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Legal Developments: Fourth Quarter, 2017

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Columbia Banking System, Inc.
Tacoma, Washington

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2017–26 (October 6, 2017)

Columbia Banking System, Inc. ("Columbia"), Tacoma, Washington, 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 Pacific Continental Corporation ("Pacific"), and thereby indirectly acquire Pacific Continental Bank ("Pacific Bank"), both of Eugene, Oregon. Following the proposed merger, Pacific Bank would be merged into Columbia's subsidiary bank, Columbia State Bank ("Columbia Bank"), Tacoma, Washington.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's rules (82 *Federal Register* 14728 (March 22, 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.

Columbia, with consolidated assets of approximately $9.5 billion, is the 132nd largest insured depository organization in the United States. Columbia controls approximately $8.1 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] Columbia controls Columbia Bank, which operates in Idaho, Oregon, and Washington. Columbia is the 7th largest insured depository organization in Oregon, controlling deposits of approximately $2.7 billion in Oregon, which represent approximately 4 percent of the total deposits of insured depository institutions in that state.[6] Columbia is the 8th largest insured depository organization