activities, Scottrade Bank is considered to be a wholesale bank.

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.

CRA Performance of TD Bank

TD Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of December 31, 2013 ("TD Bank Evaluation").[32] TD Bank received "High Satisfactory" ratings for the Lending and Service tests and an "Outstanding" rating for the Investment Test. Examiners found that TD Bank provided a relatively high level of community development services.

Examiners found that TD Bank's overall lending activity was excellent. Examiners noted that the distribution by TD Bank of loans to geographies and borrowers of different income levels was adequate. Examiners found that TD Bank had a good level of community development lending that had a positive impact on TD Bank's overall lending.

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[27] Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of $1million 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).

[28] 12 CFR 228.25. 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.

[29] 12 CFR 228.25(c).

[30] *Id*.

[31] Other data relevant to credit decisions could include credit histories, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners may analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[32] The TD Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and the CRA from January 1, 2011, through December 31, 2013. The evaluation period for community development loans, investments, and services was from January 1, 2012, through December 31, 2013. The TD Bank Evaluation covered TD Bank's 72 AAs located in fifteen states and six multistate metropolitan areas ("MMAs"). A full-scope review was conducted in one office of each state and MMA. A limited-scope review was conducted in the remaining AAs.

TD Bank received a "High Satisfactory" rating for the Lending Test in the New York-Northern New Jersey-Long Island MMA ("New York MMA"), an area of concern for the commenter. Examiners conducted a full-scope review in the New York MMA and noted that TD Bank had adequate distribution of loans to individuals and businesses of different income levels. Examiners noted that TD Bank had good performance for small loans to businesses of different sizes, but poor performance for home mortgage loans by income level of the borrower. Examiners found that TD Bank's level of community development lending in the New York MMA was excellent and flexible, which positively impacted the bank's Lending Test performance.

Examiners found that TD Bank had an excellent level of qualified investments that was responsive to the needs of its communities. In the New York MMA, TD Bank received an "Outstanding" rating for the Investment Test. Examiners found that TD Bank made extensive use of innovative or complex investments to support community development initiatives, particularly for affordable housing development. Examiners also noted that TD Bank's responsiveness to the investment needs of the communities in the New York MMA was excellent. Examiners found that a substantial majority of TD Bank's investments were in low-income housing tax credit projects, which examiners stated were a primary need in the bank's AAs.

Examiners found that TD Bank had accessible office locations and a relatively high level of community development services. In the New York MMA, examiners assigned TD Bank a "High Satisfactory" rating for the Service Test. Examiners noted that TD Bank provided a good level of community development services, including first-time homebuyer seminars and financial literacy classes for students in community schools and economic and affordable housing organizations. Examiners found that TD Bank's delivery systems were accessible to all geographies, all census tracks, and individuals of different income levels. While examiners noted that the distribution of branches and full-service ATMs in LMI geographies was below what would be consistent with the number of LMI borrowers in the New York MMA, examiners found that TD Bank's 79 branches provided good access to LMI individuals. Examiners also found that TD Bank made adequate use of alternative delivery systems, including ATMs, online banking, and free telephone banking. Examiners found that TD Bank's record of opening and closing branch offices did not adversely affect, but instead significantly improved, the accessibility of its delivery systems to LMI individuals.

TD Bank's Activities since the TD Bank Evaluation

TD states that, since the TD Bank Evaluation, TD Bank has taken significant steps to continue and improve its CRA performance. Specifically, TD Bank has initiated two mortgage lending programs, the TD Right Step affordable mortgage loan product and the FannieMae HomeReady affordable mortgage program. The TD Right Step mortgage product provides borrowers with flexible financing options, including down payments as low as 3 percent without a requirement to purchase private mortgage insurance. This mortgage product also has simplified underwriting and appraisal processes that are more consumer friendly than traditional processes. Since beginning the program in 2014, TD Bank has closed over 3,100 loans through the TD Right Step program. TD Bank also began participating in Fannie Mae's HomeReady affordable mortgage program, which provides flexible financing options to LMI borrowers. Since joining the program in late 2016, TD Bank has closed 113 HomeReady loans.

CRA Performance of TD Bank USA

TD Bank USA was assigned an overall CRA rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of March 31, 2014 ("TD Bank USA Evaluation"). The TD Bank USA Evaluation was conducted pursuant to an OCC-approved CRA strategic plan, which specified measurable goals for meeting the lending, investment, and service needs of the bank's assessment area.[33] The TD Bank USA Evaluation included a review of the bank's performance toward meeting the strategic plan goals in the defined assessment area of the Portland-South Portland-Biddeford, Maine, MSA for 2011 and 2012.[34]

Examiners found that TD Bank USA substantially met or exceeded all of its strategic plan goals in its AA. In addition, examiners noted that the bank supported community-based organizations in New York City with capital lines of credit. Examiners noted that the bank invested in low-income housing tax credits to construct low-income housing for the elderly, and made deposits or donated certificates of deposits to low-income and minority-owned credit unions. Examiners also noted that TD Bank USA provided grants and donations to organizations dedicated to providing affordable housing, services for LMI individuals, and local economic development.

CRA Performance of Scottrade Bank

Scottrade Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of April 1, 2013 ("Scottrade Bank Evaluation").[35]

Examiners found that Scottrade Bank's lending levels were adequate in light of the bank's capacity and the lending opportunities available to it. Examiners noted that Scottrade Bank made complex community development loans, which aided in the development of affordable housing. Examiners also noted that Scottrade Bank made additional community development loans outside of its AA, which favorably impacted its CRA evaluation.

Examiners found that Scottrade Bank provided an adequate level of investments to meet community needs, most of which helped to provide affordable housing and neighborhood revitalization. Examiners noted that Scottrade Bank also invested in a mortgage loan pool that only lent to LMI borrowers. Examiners found that Scottrade Bank made charitable donations that promoted affordable housing and provided other services to LMI individuals. Examiners also noted that Scottrade Bank made investments outside of its AA to promote affordable housing, which favorably impacted its CRA evaluation.

Examiners found that Scottrade Bank provided an adequate level of services in its AA. Examiners noted that the bank's employees volunteered with several organizations that provided services to LMI individuals.

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[33] Under the federal banking agencies' CRA regulations, 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. *See* 12 CFR 25.27. The OCC approved TD Bank USA's strategic plan in August 2010.

[34] The bank's strategic plan also permits the bank to respond to the needs of communities in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, and New York.

[35] The Scottrade Bank Evaluation was conducted using Wholesale or Limited Purpose Bank Examination Procedures. Examiners reviewed Scottrade Bank's community development activities both inside and outside of its sole AA from July 8, 2008, through April 1, 2013. The bank's sole AA includes St. Louis County and St. Louis City County, both in Missouri.

Views of the OCC and CFPB

In its review of the proposal, the Board consulted with the OCC regarding TD Bank's CRA, consumer compliance, and fair lending records, as well as with the CFPB regarding TD Bank's record of consumer compliance. The OCC reviewed the bank merger underlying this proposal, including the comment received by the Board.

The Board has considered the results of the most recent consumer compliance examination of TD Bank conducted by OCC examiners. The Board also has considered the results of the OCC's most recent examination of TD Bank's compliance with the Equal Credit Opportunity Act[36] and the Fair Housing Act.[37] In addition, the Board has considered the results of the CFPB's consumer compliance examination of TD Bank.

The Board has taken the consultations with the OCC and the CFPB, as well as the information discussed above, into account in evaluating this proposal, including in considering whether TD has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. TD represents that, as a result of the proposal, existing customers of Scottrade Bank would have access to additional or expanded services, including access to retail branches and ATM locations in its market areas. Upon consummation of the bank merger, TD Bank would offer the former depositors of Scottrade Bank its products and services, including a debit card, free ATM withdrawals, free online bill payment, and a sweep deposit program comparable to that currently offered by Scottrade Bank. TD also represents that deposit customers of Scottrade Bank, many of whom use the brokerage and wealth management services of Scottrade Financial's other subsidiaries, would have access to the enhanced product selection and trading platform of Ameritrade HC and its subsidiaries, including investor education programs, mobile trading technology, more diverse investment products including derivatives and foreign exchange, and greater investment guidance and advice. TD represents that the combined company's larger capital and asset base would allow it to be a more effective competitor in the investment advisory and securities brokerage markets and to continue to offer competitive prices for its services. TD also represents that, on balance, no significant reductions in products or services would be expected as a result of the proposal.[38]

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, confidential supervisory information, information provided by TD, 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.

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[36] 15 U.S.C. § 1692 *et seq.*

[37] 42 U.S.C. § 3601 *et seq.*

[38] TD represents that Ameritrade HC and its subsidiaries would discontinue all but a few of the proprietary products currently offered by Scottrade Financial. However, TD represents that the products of Ameritrade HC and its subsidiaries would provide investors with improved quality and investment options.

The Board expects TD to ensure that its subsidiary banks implement effective consumer compliance and risk-management programs following consummation of the proposal that are commensurate with each bank's size, complexity, and nature and scope of operations. The Board will continue to monitor and evaluate these efforts through its ongoing supervision of TD Group U.S. Holdings LLC and TD Bank US Holding Company, as well as through consultations with the OCC and CFPB.

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 requires the Board to consider "the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy" in considering a notice submitted pursuant to section 163(b) of the Dodd-Frank Act.[39]

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system or the United States economy, or on global or United States financial stability, 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.[40] 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.[41]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system or the U.S economy and risks to global or United States financial stability. Both the acquirer and the target are engaged in retail banking, investment advisory, wealth management, and securities brokerage activities. TD has, and as a result of the proposal, would continue to have, small-to-moderate market shares in these products and services on a nationwide basis. The acquisition would not have meaningful effects on the cross-border activities of the acquirer; would not lead to changes in the institution's organizational structure, complexity, or unique characteristics that would complicate its resolution; nor would it pose a significant risk to the banking or financial system, economy, or financial stability, in the event of financial distress. In addition, substitute providers would be readily available for the critical financial services provided by the *pro forma* institution, and the acquisition would not heighten its interconnectedness with other firms or markets in ways that would significantly raise risks to the financial system or economy or to financial stability in the event of financial distress.

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[39] Dodd-Frank Act §§ 163(b)(4), 604(e)(1) and (f), codified at 12 U.S.C. 5363(b)(4) and 12 U.S.C. §§1843(j)(2)(A) and 1828(c)(5), respectively.

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

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

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 or the United States economy or to global or United States financial stability. 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 Proposal

As noted, in connection with a notice under section 4(c)(8) of the BHC Act and notice under section 163(b) of the Dodd Frank Act, section 4(j)(2) 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."[42] As discussed above, the Board has considered that the proposed transaction would provide greater services, product offerings, and geographic scope to customers of Scottrade Financial and its subsidiaries. In addition, the acquisitions would ensure continuity and strength of service to these customers.

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 the proposal. 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 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. The Board's approval is specifically conditioned on compliance by TD with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

By order of the Board of Governors, effective September 13, 2017.

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

[42] 12 U.S.C. § 1843(j)(2)(A).

Orders Issued Under Bank Merger Act

Veritex Holdings, Inc.
Dallas, Texas

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017–18 (July 6, 2017)

Veritex Holdings, Inc. ("Veritex Holdings"), Dallas, Texas, 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 Act[2] to merge with Sovereign Bancshares, Inc. ("Sovereign Bancshares"), and thereby indirectly acquire Sovereign Bank, both of Dallas, Texas.

In addition, Veritex Holdings' subsidiary state member bank, Veritex Community Bank ("Veritex Bank"), Dallas, Texas, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Sovereign Bank, with Veritex Bank as the surviving entity.[3] Veritex 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 Sovereign Bank.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 8425 (January 25, 2017)).[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").

Veritex Holdings, with consolidated assets of approximately $1.4 billion, is the 524th largest insured depository organization in the United States.[6] Veritex Holdings controls approximately $1.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] Veritex Holdings controls Veritex Bank, which operates only in Texas. Veritex Holdings is the 64th largest insured depository organization in Texas, controlling deposits of approximately $1.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8]

Sovereign Bancshares, with consolidated assets of approximately $1.1 billion, is the 670th largest insured depository organization in the United States, controlling approximately $857.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sovereign Bancshares controls Sovereign Bank, which operates only in Texas. Sovereign Bancshares is

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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 the Appendix.
5 12 CFR 262.3(b).
6 National asset data, market share, and ranking data are as of December 31, 2016, unless otherwise noted.
7 In this context, insured depository institutions include commercial banks, credit unions, savings and loan associations, and savings banks.
8 State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

the 80th largest insured depository organization in Texas, controlling deposits of approximately $814.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Veritex Holdings would become the 338th largest insured depository organization in the United States, with consolidated assets of approximately $2.5 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Veritex Holdings would control consolidated deposits of approximately $2.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. Veritex Holdings would become the 38th largest insured depository organization in Texas, controlling deposits representing 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.[9] Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any 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.[10]

Veritex Holdings and Sovereign Bancshares have subsidiary depository institutions that compete directly in the Dallas, Texas, banking market ("Dallas market").[11]The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") that Veritex Holdings would control;[12] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[13] and other characteristics of the market.

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[9] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[10] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[11] The Dallas market includes Dallas and Rockwall counties; the southeastern quadrant of Denton County, including Denton and Lewisville; the southwestern quadrant of Collin County, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County; and Midlothian, Waxahachie and Ferris in Ellis County, all in Texas.

[12] Local deposit and market share data are as of June 30, 2016, 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).

[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), available at 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 Dallas market. On consummation of the proposal, the Dallas market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in this market would be small, and numerous competitors would remain in the market.[14]

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 Dallas 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 Dallas 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 and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[15] 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.

Veritex Holdings and Sovereign Bancshares 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, with a subsequent merger of Veritex Bank and Sovereign Bank.[16] The asset quality, earnings, and liquidity of both Veritex Bank

[14] Veritex Holdings operates the 23rd largest depository institution in the Dallas market, controlling approximately $1.0 billion in deposits, which represent less than 1 percent of market deposits. Sovereign Bancshares operates the 28th largest depository institution in the same market, controlling approximately $539.7 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Veritex Holdings would become the 16th largest depository organization in the market, controlling deposits of approximately $1.6 billion, which represent less than 1 percent of market deposits. The HHI for the Dallas market would increase by 1 point to 1792, and 121 competitors would remain in the market.

[15] 12 U.S.C. §§ 1842(c)(2), (5), and (6), and 1828(c)(5) and (11).

[16] To effect the holding company merger, a wholly owned subsidiary of Veritex Holdings formed to facilitate the transaction would merge with Sovereign Bancshares, with Sovereign Bancshares as the surviving entity, and immediately thereafter Sovereign Bancshares would merge with Veritex Holdings, with Veritex Holdings as the surviving entity. Upon consummation of that merger, each share of Sovereign Bancshares common stock would be entitled to receive a portion of the aggregate merger consideration, which would consist of Veritex Holdings common stock and cash. Sovereign Bank would then merge with and into Veritex Bank, with Veritex Bank as the surviving entity. Veritex Holdings has the financial resources to effect the transaction.

and Sovereign Bank are consistent with approval, and Veritex Holdings 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 Veritex Holdings, Sovereign 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 Veritex Holdings; 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.

Veritex Holdings, Sovereign Bancshares, and their subsidiary depository institutions are considered to be well managed. Veritex Holdings has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Veritex Holdings' directors and senior executive officers have 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 Veritex Holdings' plans for implementing the proposal. Veritex Holdings 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. Veritex Holdings would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Veritex Holdings' management has the experience and resources to operate the combined organization in a safe and sound manner, and Veritex Holdings plans to integrate Sovereign Bancshares' existing management and personnel in a manner that augments Veritex Holdings' management.[17]

Based on all the facts of record, including the supervisory records of Veritex Holdings, Sovereign Bancshares, and their subsidiary banks, 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 Veritex Holdings and Sovereign Bancshares in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[18] 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

[17] On consummation, Sovereign Bancshares' president and chief executive officer, as well as the chairman of its board of directors, will be appointed to the boards of directors of Veritex Holdings and Veritex Bank. Additionally, one of these individuals is expected to be appointed vice chairman of the board of directors of Veritex Holdings.

[18] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

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, in evaluating bank expansionary proposals.[21]

In addition, the Board considers the banks' overall compliance records and their 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 Veritex Bank and Sovereign Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Veritex Holdings; and the public comments received on the proposal.

Public Comments Regarding the Proposal

The Board received comments from one commenter opposing the proposal. The commenter alleged that Veritex Bank discriminates against African Americans and "redlines" African American neighborhoods, particularly in the Dallas and Houston areas,[22] both in Texas, with respect to its branching, marketing, and lending activities.[23] The commenter also alleged that Veritex Bank has designated its CRA assessment area in a manner that excludes majority African American neighborhoods in Dallas. In addition, the commenter alleged that Sovereign Bank also discriminates against African Americans and redlines African American neighborhoods.

Businesses of the Involved Institutions and Response to Comments

Veritex Holdings and Veritex Bank offer a range of financial products and services to individual customers and businesses. Veritex Bank is a full-service retail bank offering agricultural, commercial, home purchase, home improvement, home equity, and vehicle loans. Through its network of 11 branches, Veritex Bank offers a wide range of deposit products including various checking accounts, savings accounts, certificates of deposit, individual retirement accounts, money market accounts, and NOW accounts. Veritex Bank also provides automated teller machines, debit cards, and internet banking.

Sovereign Bancshares and Sovereign Bank offer deposit and loan products and specialize in commercial banking activities. Sovereign Bank offers a range of financial products and

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[19] 12 U.S.C. § 2901 *et seq.*; 12 CFR 225.13(b)(3).

[20] 12 U.S.C. § 2901(b).

[21] 12 U.S.C. § 2903.

[22] Veritex currently has no branch locations in Houston.

[23] 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. *See* Interagency Fair Lending Examination Procedures (August 2009), available at https://www.ffiec.gov/pdf/fairlend.pdf.

services to individual customers and businesses, including business loans, commercial real estate lending, and consumer deposit products.

Veritex Holdings denies the commenter's allegations of discriminatory lending and redlining with respect to the branching, marketing, and lending activities of Veritex Bank. Veritex Holdings asserts that Veritex Bank maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations, and asserts that Veritex Bank designated the entirety of two counties in the Dallas area as its CRA assessment area,[24] in part to ensure that no LMI or high minority census tracts were excluded or neglected. Veritex Holdings further asserts that Veritex Bank's management is committed to ensuring that no geographic areas are excluded by branch location decisions. With respect to fair lending, Veritex Holdings asserts that the bank has implemented policies and procedures to ensure fair lending compliance, including an equal credit opportunity policy and a fair lending policy, among others. Veritex Holdings represents that Veritex Bank monitors and reviews loan policies and practices for the purpose of measuring compliance with fair lending laws and equal credit opportunity requirements, and that this monitoring includes internal and external audits, as well as training programs.

In response to the commenter's criticism that Veritex Bank has no advertising or marketing efforts directed at African American communities, Veritex Holdings asserts that Veritex Bank has directed advertising and marketing efforts towards individuals and small businesses in areas typically underserved by banks, including African American communities. Veritex Holdings represents that these marketing efforts include partnerships with various community organizations, including one that facilitates micro lending to low- and moderate-income individuals.

The commenter also noted that Sovereign Bank discriminates against African Americans and redlines in African American neighborhoods. Veritex Holdings notes that as part of its community development activities, a majority of Sovereign Bank's community development loans have been to borrowers in predominantly minority census tracts. Veritex Holdings represents that as part of Sovereign Bank's CRA efforts, it has made qualified donations to organizations that help to support financial literacy and money management to individuals in census tracts that are over 50 percent minority, as well as to organizations that focus on housing, ending homelessness, and providing other social services targeted to LMI individuals in the Dallas metropolitan area. Further, Veritex Holdings represents that, through Sovereign Bank branch locations, bank personnel provide community development services to organizations located in predominantly minority census tracts and meet with different community groups, including an alliance for the homeless, which helps the bank better understand the needs of the communities it serves. Veritex Holdings also represents that Sovereign Bank has implemented processes to comply with anti-discrimination requirements, including the establishment of a fair lending committee that reviews, among other things, high-rate loans and consumer loans with origination fees.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to the information provided by the public commenters and the applicant's response to comments. 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

[24] These counties, the Dallas and Collin counties, are defined below.

provided by the appropriate federal supervisors.[25] In this case, the Board considered the views of its supervisory staff and of examiners from the Federal Reserve Bank of Dallas ("Reserve Bank") and 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.[26] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.[27]

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")[28] 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.[29] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amount of their community development loans and qualified investments; the extent to which they provide community development services; and their responsiveness to community development lending, investment, and service needs.[30]

CRA Performance of Veritex Bank

Veritex Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of January 23, 2017 ("Veritex Bank Evaluation").[31] The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test. The Veritex Bank Evaluation included full-scope evaluations of Dallas and Collin counties in the Dallas-Plano-Irving Metropolitan Division, an area of concern to the commenter.

Examiners concluded that the bank's performance demonstrated a reasonable responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of

[25] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[26] 12 U.S.C. § 2906.

[27] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[28] 12 U.S.C. § 2801 *et seq*.

[29] *See* 12 CFR 228.26(b).

[30] *See* 12 CFR 228.26(c).

[31] The Veritex Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed HMDA loans reported by Veritex Bank in 2014 and 2015 and small business loans originated by the bank between April 1, 2016, and September 30, 2016. For the Community Development Test, examiners reviewed community development lending, investments, and services based on data from November 12, 2013, through January 23, 2017.

the bank's HMDA and small business loans were originated inside its assessment area. Examiners found that the bank's net loan-to-deposit ratio was considered reasonable, given the bank's size and financial condition, the credit needs of the assessment area, and the competitive local banking environment.

Examiners also found that the bank's distribution of lending to borrowers reflected a reasonable penetration among individuals of different income levels (including LMI borrowers) and that the geographic dispersion of the bank's lending was reasonable given the performance context. Examiners determined that the distribution of HMDA loans by borrower income level was reasonable given the high level of competition in the assessment area and low volume of loans originated to LMI borrowers by the aggregate lenders. Loans were generally made in close proximity to the bank's branches, and there were no conspicuous gaps or anomalies in the lending patterns. The distribution of the remainder of bank lending in middle- and upper-income geographies did not affect the conclusions about the bank's performance considering its lending in LMI geographies. With respect to small business lending, examiners found geographic distribution to be reasonable.

Examiners also determined that Veritex Bank's responsiveness to community development needs was adequate considering the bank's capacity and its primary focus as a commercial lender. Examiners noted that the bank applied its community development resources strategically to meet community needs, primarily through qualified loans and community services targeted to LMI individuals in its community, and that the bank provided community development services through its branches in LMI areas. Examiners found that the bank provided a high level of retail services in its assessment area. Specifically, examiners found Veritex Bank's delivery systems to be accessible to geographies and individuals of different income levels in its assessment area. Examiners also noted that the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and individuals, and that its services did not vary in a way that inconvenienced its assessment area, particularly LMI geographies and individuals.

CRA Performance of Sovereign Bank

Sovereign Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 30, 2015 ("Sovereign Bank Evaluation").[32] Sovereign Bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test. Although Sovereign Bank's overall rating took into consideration its performance in each of its MSA AAs, examiners gave significantly more weight to the bank's records in the Dallas, Texas MSA AA due to the higher volume of loans in that area.

For the Lending Test, examiners evaluated Sovereign Bank's small business loans. Based on this evaluation, examiners found that Sovereign Bank's loan-to-deposit ratio reflected reasonable responsiveness to credit needs in its assessment areas given its size and financial

[32] The Sovereign Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed small business loans originated by the bank from January 1, 2014, through December 31, 2014. Because commercial loans comprised approximately 49 percent of the bank's loan portfolio and its primary product line, examiners focused the Lending Test on small business loans. For the Community Development Test, examiners reviewed the bank's qualified community development lending, investments, and service activities from June 19, 2012, through March 30, 2015.

The Sovereign Bank Evaluation included a full-scope review of performance in the Dallas-Fort Worth-Arlington, Texas Metropolitan Statistical Area Assessment Area ("Dallas, Texas MSA AA"); and a limited-scope review of performance in the Austin-Round Rock, Texas MSA assessment area and the Houston-The Woodlands-Sugar Land, Texas MSA assessment area.

condition. Examiners found that Sovereign Bank originated a majority of its lending within the bank's assessment areas. Specifically, examiners noted that Sovereign Bank originated a majority of its small business loans by number and dollar volume inside of its assessment areas. Examiners found that Sovereign Bank displayed a reasonable level of penetration regarding its distribution of loans based on borrower profile and that the bank's record of lending to businesses of different sizes reflected a reasonable performance. Examiners also found that Sovereign Bank demonstrated a reasonable record of geographically distributing its loans throughout the assessment areas. Examiners found that the bank's lending in moderate-income areas reflected reasonable performance, but lending in low-income census tracts demonstrated poor performance. However, examiners noted that the geographic distribution of the bank's small business loans reflected a reasonable record of lending within the assessment areas when performance context factors that mitigate the bank's small business loan originations in LMI census tracts were considered. These performance context factors include (1) the bank's concentrated marketing efforts in LMI areas to increase small business loan volume through its Small Business Administration Loan Programs, such as by mailing out letters advertising the program in each assessment area, and (2) the bank's targeting of businesses, and specifically those with gross annual revenues of less than $1 million, in the bank's low-income census tracts. Overall, examiners noted that, considering efforts made to increase small business lending in LMI areas and the heavy concentration of bank competition in the Dallas MSA AA, the bank's geographic distribution of small business loans reflected reasonable dispersion.

With respect to community development, examiners considered Sovereign Bank's community development loans, community development investments, and community development services. Examiners found that Sovereign Bank demonstrated an excellent record regarding its community development lending. Examiners also found that Sovereign Bank exhibited an adequate record regarding its community development investments and donations. Specifically, examiners noted that the bank had adequate responsiveness to community development needs combined with an adequate level regarding the number and dollar volume of community development investments and donations. Examiners found that Sovereign Bank established an excellent record of providing community development services to LMI individuals through its contribution of financial expertise and involvement in activities directed at LMI individuals and families. Examiners further noted that Sovereign Bank provided a range of banking products and services to meet the needs of consumer and commercial customers and that its branch offices and delivery systems were readily accessible to LMI borrowers.

Sovereign Bank's Efforts since the Sovereign Bank Evaluation

Veritex Holdings represents that since the Sovereign Bank Evaluation, Sovereign Bank has worked to continue to serve its communities through its small business lending, community service activities, outreach efforts, investments, and donations. Specifically, Veritex Holdings represents that since its last evaluation, Sovereign Bank has continued to provide for community development services through non-profit organizations to LMI individuals and that the bank's employees have continued to serve its communities through work on the boards of directors of non-profit organizations. Veritex Holdings represents that Sovereign Bank's CRA committee meets with different community groups, which helps the bank understand the needs of the communities it serves.

Additional Supervisory Reviews

The Board has considered the results of the most recent consumer compliance examinations of Veritex Bank conducted by Reserve Bank examiners, which included a review of the compliance management program and the banks' compliance with consumer protec-

tion laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated Veritex Bank's fair lending management program, including the bank's fair-lending-related practices, policies, procedures, and internal controls.

The Board also has considered the results of a recent consumer compliance examination of Sovereign Bank conducted by FDIC examiners, which included a review of the bank's compliance management system and the bank's compliance with consumer protection laws, including 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. Veritex Holdings represents that it has no plans to discontinue any significant product or service currently offered by Veritex Bank or Sovereign Bank. Specifically, Veritex Bank represents that it will continue to offer customers a range of deposit and credit products and services that benefit the communities in which Veritex Bank and Sovereign Bank each presently conduct business, including those credit products and services that fulfill the needs of LMI demographics. Veritex Bank represents that, following the proposed transaction, customers of Sovereign Bank would have access to a complement of products and services that are more expansive than those currently available to Sovereign Bank customers, including residential mortgage loan products, and that Sovereign Bank customers would also have increased access to Veritex Bank's offices by telephone and online applications, which may increase access to banking services. In addition, Veritex Bank asserts that customers of both institutions would benefit from a more expansive branch and ATM network. Following the proposed transaction, Veritex Bank represents that it will continue to provide a level of service consistent with Veritex Bank's current CRA performance.

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 provided by Veritex Bank, public comments 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.

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."[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 finan-

[33] Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

cial 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's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that results in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[36]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.[37] 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.

Establishment of Branches

Veritex Bank has applied under section 9 of the FRA to establish branches at the current locations of Sovereign Bank.[38] The Board has assessed the factors it is required to consider

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

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

[36] *See Peoples United Financial, Inc*., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

[37] Veritex Holdings primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, and treasury management. Sovereign Bancshares primarily offers commercial and consumer banking services, commercial real estate lending, and treasury management. In each of the activities in which it engages, Veritex Holdings 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.

[38] *See* 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 that 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 Veritex Bank's branches would be permissible under applicable state law. *See* Tex. Fin. Code §§ 32.203; 32.301(c).

when reviewing an application under that section.[39] Specifically, the Board has considered Veritex 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.[40] 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 proposal should be, and hereby is, approved.[41] 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 Veritex Holdings and Veritex Bank 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 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective July 6, 2017.

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

Appendix

Branches to Be Established by Veritex Bank

1. 600 West 5th Street, Austin, Texas 78701
2. 150 South Bell Boulevard, Cedar Park, Texas 78613
3. 17950 Preston Road, Suite 100, Dallas, Texas 75252
4. 6060 Sherry Lane, Dallas, Texas 75225
5. 7255 North State Highway 161, Irving, Texas 75039

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[39] 12 U.S.C. § 322; 12 CFR 208.6.

[40] Upon consummation of the proposed transaction, Veritex Bank's investments in bank premises would remain within legal requirements, under 12 CFR 208.21.

[41] The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 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 may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the Federal Registeron January 25, 2017, and in the relevant newspaper of general circulation (*The Dallas Morning News*) on January 13, January 20, and February 10, 2017. The comment period ended on February 12, 2017. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

6. 3800 Matlock Road, Arlington, Texas, 76015
7. 2438 East Southlake Boulevard, Southlake, Texas 76092
8. 2800 West 7th Street, Fort Worth, Texas 76107
9. 5111 San Felipe, Houston, Texas 77056
10. 777 Post Oak Boulevard, Suite 700, Houston, Texas 77056

Synovus Bank
Columbus, Georgia

Order Approving the Acquisition of Assets and Assumption of Liabilities
FRB Order No. 2017–22 (September 6, 2017)

Synovus Bank, the state member bank subsidiary of Synovus Financial Corp. ("Synovus Financial"), both of Columbus, Georgia, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[1] to acquire substantially all the assets of, and assume the deposit liabilities of, World's Foremost Bank, a state nonmember credit-card bank subsidiary of Cabela's Incorporated ("Cabela's"), both of Sidney, Nebraska.

Under the proposal, Synovus Bank would assume all of the deposits of World's Foremost Bank (totaling approximately $1.2 billion), as well as approximately $4.1 billion in nondeposit liabilities. Synovus Bank also would acquire substantially all of the assets of World's Foremost Bank (equaling approximately $5.7 billion), including credit-card loans and related assets.[2]

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

Synovus Financial, with consolidated assets of approximately $30.7 billion, is the 59th largest depository organization in the United States by assets.[4] Synovus Financial is the 50th largest insured depository organization in the United States by deposits, controlling deposits through Synovus Bank of approximately $25.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Synovus Bank has offices in Alabama, Florida, Georgia, South Carolina, and Tennessee.

World's Foremost Bank, with total assets of approximately $5.7 billion, operates a single banking office in Sidney, Nebraska. The bank is a credit-card bank and, as such, engages only in a limited set of lending and deposit-taking activities.[5]World's Foremost Bank is the 11th largest depository organization in Nebraska, controlling deposits of approximately $1.2 billion, which represent 1.9 percent of the total amount of deposits of insured depository institutions in Nebraska.

On consummation of the proposal, Synovus Financial would control approximately $26.3 billion in deposits through Synovus Bank. Synovus Financial would become the 53rd

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1 12 U.S.C. § 1828(c).

2 In a transaction not subject to Board approval, Synovus Bank proposes to sell to Capital One Bank (USA), National Association ("CapitalOne Bank"), Glen Allen, Virginia, all of the assets acquired from World's Foremost Bank. Capital One Bank also would assume approximately $4.1 billion in nondeposit liabilities of World's Foremost Bank.

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

4 National deposit, ranking, and market-share data are as of March 31, 2017. State deposit ranking data are as of June 30, 2016. Total assets are as of June 30, 2017. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5 As a credit-card bank, World's Foremost Bank engages only in credit-card operations, does not accept demand deposits, does not accept deposits of less than $100,000, and otherwise conforms to the requirements of section 2(c)(2)(F) of the Bank Holding Company Act of 1956 ("BHC Act"). 12U.S.C.§ 1841(c)(2)(F). World's Foremost Bank is not a "bank" for purposes of the BHC Act, and Cabela's is not a bank holding company.

largest insured depository organization in the United States by assets and would become the 49th largest insured depository organization in the United States by deposits.[6]

For purposes of section 44 of the FDI Act and the Bank Merger Act, the home state of Synovus Bank is Georgia, and the home state of World's Foremost Bank is Nebraska.[7] Synovus Bank is well capitalized and well managed under applicable law and has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA"). The proposed acquisition of deposits and assets of World's Foremost Bank would not be prohibited by the law of any state in which World's Foremost Bank is located.

Interstate and Deposit Cap Analyses

Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve an application by a bank to engage in an interstate transaction with a bank that has a different home state without regard to whether the transaction would otherwise be prohibited under state law.[8] The Board may not approve an application under this section that would permit an out-of-state bank to engage in an interstate transaction with a bank in a host state if the bank to be acquired 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 under this section if the bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, the bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping branches.[10] The Bank Merger Act includes a prohibition on approval of interstate transactions where the applicant controls, or, upon consummation of the proposed transaction, would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.[11]

For purposes of section 44 of the FDI Act and the Bank Merger Act, the home state of Synovus Bank is Georgia, and the home state of World's Foremost Bank is Nebraska.[12] Synovus Bank is well capitalized and well managed under applicable law and has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA"). The proposed acquisition of deposits and assets of World's Foremost Bank would not be prohibited by the law of any state in which World's Foremost Bank is located.

On consummation of the proposed transaction, Synovus Bank would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. The Board has considered all other requirements under section 44 of the FDI Act and the Bank Merger Act. In light of all the facts of the record, the Board may approve the proposal under section 44 of the FDI Act and the interstate merger provisions of the Bank Merger Act.

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[6] For purposes of these rankings, the Board assumes that Synovus Bank would retain all of the assets and liabilities that would be acquired through the proposal. This approach is discussed further below.

[7] A state bank's home state is the state by which the bank is chartered. 12 U.S.C. §§1828(c)(13)(C)(ii) and 1831u(g)(4). Although World's Foremost Bank is not considered to be a bank for purposes of the BHC Act, it is a bank for purposes of section44 of the FDI Act and the Bank Merger Act.

[8] 12 U.S.C. § 1831u(a)(1).

[9] 12 U.S.C. § 1831u(a)(5).

[10] 12 U.S.C. § 1831u(b)(2).

[11] 12 U.S.C. §1828(c)(13).

[12] A state bank's home state is the state by which the bank is chartered. 12 U.S.C. §§1828(c)(13)(C)(ii) and 1831u(g)(4). Although World's Foremost Bank is not considered to be a bank for purposes of the BHC Act, it is a bank for purposes of section44 of the FDI Act and 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.[13] 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.[14]

Synovus Bank and World's Foremost Bank do not compete directly 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, 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 existing and proposed institutions.[15] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations, 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, liquidity, 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 in the proposal in light of their financial and managerial resources and the proposed business plan.

The Board considered this proposal with and without regard to the proposed sale of the assets and liabilities of World's Foremost Bank to Capital One Bank by Synovus Bank.[16] Synovus Bank and World's Foremost Bank are well capitalized, and Synovus Bank would remain so on consummation of the proposal, including if it were to retain substantially

[13] 12 U.S.C. § 1828(c)(5)(A).

[14] 12 U.S.C. § 1828(c)(5)(B).

[15] 12 U.S.C. § 1828(c)(5).

[16] Commenters alleged that the proposal has been structured to evade the requirements of the Bank Merger Act. Commenters also object to the involvement of Capital One Bank in the transaction, alleging that Capital One Bank has managerial weaknesses and deficiencies in its compliance and anti-money-laundering programs. Capital One Bank is a national bank; the Office of the Comptroller of the Currency ("OCC"), and not the Board, determines whether a combination resulting in a national bank requires prior approval under the Bank Merger Act. The Board has consulted with the OCC in connection with this proposal and understands that the OCC does not object to CapitalOne Bank's acquisition of the credit-card loans and related assets and assumption of nondeposit liabilities of World's Foremost Bank from SynovusBank.

all of World's Foremost Bank's assets and liabilities. Synovus Bank appears to have adequate financial resources to absorb the costs of acquiring and integrating substantially all of World's Foremost Bank's assets and deposits. The asset quality, earnings, and liquidity of Synovus Bank and World's Foremost Bank are consistent with approval. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the existing institutions and of Synovus Bank after consummation of the proposal. The Board has considered Synovus Bank's plans for implementing the proposal and has reviewed the examination records of Synovus Bank and World's Foremost Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered Synovus Bank's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Synovus Bank is considered to be well managed, and its board of directors and senior management have substantial banking experience. Moreover, Synovus Bank has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal. Synovus Bank appears to have the managerial and operational resources to address all aspects of the post-integration process. Synovus Bank also would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Synovus Bank's management has the experience and resources to ensure that the bank operates in a safe and sound manner after consummation of the proposal.

Based on all the facts of record, including Synovus Bank's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and public comments on the proposal, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the existing and proposed organizations, as well as the records of effectiveness of Synovus Bank and World's Foremost 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.[17] 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,[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, in evaluating bank expansionary proposals.[19]

[17] 12 U.S.C. § 1828(c)(5).
[18] 12 U.S.C. § 2901(b).
[19] 12 U.S.C. § 2903.

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 organizations' 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 Synovus Bank and World's Foremost Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Deposit Insurance Corporation ("FDIC") and the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by Synovus Bank; and the public comments received on the proposal.

Public Comments Regarding the Proposal

The Board received comments from a commenter who objected to the proposal, alleging, based on data for 2015 reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[20] that Synovus Bank made a disproportionately low number of home purchase loans to African American and Hispanic borrowers, as compared to white borrowers, in the Atlanta–Sandy Springs–Roswell, Georgia, Metropolitan Statistical Area ("Atlanta MSA"); that Synovus Bank made a disproportionately low number of home purchase loans to African American borrowers in the Birmingham–Hoover, Alabama, MSA ("Birmingham MSA"); and that Synovus Mortgage made a disproportionately low number of home mortgage loans to African American and Hispanic borrowers in the Charlotte–Concord–Gastonia, North Carolina–South Carolina MSA ("Charlotte MSA").[21] A second commenter objected to the proposal alleging that Synovus Bank's CRA and fair lending records are worse than those of its peer institutions in several markets, including Atlanta and Columbus, both in Georgia; Columbia and Charleston, both in South Carolina; Nashville, Tennessee; and Charlotte, North Carolina. The commenter also alleged that Synovus Bank received "low satisfactory" ratings for its CRA lending test performance in South Carolina and the Chattanooga, Tennessee–Georgia, MSA ("Chattanooga MSA"), and a "needs to improve" rating for the bank's performance in the state of Tennessee. The commenter also alleged that the bank makes too few home mortgage loans to African American and LMI borrowers and in minority census tracts. The commenter asserted that Synovus Bank should increase its level of community development lending and investment and that Synovus Bank has not demonstrated that a significant public benefit would result from the proposal.

Business of the Involved Institutions and Response to Comments

Synovus Financial and Synovus Bank offer a range of financial products and services to individuals and businesses. Through its branch network in Alabama, Florida, Georgia, South Carolina, and Tennessee, Synovus Bank offers banking products and services to its

[20] 12U.S.C. § 2801 *et seq*.

[21] A commenter also objected to the proposal on the basis of alleged disparities in the number of conventional home purchase loans Capital One Bank denied for AfricanAmerican and Hispanic borrowers as compared to white borrowers. The commenter also noted that Capital One Bank proposes to close branches in Laurel, Gaithersburg, Frederick, and Merrifield, all in Maryland. Capital One Bank's record of HMDA lending and branch closings are beyond the jurisdiction of the Board to consider when reviewing the application by Synovus Bank under the Bank Merger Act. Any review of Capital One Bank's compliance and HMDA lending records and branch closing proposals would be within the purview of the OCC.

customers, including consumer- and commercial-banking services, mortgage lending, treasury management, and investment services.

World's Foremost Bank is a credit-card bank that engages in only a limited set of lending and deposit-taking activities. The bank has one retail office and accepts only certain types of deposits.

In response to the commenters' allegations, Synovus Bank states that it has operated as a community-oriented financial institution since its founding and that it offers a variety of loan and deposit products and other services that meet the financial needs of its communities, including LMI individuals and small businesses. Synovus Bank represents that it has implemented policies and procedures to ensure compliance with all consumer-protection and fair lending laws and regulations and conducts regular reviews of its policies and procedures. Synovus Bank further represents that it is involved with community development organizations that focus on economic development and 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 institution, as well as information and views provided by the appropriate federal supervisors.[22]

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 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 company'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

[22] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg*. 48506, 48548 (July 25, 2016).

[23] 12 U.S.C. § 2906.

amounts of loans to low-, moderate-, middle-, and upper-income individuals;[24] (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 CRA permits a bank to apply to its primary federal regulator to be designated as a wholesale or a limited-purpose bank.[25] The CRA performance of a wholesale or limited-purpose bank is assessed by evaluating the bank's community development activities.[26] This evaluation involves an assessment of (1) the number and amounts 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; (2) 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 (3) the bank's responsiveness to credit and community development needs.[27] Based on its business activities, World's Foremost Bank has been designated as a limited-purpose bank.

As noted above, two commenters allege that HMDA data reported for 2015 by Synovus Bank show that Synovus Bank made a disproportionately low number of conventional home purchase and refinance loans to minority borrowers in several of its assessment areas. 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.[28] 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 Synovus Bank; and the public comments received on the proposal.

CRA Performance of Synovus Bank

Synovus Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of October 7, 2013 ("Synovus Bank Evaluation").[29]

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[24] 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).

[25] 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.

[26] 12 CFR 228.25(c).

[27] *Id.*

[28] 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.

[29] The Synovus Bank Evaluation was conducted using Large Bank CRA Examination Procedures. FDIC examiners reviewed home mortgage lending from 2011 through June 30, 2013. FDIC examiners reviewed small business and community development loans from 2011 through June 30, 2013. FDIC examiners reviewed community development loans, donations (investments), and community development services from January 1, 2011, through September 30, 2013. The Synovus Bank Evaluation covered Synovus Bank's 45assessment areas

Synovus Bank received "High Satisfactory" ratings for the Lending Test and Service Test and a "Low Satisfactory" rating for the Investment Test.

FDIC examiners found that Synovus Bank's overall lending levels reflected excellent responsiveness to assessment area credit needs. According to examiners, the bank's geographic distribution of loans reflected very good 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. FDIC examiners noted that Synovus Bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, which include low-income individuals and very small businesses. Examiners also found that Synovus Bank used innovative and flexible lending programs to serve its assessment area credit needs. Examiners noted that Synovus Bank made an adequate level of community development loans.

In several areas of concern to the commenters, FDIC examiners found that Synovus Bank's distribution of borrowers reflected either a good or an adequate penetration of small business loans and among individuals of different income levels, including LMI individuals.[30] FDIC examiners noted that the bank's geographic distribution of small business and home mortgage loans reflected either good or adequate penetration throughout many of the bank's assessment areas.[31] Examiners further noted that Synovus Bank provided a good array of innovative or flexible lending programs in many areas of concern to the commenters.[32] FDIC examiners also noted that the bank's record of community development lending was either excellent, good, or adequate in many of the bank's assessment areas.[33]

In the Chattanooga MSA, another area of concern to a commenter, FDIC examiners found that the bank's small business lending in LMI census tracts was generally adequate. Examiners noted that Synovus Bank's distribution of home mortgage loans in the assessment area reflected limited originations in moderate- and low-income geographies. FDIC examiners further noted that small business lending among businesses of different sizes was generally adequate, and the bank originated a limited number of home mortgage loans to LMI borrowers.

FDIC examiners found that Synovus Bank had an adequate level of qualified community development investments and grants. Examiners noted that these investments and grants exhibited a good responsiveness to credit and community development needs. The bank made qualified investments in mortgage backed securities collateralized by mortgage loans made to LMI borrowers. The bank also invested in U.S. Housing and Urban Develop-

located in five states and two multistate MSAs: Alabama; Florida; Georgia; South Carolina; Tennessee; the Chattanooga MSA; and the Columbus, Georgia–Alabama, MSA ("ColumbusMSA"). The Synovus Bank Evaluation included a full-scope review of 11of these assessment areas, including both multistate MSAs and the Atlanta MSA; the Birmingham MSA; the Columbia, SouthCarolina, MSA ("Columbia MSA"); the Charleston–North Charleston, SouthCarolina, MSA ("Charleston MSA"); and the Nashville–Davidson–Murfreesboro–Franklin, Tennessee, MSA ("Nashville MSA"). A limited-scope review was conducted in the remaining 34assessment areas. The Synovus Bank Evaluation was released on September 1, 2015.

[30] Examiners noted good penetration of small business loans and among individuals of different income levels in the Charleston, Columbia, Columbus, and Nashville MSAs, as well as in Tennessee. Examiners found adequate penetration in the Atlanta MSA.

[31] Examiners noted that the bank's distribution of small business and home mortgage loans reflected good penetration in the Birmingham, Charleston, and ColumbusMSAs, as well as in Tennessee. Examiners found adequate penetration in the ColumbiaMSA and in South Carolina.

[32] These areas include the Columbia, Columbus, and Charleston MSAs and SouthCarolina.

[33] Examiners noted excellent community development lending in the Charleston MSA, good community development lending in the Atlanta MSA and in South Carolina, and adequate community development lending in the Columbus MSA and in Tennessee.

ment bonds, Low-Income Housing Tax credit funds, Small Business Investment Corporation funds, and community reinvestment partner projects.

FDIC examiners found that Synovus Bank's delivery systems were accessible to essentially all portions of the bank's assessment areas. Examiners also noted that, to the extent changes have been made, Synovus Bank did not adversely affect the accessibility of its delivery systems in LMI geographies or to LMI individuals. FDIC examiners further noted that the bank provided a relatively high level of community development services. Examiners indicated that Synovus Bank's officers and employees served in positions at local and statewide organizations that address a wide range of community needs, including a focus on affordable housing, economic development, small business development, financial education, services for at-risk youth, and services to LMI individuals and areas.

In several areas of concern to the commenters, FDIC examiners found that the bank's delivery systems were either accessible to essentially all portions of the bank's assessment areas or were reasonably accessible to essentially all portions of the bank's assessment areas.[34] Examiners also noted that Synovus Bank provided either a high or an adequate level of community development services that benefited organizations within the bank's assessment areas.[35] In several areas of concern to the commenters, examiners noted that the bank's services were tailored to the needs of its assessment areas.[36]

In the Nashville MSA, another area of concern to a commenter, FDIC examiners noted that the bank's delivery systems were accessible to limited portions of the assessment area. Examiners also found that the bank provided a limited level of community development services within the assessment area.

In Tennessee, another area of concern to a commenter, FDIC examiners noted that Synovus Bank provided an adequate level of community development services that benefited organizations throughout Tennessee. Examiners further noted that the officers, directors, and employees of the bank were involved in community development organizations that provided affordable housing, small business assistance, economic development, and community services for LMI individuals and income areas. Examiners noted that no branches or ATMs were located in LMI census tracts.

Synovus Bank's Efforts since the 2013 CRA Evaluation

Synovus Bank represents that it has continued to help serve the credit needs of all of its assessment areas since the Synovus Bank Evaluation. Synovus Bank represents that it has originated community development loans that were responsive to community needs, including loans for LMI individuals and in LMI geographies. Synovus Bank also represents that it participates in a statewide lending consortium that provides affordable housing throughout Alabama.

In addition, Synovus Bank represents that it provides an adequate level of qualified CRA investments that are responsive to community development needs, including funding for low-income housing projects and investments in mortgage-backed securities that are collateralized by mortgage loans made to LMI borrowers. Synovus Bank represents that its offi-

[34] Examiners noted that the bank's delivery systems were accessible to essentially all portions of the bank's assessment areas in the Atlanta, Chattanooga, and ColumbusMSAs, and were reasonably accessible in the Birmingham, Charleston, and ColumbiaMSAs, as well as in South Carolina.

[35] Examiners noted that the bank provided a high level of community development services in the Atlanta and Birmingham MSAs and an adequate level in the Chattanooga, Columbia, and Columbus MSAs, as well as in South Carolina.

[36] These areas include the Chattanooga and Columbus MSAs and SouthCarolina.

cers, directors, and employees engage in activities that support affordable housing for LMI individuals and economic development of LMI geographies. The bank further represents that it participates in programs with the Small Business Administration to help meet the credit needs of small businesses. Synovus Bank also represents that it has a CRA mortgage loan program that provides LMI borrowers in the Atlanta and Birmingham MSAs with financing for purchases or refinancing for owner-occupied residences and another CRA mortgage loan program offered in the bank's five-state footprint that provides down-payment assistance to LMI borrowers.

CRA Performance of World's Foremost Bank

World's Foremost Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of August 18, 2014 ("World's Foremost Bank Evaluation").[37]

FDIC examiners noted that World's Foremost Bank had an adequate level of community development services and qualified investments. Examiners found that the bank occasionally used innovative and complex qualified investments and community development services. Further, FDIC examiners noted that the bank's qualified investments helped to provide affordable housing and revitalize and stabilize underserved nonmetropolitan middle-income geographies and provided community services to LMI individuals. Examiners also found that World's Foremost Bank exhibited adequate responsiveness to credit and community economic development needs in its assessment area. Examiners noted that the bank provided community development activities that supported health services, education, public safety, public services, and affordable housing.[38]

World's Foremost Bank's Efforts since the 2014 CRA Evaluation

Synovus Bank represents that World's Foremost Bank has continued to help meet the community development needs of its assessment area since the World's Foremost Bank Evaluation. Synovus Bank represents that World's Foremost Bank has continued to provide CRA-qualified investments and community development services. Synovus Bank also represents that World's Foremost Bank's investments support economic development projects, help to provide affordable housing, and provide services for at-risk youth and wounded veterans. Synovus Bank represents that World's Foremost Bank's community development services support financial literacy and provide mentoring to young people.

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance review conducted by examiners of the Federal Reserve Bank of Atlanta ("Reserve Bank"), which included a

[37] The World's Foremost Bank Evaluation was conducted using limited purpose CRA examination procedures. The limited purpose evaluation reviewed the bank's community development lending; qualified investments or community development services; use of innovative or complex qualified investments; community development loans or community development services; and the bank's responsiveness to community development credit needs within its assessment area. The evaluation period was from February 19, 2013, to August 18, 2014. The World's Foremost Bank Evaluation included a review of the bank's assessment area in Cheyenne County, Nebraska.

[38] One commenter alleged that World's Foremost Bank previously received less-than-satisfactory CRA ratings due to violations of the Equal Credit Opportunity Act and the Unfair or Deceptive Acts or Practices provision of the Federal Trade Commission Act. As of 2014, FDIC examiners found World's Foremost Bank's CRA performance to be "Satisfactory." No consumer compliance functions of World's Foremost Bank would be acquired by Synovus Bank as part of the proposal.

review of Synovus Bank's consumer compliance risk management program.[39] The FDIC and the CFPB also have conducted examinations of Synovus Bank's compliance with fair lending laws and regulations. As part of its consumer compliance examination in 2013, the FDIC conducted a review of the bank's fair lending policies, procedures, and practices, including a review of the bank's residential mortgage products, its underwriting and pricing practices, and its lending policies. The CFPB also conducted a fair lending review of the mortgage origination activities of Synovus Bank and its wholly owned subsidiary, Synovus Mortgage Corporation, including a review of the bank's compliance program, policies and procedures, and training.

The Board has taken the results of these examinations into account in evaluating this proposal, including in considering whether Synovus Bank has the experience and resources to ensure that the combined organization would effectively implement policies and programs that would allow the combined organization to serve the credit needs of all the communities within the firm's assessment areas.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. Synovus Bank represents that it would continue to offer the same products and services and that, as a result of the proposal, the bank will not change or discontinue any products or services currently being offered. Synovus Bank further represents that the increase in deposits will allow the bank to provide greater retail banking and community development services to all of the communities it serves, including LMI neighborhoods through increased loan generation in its retail, commercial, and mortgage programs.[40]

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; supervisory views of the FDIC and CFPB; confidential supervisory information; information provided by Synovus Bank; 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") 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.[41]

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[39] Synovus Bank was subject to the FDIC's jurisdiction until November 2016 when it became a state member bank. Prior to the Board's approval of Synovus Bank's membership application, Reserve Bank examiners conducted a review of Synovus Bank's policies, procedures, practices, and systems.

[40] One commenter urged the Board to approve the application on the condition that Synovus Bank adopt and successfully implement a community benefits plan. 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 at24 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.

[41] Dodd-Frank Act § 604(f), Pub. L. No. 111-203, 124 Stat. 1376, 1602 (2010), amending 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.[42] 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.[43]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[44]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. 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 resulting bank in the event of financial distress. In addition, the resulting bank 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.[45] In reaching its conclusion, the Board has consid-

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

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

[44] *See People's United Financial, Inc*., FRB Order No. 2017-08 at 25–26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

[45] A commenter requested that the Board hold public hearings or meetings on the proposal. The Bank Merger Act does not require that the Board hold a public meeting or a public hearing on any application. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately 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

ered 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. The Board's approval is specifically conditioned on compliance by Synovus Bank 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 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective September 6, 2017.

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

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.

Orders Issued Under Federal Reserve Act

Veritex Holdings, Inc.
Dallas, Texas

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017–18 (July 6, 2017)

Veritex Holdings, Inc. ("Veritex Holdings"), Dallas, Texas, 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 Act[2] to merge with Sovereign Bancshares, Inc. ("Sovereign Bancshares"), and thereby indirectly acquire Sovereign Bank, both of Dallas, Texas.

In addition, Veritex Holdings' subsidiary state member bank, Veritex Community Bank ("Veritex Bank"), Dallas, Texas, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Sovereign Bank, with Veritex Bank as the surviving entity.[3] Veritex 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 Sovereign Bank.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 8425 (January 25, 2017)).[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").

Veritex Holdings, with consolidated assets of approximately $1.4 billion, is the 524th largest insured depository organization in the United States.[6] Veritex Holdings controls approximately $1.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] Veritex Holdings controls Veritex Bank, which operates only in Texas. Veritex Holdings is the 64th largest insured depository organization in Texas, controlling deposits of approximately $1.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8]

Sovereign Bancshares, with consolidated assets of approximately $1.1 billion, is the 670th largest insured depository organization in the United States, controlling approximately $857.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sovereign Bancshares controls Sovereign Bank, which operates only in Texas. Sovereign Bancshares is

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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 the Appendix.
5 12 CFR 262.3(b).
6 National asset data, market share, and ranking data are as of December 31, 2016, unless otherwise noted.
7 In this context, insured depository institutions include commercial banks, credit unions, savings and loan associations, and savings banks.
8 State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

the 80th largest insured depository organization in Texas, controlling deposits of approximately $814.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Veritex Holdings would become the 338th largest insured depository organization in the United States, with consolidated assets of approximately $2.5 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Veritex Holdings would control consolidated deposits of approximately $2.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. Veritex Holdings would become the 38th largest insured depository organization in Texas, controlling deposits representing 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.[9] Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any 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.[10]

Veritex Holdings and Sovereign Bancshares have subsidiary depository institutions that compete directly in the Dallas, Texas, banking market ("Dallas market").[11]The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") that Veritex Holdings would control;[12] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[13] and other characteristics of the market.

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[9] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[10] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[11] The Dallas market includes Dallas and Rockwall counties; the southeastern quadrant of Denton County, including Denton and Lewisville; the southwestern quadrant of Collin County, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County; and Midlothian, Waxahachie and Ferris in Ellis County, all in Texas.

[12] Local deposit and market share data are as of June 30, 2016, 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).

[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), available at 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 Dallas market. On consummation of the proposal, the Dallas market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in this market would be small, and numerous competitors would remain in the market.[14]

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 Dallas 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 Dallas 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 and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[15] 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.

Veritex Holdings and Sovereign Bancshares 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, with a subsequent merger of Veritex Bank and Sovereign Bank.[16] The asset quality, earnings, and liquidity of both Veritex Bank

[14] Veritex Holdings operates the 23rd largest depository institution in the Dallas market, controlling approximately $1.0 billion in deposits, which represent less than 1 percent of market deposits. Sovereign Bancshares operates the 28th largest depository institution in the same market, controlling approximately $539.7 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Veritex Holdings would become the 16th largest depository organization in the market, controlling deposits of approximately $1.6 billion, which represent less than 1 percent of market deposits. The HHI for the Dallas market would increase by 1 point to 1792, and 121 competitors would remain in the market.

[15] 12 U.S.C. §§ 1842(c)(2), (5), and (6), and 1828(c)(5) and (11).

[16] To effect the holding company merger, a wholly owned subsidiary of Veritex Holdings formed to facilitate the transaction would merge with Sovereign Bancshares, with Sovereign Bancshares as the surviving entity, and immediately thereafter Sovereign Bancshares would merge with Veritex Holdings, with Veritex Holdings as the surviving entity. Upon consummation of that merger, each share of Sovereign Bancshares common stock would be entitled to receive a portion of the aggregate merger consideration, which would consist of Veritex Holdings common stock and cash. Sovereign Bank would then merge with and into Veritex Bank, with Veritex Bank as the surviving entity. Veritex Holdings has the financial resources to effect the transaction.

and Sovereign Bank are consistent with approval, and Veritex Holdings 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 Veritex Holdings, Sovereign 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 Veritex Holdings; 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.

Veritex Holdings, Sovereign Bancshares, and their subsidiary depository institutions are considered to be well managed. Veritex Holdings has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Veritex Holdings' directors and senior executive officers have 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 Veritex Holdings' plans for implementing the proposal. Veritex Holdings 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. Veritex Holdings would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Veritex Holdings' management has the experience and resources to operate the combined organization in a safe and sound manner, and Veritex Holdings plans to integrate Sovereign Bancshares' existing management and personnel in a manner that augments Veritex Holdings' management.[17]

Based on all the facts of record, including the supervisory records of Veritex Holdings, Sovereign Bancshares, and their subsidiary banks, 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 Veritex Holdings and Sovereign Bancshares in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[18] 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

[17] On consummation, Sovereign Bancshares' president and chief executive officer, as well as the chairman of its board of directors, will be appointed to the boards of directors of Veritex Holdings and Veritex Bank. Additionally, one of these individuals is expected to be appointed vice chairman of the board of directors of Veritex Holdings.

[18] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

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, in evaluating bank expansionary proposals.[21]

In addition, the Board considers the banks' overall compliance records and their 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 Veritex Bank and Sovereign Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Veritex Holdings; and the public comments received on the proposal.

Public Comments Regarding the Proposal

The Board received comments from one commenter opposing the proposal. The commenter alleged that Veritex Bank discriminates against African Americans and "redlines" African American neighborhoods, particularly in the Dallas and Houston areas,[22] both in Texas, with respect to its branching, marketing, and lending activities.[23] The commenter also alleged that Veritex Bank has designated its CRA assessment area in a manner that excludes majority African American neighborhoods in Dallas. In addition, the commenter alleged that Sovereign Bank also discriminates against African Americans and redlines African American neighborhoods.

Businesses of the Involved Institutions and Response to Comments

Veritex Holdings and Veritex Bank offer a range of financial products and services to individual customers and businesses. Veritex Bank is a full-service retail bank offering agricultural, commercial, home purchase, home improvement, home equity, and vehicle loans. Through its network of 11 branches, Veritex Bank offers a wide range of deposit products including various checking accounts, savings accounts, certificates of deposit, individual retirement accounts, money market accounts, and NOW accounts. Veritex Bank also provides automated teller machines, debit cards, and internet banking.

Sovereign Bancshares and Sovereign Bank offer deposit and loan products and specialize in commercial banking activities. Sovereign Bank offers a range of financial products and

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[19] 12 U.S.C. § 2901 *et seq.*; 12 CFR 225.13(b)(3).

[20] 12 U.S.C. § 2901(b).

[21] 12 U.S.C. § 2903.

[22] Veritex currently has no branch locations in Houston.

[23] 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. See Interagency Fair Lending Examination Procedures (August 2009), available at https://www.ffiec.gov/pdf/fairlend.pdf.

services to individual customers and businesses, including business loans, commercial real estate lending, and consumer deposit products.

Veritex Holdings denies the commenter's allegations of discriminatory lending and redlining with respect to the branching, marketing, and lending activities of Veritex Bank. Veritex Holdings asserts that Veritex Bank maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations, and asserts that Veritex Bank designated the entirety of two counties in the Dallas area as its CRA assessment area,[24] in part to ensure that no LMI or high minority census tracts were excluded or neglected. Veritex Holdings further asserts that Veritex Bank's management is committed to ensuring that no geographic areas are excluded by branch location decisions. With respect to fair lending, Veritex Holdings asserts that the bank has implemented policies and procedures to ensure fair lending compliance, including an equal credit opportunity policy and a fair lending policy, among others. Veritex Holdings represents that Veritex Bank monitors and reviews loan policies and practices for the purpose of measuring compliance with fair lending laws and equal credit opportunity requirements, and that this monitoring includes internal and external audits, as well as training programs.

In response to the commenter's criticism that Veritex Bank has no advertising or marketing efforts directed at African American communities, Veritex Holdings asserts that Veritex Bank has directed advertising and marketing efforts towards individuals and small businesses in areas typically underserved by banks, including African American communities. Veritex Holdings represents that these marketing efforts include partnerships with various community organizations, including one that facilitates micro lending to low- and moderate-income individuals.

The commenter also noted that Sovereign Bank discriminates against African Americans and redlines in African American neighborhoods. Veritex Holdings notes that as part of its community development activities, a majority of Sovereign Bank's community development loans have been to borrowers in predominantly minority census tracts. Veritex Holdings represents that as part of Sovereign Bank's CRA efforts, it has made qualified donations to organizations that help to support financial literacy and money management to individuals in census tracts that are over 50 percent minority, as well as to organizations that focus on housing, ending homelessness, and providing other social services targeted to LMI individuals in the Dallas metropolitan area. Further, Veritex Holdings represents that, through Sovereign Bank branch locations, bank personnel provide community development services to organizations located in predominantly minority census tracts and meet with different community groups, including an alliance for the homeless, which helps the bank better understand the needs of the communities it serves. Veritex Holdings also represents that Sovereign Bank has implemented processes to comply with anti-discrimination requirements, including the establishment of a fair lending committee that reviews, among other things, high-rate loans and consumer loans with origination fees.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to the information provided by the public commenters and the applicant's response to comments. 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

[24] These counties, the Dallas and Collin counties, are defined below.

provided by the appropriate federal supervisors.[25] In this case, the Board considered the views of its supervisory staff and of examiners from the Federal Reserve Bank of Dallas ("Reserve Bank") and 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.[26] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.[27]

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")[28] 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.[29] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amount of their community development loans and qualified investments; the extent to which they provide community development services; and their responsiveness to community development lending, investment, and service needs.[30]

CRA Performance of Veritex Bank

Veritex Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of January 23, 2017 ("Veritex Bank Evaluation").[31] The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test. The Veritex Bank Evaluation included full-scope evaluations of Dallas and Collin counties in the Dallas-Plano-Irving Metropolitan Division, an area of concern to the commenter.

Examiners concluded that the bank's performance demonstrated a reasonable responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of

[25] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[26] 12 U.S.C. § 2906.

[27] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[28] 12 U.S.C. § 2801 *et seq*.

[29] See 12 CFR 228.26(b).

[30] See 12 CFR 228.26(c).

[31] The Veritex Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed HMDA loans reported by Veritex Bank in 2014 and 2015 and small business loans originated by the bank between April 1, 2016, and September 30, 2016. For the Community Development Test, examiners reviewed community development lending, investments, and services based on data from November 12, 2013, through January 23, 2017.

the bank's HMDA and small business loans were originated inside its assessment area. Examiners found that the bank's net loan-to-deposit ratio was considered reasonable, given the bank's size and financial condition, the credit needs of the assessment area, and the competitive local banking environment.

Examiners also found that the bank's distribution of lending to borrowers reflected a reasonable penetration among individuals of different income levels (including LMI borrowers) and that the geographic dispersion of the bank's lending was reasonable given the performance context. Examiners determined that the distribution of HMDA loans by borrower income level was reasonable given the high level of competition in the assessment area and low volume of loans originated to LMI borrowers by the aggregate lenders. Loans were generally made in close proximity to the bank's branches, and there were no conspicuous gaps or anomalies in the lending patterns. The distribution of the remainder of bank lending in middle- and upper-income geographies did not affect the conclusions about the bank's performance considering its lending in LMI geographies. With respect to small business lending, examiners found geographic distribution to be reasonable.

Examiners also determined that Veritex Bank's responsiveness to community development needs was adequate considering the bank's capacity and its primary focus as a commercial lender. Examiners noted that the bank applied its community development resources strategically to meet community needs, primarily through qualified loans and community services targeted to LMI individuals in its community, and that the bank provided community development services through its branches in LMI areas. Examiners found that the bank provided a high level of retail services in its assessment area. Specifically, examiners found Veritex Bank's delivery systems to be accessible to geographies and individuals of different income levels in its assessment area. Examiners also noted that the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and individuals, and that its services did not vary in a way that inconvenienced its assessment area, particularly LMI geographies and individuals.

CRA Performance of Sovereign Bank

Sovereign Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 30, 2015 ("Sovereign Bank Evaluation").[32] Sovereign Bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test. Although Sovereign Bank's overall rating took into consideration its performance in each of its MSA AAs, examiners gave significantly more weight to the bank's records in the Dallas, Texas MSA AA due to the higher volume of loans in that area.

For the Lending Test, examiners evaluated Sovereign Bank's small business loans. Based on this evaluation, examiners found that Sovereign Bank's loan-to-deposit ratio reflected reasonable responsiveness to credit needs in its assessment areas given its size and financial

[32] The Sovereign Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed small business loans originated by the bank from January 1, 2014, through December 31, 2014. Because commercial loans comprised approximately 49 percent of the bank's loan portfolio and its primary product line, examiners focused the Lending Test on small business loans. For the Community Development Test, examiners reviewed the bank's qualified community development lending, investments, and service activities from June 19, 2012, through March 30, 2015.

The Sovereign Bank Evaluation included a full-scope review of performance in the Dallas-Fort Worth-Arlington, Texas Metropolitan Statistical Area Assessment Area ("Dallas, Texas MSA AA"); and a limited-scope review of performance in the Austin-Round Rock, Texas MSA assessment area and the Houston-The Woodlands-Sugar Land, Texas MSA assessment area.

condition. Examiners found that Sovereign Bank originated a majority of its lending within the bank's assessment areas. Specifically, examiners noted that Sovereign Bank originated a majority of its small business loans by number and dollar volume inside of its assessment areas. Examiners found that Sovereign Bank displayed a reasonable level of penetration regarding its distribution of loans based on borrower profile and that the bank's record of lending to businesses of different sizes reflected a reasonable performance. Examiners also found that Sovereign Bank demonstrated a reasonable record of geographically distributing its loans throughout the assessment areas. Examiners found that the bank's lending in moderate-income areas reflected reasonable performance, but lending in low-income census tracts demonstrated poor performance. However, examiners noted that the geographic distribution of the bank's small business loans reflected a reasonable record of lending within the assessment areas when performance context factors that mitigate the bank's small business loan originations in LMI census tracts were considered. These performance context factors include (1) the bank's concentrated marketing efforts in LMI areas to increase small business loan volume through its Small Business Administration Loan Programs, such as by mailing out letters advertising the program in each assessment area, and (2) the bank's targeting of businesses, and specifically those with gross annual revenues of less than $1 million, in the bank's low-income census tracts. Overall, examiners noted that, considering efforts made to increase small business lending in LMI areas and the heavy concentration of bank competition in the Dallas MSA AA, the bank's geographic distribution of small business loans reflected reasonable dispersion.

With respect to community development, examiners considered Sovereign Bank's community development loans, community development investments, and community development services. Examiners found that Sovereign Bank demonstrated an excellent record regarding its community development lending. Examiners also found that Sovereign Bank exhibited an adequate record regarding its community development investments and donations. Specifically, examiners noted that the bank had adequate responsiveness to community development needs combined with an adequate level regarding the number and dollar volume of community development investments and donations. Examiners found that Sovereign Bank established an excellent record of providing community development services to LMI individuals through its contribution of financial expertise and involvement in activities directed at LMI individuals and families. Examiners further noted that Sovereign Bank provided a range of banking products and services to meet the needs of consumer and commercial customers and that its branch offices and delivery systems were readily accessible to LMI borrowers.

Sovereign Bank's Efforts since the Sovereign Bank Evaluation

Veritex Holdings represents that since the Sovereign Bank Evaluation, Sovereign Bank has worked to continue to serve its communities through its small business lending, community service activities, outreach efforts, investments, and donations. Specifically, Veritex Holdings represents that since its last evaluation, Sovereign Bank has continued to provide for community development services through non-profit organizations to LMI individuals and that the bank's employees have continued to serve its communities through work on the boards of directors of non-profit organizations. Veritex Holdings represents that Sovereign Bank's CRA committee meets with different community groups, which helps the bank understand the needs of the communities it serves.

Additional Supervisory Reviews

The Board has considered the results of the most recent consumer compliance examinations of Veritex Bank conducted by Reserve Bank examiners, which included a review of the compliance management program and the banks' compliance with consumer protec-

tion laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated Veritex Bank's fair lending management program, including the bank's fair-lending-related practices, policies, procedures, and internal controls.

The Board also has considered the results of a recent consumer compliance examination of Sovereign Bank conducted by FDIC examiners, which included a review of the bank's compliance management system and the bank's compliance with consumer protection laws, including 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. Veritex Holdings represents that it has no plans to discontinue any significant product or service currently offered by Veritex Bank or Sovereign Bank. Specifically, Veritex Bank represents that it will continue to offer customers a range of deposit and credit products and services that benefit the communities in which Veritex Bank and Sovereign Bank each presently conduct business, including those credit products and services that fulfill the needs of LMI demographics. Veritex Bank represents that, following the proposed transaction, customers of Sovereign Bank would have access to a complement of products and services that are more expansive than those currently available to Sovereign Bank customers, including residential mortgage loan products, and that Sovereign Bank customers would also have increased access to Veritex Bank's offices by telephone and online applications, which may increase access to banking services. In addition, Veritex Bank asserts that customers of both institutions would benefit from a more expansive branch and ATM network. Following the proposed transaction, Veritex Bank represents that it will continue to provide a level of service consistent with Veritex Bank's current CRA performance.

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 provided by Veritex Bank, public comments 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.

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."[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 finan-

[33] Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

cial 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's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that results in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[36]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.[37] 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.

Establishment of Branches

Veritex Bank has applied under section 9 of the FRA to establish branches at the current locations of Sovereign Bank.[38] The Board has assessed the factors it is required to consider

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

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

[36] *See Peoples United Financial, Inc*., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

[37] Veritex Holdings primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, and treasury management. Sovereign Bancshares primarily offers commercial and consumer banking services, commercial real estate lending, and treasury management. In each of the activities in which it engages, Veritex Holdings 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.

[38] See 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 that 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 Veritex Bank's branches would be permissible under applicable state law. *See* Tex. Fin. Code §§ 32.203; 32.301(c).

when reviewing an application under that section.[39] Specifically, the Board has considered Veritex 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.[40] 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 proposal should be, and hereby is, approved.[41] 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 Veritex Holdings and Veritex Bank 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 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective July 6, 2017.

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

Appendix

Branches to Be Established by Veritex Bank

1. 600 West 5th Street, Austin, Texas 78701
2. 150 South Bell Boulevard, Cedar Park, Texas 78613
3. 17950 Preston Road, Suite 100, Dallas, Texas 75252
4. 6060 Sherry Lane, Dallas, Texas 75225
5. 7255 North State Highway 161, Irving, Texas 75039

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[39] 12 U.S.C. § 322; 12 CFR 208.6.

[40] Upon consummation of the proposed transaction, Veritex Bank's investments in bank premises would remain within legal requirements, under 12 CFR 208.21.

[41] The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 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 may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the *Federal Register* on January 25, 2017, and in the relevant newspaper of general circulation (*The Dallas Morning News*) on January 13, January 20, and February 10, 2017. The comment period ended on February 12, 2017. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

6. 3800 Matlock Road, Arlington, Texas, 76015
7. 2438 East Southlake Boulevard, Southlake, Texas 76092
8. 2800 West 7th Street, Fort Worth, Texas 76107
9. 5111 San Felipe, Houston, Texas 77056
10. 777 Post Oak Boulevard, Suite 700, Houston, Texas 77056

Regions Bank
Birmingham, Alabama

Order Approving the Establishment of Branches
FRB Order No. 2017–19 (July 18, 2017)

Regions Bank, a state member bank subsidiary of Regions Financial Corporation, both of Birmingham, Alabama, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[1] and the Board's Regulation H[2] to establish branches in Georgia, Indiana, Missouri, Tennessee, and Texas, as set forth in Appendix A.

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 proposal and the comments received in light of the factors specified in the FRA.

Regions Bank, with total assets of $123.6 billion, is the 21st largest depository organization in the United States, controlling approximately $99.3 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[4] Regions Bank operates in 15 states with 1,527 branches, and the bank's main office is in Birmingham, Alabama.[5]

Under section 208.6 of the Board's Regulation H,[6] 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

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1 12 U.S.C. § 321.

2 12 CFR part 208.

3 12 CFR 262.3(b).

4 State deposit data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

Total assets are as of March 31, 2017. National asset ranking and deposit data are as of December 31, 2016.

In Georgia, Regions Bank is the 6th largest depository organization, with 124 branches, controlling approximately $5.9 billion in deposits, which represent approximately 2.6 percent of the total amount of deposits in that state.

In Indiana, Regions Bank is the 12th largest depository organization, with 55 branches, controlling approximately $2.8 billion in deposits, which represent approximately 2.4 percent of the total amount of deposits in that state.

In Missouri, Regions Bank is the 11th largest depository organization, with 57 branches, controlling approximately $2.3 billion in deposits, which represent approximately 1.4 percent of the total amount of deposits in that state.

In Tennessee, Regions Bank is the 2nd largest depository organization, with 230 branches, controlling approximately $17.7 billion in deposits, which represent approximately 12.9 percent of the total amount of deposits in that state.

In Texas, Regions Bank is the 14th largest depository organization, with 76 branches, controlling approximately $6.0 billion in deposits, which represent approximately 1 percent of the total amount of deposits of insured depository institutions in that state.

5 Regions Bank conducts its banking operations through branch locations across the following 15 states: Florida, Tennessee, Alabama, Mississippi, Georgia, Louisiana, Arkansas, Texas, Missouri, Illinois, Indiana, South Carolina, Kentucky, Iowa, North Carolina.

6 12 CFR 208.6(b).

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 application in light of these factors and the public comment received on the proposal. One commenter objected to the proposal, alleging that Regions 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, lending, and community development activities.[9]

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Regions Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Regions Bank, and the comment received on the proposal. Regions Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Regions Bank are consistent with approval, and Regions Bank appears to have adequate resources to absorb the costs of the proposal.

In addition, future earnings prospects are considered consistent with approval. The Board also has reviewed Regions 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 Regions 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 Regions Bank and the bank's record of compliance with applicable banking laws, including consumer protection and anti-money-laundering laws. Regions Bank is considered to be well managed. Regions Bank's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and the bank's risk-management program appears consistent with approval.

Based on this review and all the facts of record, the Board concludes that Regions Bank's management, financial history and condition, capital adequacy, and future earnings prospects, as well as the effectiveness of Regions 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

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[7] 12 U.S.C. § 2901 *et seq*.

[8] 12 CFR 208.21(a). 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).Regions Bank has branches in Georgia, Indiana, Missouri, Tennessee, and Texas, and is permitted to establish additional branches under each state's laws. *See* Ga. Code Ann. §7-1-628.6; Ind. Code §28-2-18-24; Tenn. Code Ann. §§45-2-614 and 45-2-1412; Mo. Rev. Stat. §362.107; and Tex. Fin. Code Ann. §203.006.

[9] 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. *See* Interagency Fair Lending Examination Procedures (August 2009), available at https//www.ffiec.gov/pdf/fairlend.pdf.

[10] 12 CFR 208.21(a).

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, in evaluating bank branching proposal.[13]

In addition, the Board considers the bank's overall compliance record 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 Regions Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Regions Bank, and the public comment received on the proposal.

Summary of Public Comments on Convenience and Needs

In this case, the Board received comments from a commenter objecting to the proposal, alleging that Regions Bank has engaged in discriminatory practices in Dallas and Houston. Specifically, the commenter alleges that Regions Bank engages in redlining in these areas.The commenter alleges that Regions Bank disfavors certain African American neighborhoods in Houston and Dallas and has limited its lending, marketing activities, community development activities, and branching in those areas.

Business of the Applicant

Regions Bank offers a broad range of retail and commercial banking products to consumers and businesses. Through its network of branches, the bank offers a variety of banking products including commercial, residential, agricultural, and consumer loans, personal checking and savings accounts, business checking and savings accounts, money market accounts, cash management products and services, foreign exchange services, credit cards, merchant services, and wealth management services.

Record 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 in light of examinations and other supervisory information and information

[11] 12 CFR 208.6(b)(3).
[12] 12 U.S.C. § 2901(b).
[13] 12 U.S.C. § 2903.

and views provided by the appropriate federal supervisors.[14] In this case, the Board considered the information collected by and the findings of examiners from the Federal Reserve Bank of Atlanta ("Reserve Bank"), who conducted an on-site CRA performance evaluation of Regions Bank.

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 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 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;[16] (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 commenters assert that data reflect disparities in the rates of loan applications, originations, or 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 typically is not available to commenters.[17] Consequently, these alleged disparities must be evaluated in the context of other information regarding the lending record of an institution.

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[14] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

[15] 12 U.S.C. § 2906.

[16] Examiners also consider the number and amounts of small business and small farm loans made to businesses and farms with gross annual revenues of $1million 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).

[17] 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.

CRA Performance of Regions Bank

Regions Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of April 1, 2016 ("Regions Bank Evaluation").[18] The bank received a "High Satisfactory" rating for the Lending Test, the Investment Test, and the Service Test.[19]

Examiners found that Regions Bank's overall lending activity was responsive to the credit needs in all of its assessment areas, and there were no conspicuous gaps in lending activity by income category. According to examiners, the bank originated a substantial majority of its loans inside its assessment areas. Examiners noted that the distribution of the bank's borrowers of different income levels and businesses of different sizes was good and that the bank's overall geographic distribution of HMDA and small business loans reflected good penetration throughout LMI areas. Further, examiners noted that the bank made an adequate level of community development loans, the majority of which were for affordable housing and community services and that the bank was responsive to the community development needs throughout its assessment areas.

Examiners rated Regions Bank's performance in Texas under the Lending Test as "Low Satisfactory." Examiners found that the distribution of the bank's borrowers reflected good penetration among individuals of different income levels and businesses of different sizes and that the geographic distribution of its loans reflected adequate penetration throughout Texas. Further, examiners found that the bank made an adequate level of community development loans in Texas and was responsive to community development and credit needs. In Houston, an area of concern for the commenter, the bank's lending performance was considered adequate, and examiners noted that the bank made an adequate level of community development loans. In Dallas, another area of concern for the commenter, the bank's lending performance was found to have exceeded its state-wide lending performance.

Examiners found that, both overall and in Texas, Regions Bank made a significant level of qualified community development investments in response to community development needs. Examiners rated Regions Bank's investment performance in Texas as "High Satisfactory." Examiners found that the majority of Regions Bank's investments in Texas were concentrated in the Austin or Houston assessment areas and that the bank's investment performance was good in the Houston assessment area. In addition, the bank's performance in the Dallas Metropolitan Statistical Area ("MSA") was found to have exceeded its state-wide investment performance in Texas, due to the bank's strong mix of contributions and investments that were responsive to local community development and credit needs.

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[18] The Regions Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business lending activities reported by the bank from January 1, 2014, through December 31, 2015. The evaluation period for community development lending, investments, and services was July 1, 2014, through March 31, 2016.

[19] Regions Bank's assessment areas are set forth in Appendix B. The commenter alleged that Regions 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, 81 *Federal Register* 48506, 48549(July25, 2016). The Houston assessment area comprises the entirety of Brazoria, Fort Bend, Galveston, Harris and Montgomery Counties. The Dallas assessment area comprises the entirety of Collin, Dallas, Denton and Rockwell Counties. Reserve Bank examiners found that the bank's assessment areas were appropriate.

Examiners found that Regions Bank's retail delivery systems were reasonably accessible to geographies and individuals of different income levels located in its assessment areas. Examiners further noted that Regions Bank's opening and closing of branches generally did not adversely affect the accessibility of banking services to LMI geographies and/or individuals. Further, examiners found that the banking services and business hours did not vary in a way that inconvenienced any portion of the bank's assessment areas, including LMI geographies and individuals. Moreover, examiners found that Regions Bank provided a high level of community development services that benefited all of its assessment areas, including Texas.

Examiners rated Regions Bank's service performance in Texas as "High Satisfactory." In the Houston assessment area, examiners concluded that, although Regions Bank's branch distribution was weak in LMI geographies, there had been no change to the accessibility of retail services for LMI geographies and/or individuals and many branches had extended hours, including branches located in LMI geographies. Examiners also found that Regions Bank's delivery services and hours of operation did not vary in a way that would inconvenience LMI geographies or individuals. In addition, examiners found that Regions Bank provided a relatively high level of community development services in the Houston assessment area. In the Dallas assessment area, examiners concluded that Regions Bank's service performance was consistent with its state-wide service performance.

Regions Bank's Efforts since the 2016 CRA Evaluation

Regions Bank represents that since the Regions Bank Evaluation, it has continued to offer several lending and deposit products specifically designed for LMI populations that are utilized by individuals and businesses in LMI and/or minority census tracts. According to Regions Bank, such products include a Regions Line of Credit, which has been used by customers in Houston and Dallas, its "Regions NOW Banking" suite of services, which is designed for the unbanked and underbanked customers who prefer a pay-as-you-go approach to managing their finances, and its "Savings Account Secured Loans" and lines of credit that allow borrowers to use their savings accounts as collateral. Regions Bank also represents that it offers affordable mortgage products for LMI borrowers, including some products that provide low-income homebuyers with down-payment assistance and no requirement to carry mortgage insurance, which lowers monthly payments.

Regions Bank represents that it has continued to serve the banking needs of its assessment areas, including the Houston and Dallas assessment areas, through community development lending, investments, and services. For example, the bank represents that it has made 264 community development loans since the Regions Bank Evaluation, including two loans in the Houston and Dallas markets. Regions Bank also represents that it has made a number of community development investments that support organizations that focus on LMI and minority individuals and communities, including an investment that supported affordable housing in the Dallas assessment area. Regions Bank represents that it engages in marketing and outreach, including targeted radio and advertising campaigns, to achieve lending penetration in LMI and minority census tracts, including those tracts in the Houston and Dallas assessment areas. Additionally, Regions Bank represents that bank employees have actively participated in a variety of volunteer activities in its assessment areas, including events that target primarily LMI and minority individuals and small business owners, such as participating in financial literacy classes in Dallas.

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance examination conducted by Reserve Bank examiners. In addition, the Board has consulted with the Consumer Financial Protection Bureau concerning the bank's supervisory record.

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. The bank asserts that the proposed branches, some of which will include enhanced technologies and expanded services, will provide additional convenience to customers of the bank.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA record of Regions Bank, the bank's record of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Regions 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.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.[20] The Board's approval is specifically conditioned on Regions 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. For purposes of this action, the conditions and commitments are deemed to be conditions in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

Approval of this application is also subject to the establishment of the proposed 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 July 18, 2017.

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

[20] The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 262.3(e). The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in relevant newspapers of general circulation on March 24 and April 12, 2017. The comment periods ended on April 8 and April 27, 2017. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Appendix A

Branches to Be Established by Regions Bank

Georgia Branches

- Acworth Stilesboro Oaks Branch
  Mars Hill Road and Stilesboro Road
  Acworth, Georgia 30101
- Parkside West Branch
  Dallas Highway and Castell Road
  Marietta, Georgia 30064

Indiana Branches

- Marion-University Marketplace Branch
  South Western Avenue/Outparcel of University Marketplace
  Marion, Indiana 46953

Missouri Branches

- Delmar Branch
  6680 Delmar Boulevard
  University City, Missouri 63130
- Des Peres Branch
  Northeast Corner of Manchester Road and Bopp Road, Hard Corner
  Des Peres, Missouri 63131
- Florissant Branch
  100 North Highway 67
  Florissant, Missouri 63031
- Jungermann Road Branch
  Jungermann Road and Glen Park Drive
  St. Charles, Missouri 63376
- Lake St. Louis Branch
  701 Civic Center Drive
  Lake St. Louis, Missouri 63367
- Mid Rivers Mall Branch
  Northeast Corner of Mid Rivers Mall Drive and North St. Peters Parkway; 2 Lots North of Intersection
  St. Peters, Missouri 63304
- Twin Oaks Branch
  Big Bend Road and Meramec Station Road
  Ballwin, Missouri 63021

Tennessee Branches

- Canada Road Branch
  Northwest Corner of Canada Road and Highway 64; Hard Corner (Outparcel of Small Shopping Strip)
  Lakeland, Tennessee 38002

- Northshore Branch
  Northwest Corner of South Northshore Drive and Pinnacle Pointe Way; Hard Corner
  Knoxville, Tennessee 37922
- Harriman Midtown Branch
  U.S. Highway 70 (Roane State Highway) and Tanner Way
  Harriman, Tennessee 37748

Texas Branches

- Alder Trails Branch
  Southwest Corner of Barker Cypress Road and Cypress North Houston Boulevard One Lot South of Hard Corner
  Cypress, Texas 77433
- Copperwood Village Branch
  Northwest Corner of Highway 6 and Kingfield Drive, Hard Corner
  Houston, Texas 77084
- Katy Stableside Branch
  North Corner of Gaston Road and Falcon Landing Boulevard, Hard Corner
  Katy, Texas 77494
- Katy Westpark Tollway Branch
  Northeast Corner of Spring Green Boulevard and FM 1093, 2-3 Lots East of Intersection
  Katy, Texas 77494
- Preston Road Branch
  Southwest Corner of Hickory Street and Preston Road; Hard Corner
  Frisco, Texas 75034
- Rayford Crossing Branch
  Rayford Road and Riley Fuzzel Road (Future Grand Parkway Service Road)
  Spring, Texas 77386

Appendix B

The Regions Bank Evaluation included a full-scope review of the bank's assessment areas within the following Metropolitan Statistical Areas ("MSAs"): the Birmingham, Alabama, MSA; the Montgomery, Alabama, MSA; the Little Rock, Arkansas, MSA; the Miami, Florida, MSA; the Tampa, Florida, MSA; the Atlanta, Georgia, MSA; the Carbondale-Marion, Illinois, MSA; the Indianapolis, Indiana, MSA; the Waterloo, Iowa, MSA; Southwest Kentucky, Kentucky; the Baton Rouge, Louisiana, MSA; the New Orleans, Louisiana, MSA; the Jackson, Mississippi, MSA; Northern Mississippi, Mississippi; the Springfield, Missouri, MSA; the Charlotte, North Carolina, MSA; the Charleston, South Carolina, MSA; the Nashville, Tennessee, MSA; the Austin, Texas, MSA; the Houston, Texas, MSA; and the Augusta-Chattanooga-Columbus-Kingsport-Memphis-St. Louis-Texarkana, MSA.

A limited-scope review was conducted in the bank's assessment areas within the Anniston, Alabama, MSA; the Auburn, Alabama, MSA; Coffee-Covington-Escambia, Alabama; the Daphne, Alabama, MSA; the Decatur, Alabama, MSA; the Dothan, Alabama, MSA; Fayette County, Alabama; the Florence, Alabama, MSA; the Gadsden, Alabama, MSA; the Huntsville, Alabama, MSA; the Mobile, Alabama, MSA; Northern Alabama; Southern Alabama; Tallapoosa-Talladega, Alabama; the Tuscaloosa, Alabama, MSA; the Fayetteville, Arkansas, MSA; the Fort Smith, Arkansas, MSA; the Hot Springs, Arkansas, MSA; the Jonesboro, Arkansas, MSA; Northeast Arkansas; Northwest Arkansas;

Southern Arkansas; Union County, Arkansas; the Daytona, Florida, MSA; the Fort Lauderdale, Florida, MSA; the Fort Myer, Florida, MSA; the Fort Walton, Florida, MSA; the Gainesville, Florida, MSA; the Homosassa Springs, Florida, MSA; the Jacksonville, Florida, MSA; the Lakeland, Florida, MSA; the Naples, Florida, MSA; Northern Florida; the Ocala, Florida, MSA; Okeechobee, Florida; the Orlando, Florida, MSA; the Palm Bay, Florida, MSA; the Panama City, Florida, MSA; the Pensacola, Florida, MSA; the Punta Gorda, Florida, MSA; the Sarasota, Florida, MSA; the Tallahassee, Florida, MSA; the The Villages, Florida, MSA; the West Palm Beach, Florida, MSA; the Albany, Georgia, MSA; the Athens, Georgia, MSA; the Dalton, Georgia, MSA; Elbert andWilkes counties, Georgia; the Gainesville, Georgia, MSA; Jefferson-Jenkins, Georgia; Morgan-Elbert-Wilkes, Georgia; Northeast Georgia; Northwest Georgia; the Rome, Georgia, MSA; the Savannah, Georgia, MSA; Southwest Georgia; the Valdosta, Georgia, MSA; the Bloomington, Illinois, MSA; Central Illinois; the Champaign, Illinois, MSA; the Decatur, Illinois, MSA; the Livingston, Illinois, MSA; the Peoria, Illinois, MSA; Southeast Illinois; Southern Illinois; the Springfield, Illinois, MSA; the Bloomington, Indiana, MSA; Clinton-Grant, Indiana; the Evansville, Indiana, MSA; Knox-Lawrence, Indiana; the Kokomo, Indiana, MSA; the Lafayette, Indiana, MSA; the Louisville, Indiana, MSA; the Terre Haute, Indiana, MSA; the Cedar Rapids, Iowa, MSA; the Des Moines, Iowa, MSA; Fayette, Iowa; the Iowa City, Iowa, MSA; Simpson, Kentucky; the Alexandria, Louisiana, MSA; the Hammond, Louisiana, MSA; the Houma, Louisiana, MSA; the Lafayette, Louisiana, MSA; the Monroe, Louisiana, MSA; Morehouse, Louisiana; Northwest Louisiana; the Shreveport, Louisiana, MSA; Southern Louisiana; Adams-Wilkinson, Mississippi; Central Mississippi; the Gulfport, Mississippi, MSA; the Hattiesburg, Mississippi, MSA; Northwest Mississippi; Southern Mississippi; Warren, Mississippi; the Cape Girardeau, Missouri, MSA; Central Missouri; the Columbia, Missouri, MSA; the Jefferson City, Missouri, MSA; Lawrence County, Missouri; Southeast Missouri; St. Genevieve-Perry, Missouri; Taney County, Missouri; Macon County, North Carolina; the Raleigh, North Carolina, MSA; the Columbia, South Carolina, MSA; the Greenville, South Carolina, MSA; Hampton County, South Carolina; the Hilton Head Island-Bluffton-Beaufort, South Carolina, MSA; McCormick-Barnwell South Carolina; the Spartanburg, South Carolina, MSA; the Clarksville, Tennessee, MSA; the Cleveland, Tennessee, MSA; Eastern Tennessee; the Jackson, Tennessee, MSA; the Johnson City, Tennessee, MSA; the Knoxville, Tennessee, MSA; Middle Tennessee; the Morristown, Tennessee, MSA; Western Tennessee; Cass, Texas; the Dallas, Texas, MSA; the Fort Worth, Texas, MSA; the Longview, Texas, MSA; Nacogdoches-Angelina-Anderson, Texas; and the Tyler, Texas, MSA.

Order Issued Under International Banking Act

The Bank of East Asia, Limited
Hong Kong SAR, People's Republic of China

Order Approving Establishment of a Branch
FRB Order No. 2017–25 (September 28, 2017)

The Bank of East Asia, Limited ("BEA"), Hong Kong SAR ("Hong Kong"), People's Republic of China ("China"), a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA[1] to upgrade its existing limited federal branch in Los Angeles, California, to a full-service branch.[2] 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.[3]

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Los Angeles, California (*The Los Angeles Daily News*,July 2, 2012). The time for filing comments has expired, and the Board has considered all comments received.

BEA, with total consolidated assets of approximately $101.0 billion, is the sixth largest bank in Hong Kong.[4] Sumitomo Mitsui Financial Group ("SMFG"), through its subsidiary, Sumitomo Mitsui Banking Corporation, both of Tokyo, Japan, owns approximately 19 percent of the voting shares of BEA.[5] Fundación Bancaria Caixa d'Estalvis i Pensions de Barcelona, "la Caixa" ("la Caixa"), through its subsidiary, Criteria Caixa, S.A., both of Barcelona, Spain, owns approximately 17.3 percent of the voting shares of BEA.[6] Guoco Management Company Limited ("Guoco"), Hong Kong, China, owns approximately 14.2 percent of the voting shares of BEA.[7] In addition, Elliot Capital Advisors, L.P.

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1 12 U.S.C. § 3105(d).

2 As a limited branch, the Los Angeles branch is prohibited from accepting deposits from sources other than those permitted by section 25A of the Federal Reserve Act. Under section 25A of the Federal Reserve Act, an Edge corporation may receive deposits outside the United States and only such deposits within the United States thatare 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). Upgrading the limited branch to a full-service branch would permit the branch to accept wholesale domestic deposits.

3 Under the Board's Regulation K, upgrading a limited branch to a full-service branch requires Board approval. 12 CFR 211.21(f) and (*l*)(4); 12 CFR 211.24(a)(1)(A).

4 Asset data are as of June 30, 2017, and ranking data are as of December 31, 2016, and each figure is based on the exchange rate as of the respective date. Ownership data are as of December 31, 2016.

5 SMFG received Board approval to acquire up to 19.9 percent of BEA's shares. *See Sumitomo Mitsui Financial Group*, FRB Order No. 2015-07 (February 20, 2015).

6 Both SMFG and la Caixa have provided passivity commitments to the Board to ensure that their ownership in, and business relationships with, BEA would not enable them or their affiliates to exercise a controlling influence over BEA for the purposes of the Bank Holding Company Act of 1956, as amended.

7 Guoco is the beneficial owner of the shares, and a number of affiliated companies and individuals (together with Guoco, the "Guoco Group") are deemed to have an interest in the shares through their direct or indirect ownership in Guoco. The Guoco Group has no director or senior management interlocks with BEA and does not engage in material business relationships with BEA. In connection with this application, BEA has committed to monitor the Guoco Group's ownership of BEA and will inform the Federal Reserve Bank of New York if (1) the Guoco Group acquires more than 20percent of BEA's voting shares, (2) the Guoco Group nominates a director to BEA's board of directors, (3) an individual associated with the Guoco Group is nominated to BEA's board of directors, or (4) the Guoco Group proposes an item for vote at a shareholder meeting of BEA.

("Elliot"), Wilmington, Delaware, owns approximately 7.0 percent of the voting shares of BEA.[8] No other shareholder owns 5 percent or more of BEA's shares.[9]

BEA engages primarily in retail and commercial banking, wealth management, and insurance services. Outside of Hong Kong, BEA operates a bank subsidiary and branches in China and branches in Macau, Taiwan, the United Kingdom, Singapore, and Malaysia. In the United States, BEA operates three branches[10] and controls Industrial and Commercial Bank of China, National Association ("ICBC-USA"), New York City.[11] BEA is a qualifying foreign banking organization under Regulation K.[12]

BEA's home state is New York. BEA proposes to establish this branch outside of its home state by upgrading its Los Angeles limited branch to a full-service branch pursuant to section 5(a)(7)(B) of the IBA.[13]

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 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.[14] The Board also considers additional standards as set forth in the IBA and Regulation K.[15]

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[8] Elliot's ownership in BEA is dispersed among a number of companies associated with Elliot, including funds managed by Elliot.

[9] HKSCC Nominees Limited and The Bank of East Asia (Nominees) Limited hold approximately 79.7 percent and 6.3 percent, respectively, of the shares of BEA as the registered nominees of other shareholders.

[10] In addition to the limited federal branch in Los Angeles, BEA operates both an insured and an uninsured federal branch in New York City.

[11] BEA and its subsidiary, East Asia Holding Company, Inc., New York, New York, own 20 percent of the voting shares of ICBC-USA and are bank holding companies by virtue of their control of ICBC-USA.

[12] 12 CFR 211.23(a).

[13] 12 U.S.C. § 3103(a)(7)(B). That section permits the upgrade of a limited branch to a full-service branch outside a foreign bank's home state if the establishment and operation of the full-service branch is permitted by the host state and if the limited branch was in operation in the host state prior to September 29, 1994. The proposed upgrade meets the requirements of that section.

[14] 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.

[15] 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 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. 12 U.S.C. § 3105(d)(3)(E).

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

The Board previously has determined, in connection with applications involving BEA and other banks in Hong Kong, that those banks were subject to comprehensive supervision on a consolidated basis by their home jurisdiction supervisor, the Hong Kong Monetary Authority ("HKMA").[16] BEA continues to be supervised by the HKMA on substantially the same terms and conditions. Based on all the facts of record, BEA continues to be subject to comprehensive supervision on a consolidated basis by its home jurisdiction supervisor.

The financial and managerial and other applicable factors in the case have also been taken into account. The HKMA has no objection to the establishment of the proposed full-service branch. Hong Kong's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Accord"). BEA'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. BEA appears to have the experience and capacity to support the proposed branch and has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general. Taking into consideration BEA's overall financial and managerial resources, financial and managerial factors are considered consistent with approval.

Hong Kong is a member of the Financial Action Task Force ("FATF") and subscribes to the FATF's recommendations on measures to combat money laundering and terrorist financing. In accordance with these recommendations, Hong Kong has enacted laws and developed regulatory standards to deter money laundering and terrorist financing. Money laundering is a criminal offense in Hong Kong, and Hong Kong financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering and terrorist financing throughout their worldwide operations. BEA has policies and procedures to comply with these laws and regulations, and BEA's compliance with applicable laws and regulations is monitored by governmental entities responsible for anti-money-laundering compliance.

BEA has committed to make available to the Board such information on the operations of BEA and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, BEA 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 addition, subject to certain conditions, the HKMA may share information on BEA'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 BEA 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

[16] *See* Letter dated May 14, 2007, from the Federal Reserve Bank of New York to The Hongkong and Shanghai Banking Corporation Limited; *Citic Ka Wah Bank Limited*, 89 *Federal Reserve Bulletin* 435 (2003); Letter dated June 29, 2001, from the Federal Reserve Bank of San Francisco to The Bank of East Asia, Limited; *The Bank of East Asia, Limited*, 84 *Federal Reserve Bulletin* 886 (1998); *Liu Chong Hing Bank*, 81 *Federal Reserve Bulletin* 905 (1995); *Hong Kong and Shanghai Banking Company*, 81 *Federal Reserve Bulletin*902 (1995); *Dah Sing Bank, Ltd.*, 80 *Federal Reserve Bulletin* 182 (1994).

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.[17] Information relevant to the standard regarding risk to the stability of the United States financial system has been reviewed. In particular, consideration has been given to (1) the size and scope of BEA'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 BEA 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 BEA as well as to the terms and conditions set forth in this order, BEA's application to upgrade its limited branch in Los Angeles to a full-service branch is hereby approved by the Director of the Division of Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.[18] Should any restrictions on access to information on the operations or activities of BEA and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by BEA or its affiliates with applicable federal statutes, the Board may require termination of any of BEA's direct or indirect activities in the United States or, in the case of any such operation licensed by the Office of the Comptroller of the Currency ("OCC"), recommend termination of such operation. Approval of this application also is specifically conditioned on compliance by BEA with the commitments made in connection with this application and with the conditions in this order.[19] The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective September 28, 2017.

[17] 12 U.S.C. § 3105(d)(3)(E).

[18] 12 CFR 265.7(d)(12).

[19] The Board's authority to approve the upgrade of the limited branch parallels the continuing authority of the OCC to license offices of aforeign bank. The Board's approval of this application does not supplant the authority of the OCC to license the proposed office of BEA in accordance with any terms or conditions that the OCC may impose.

Federal Reserve
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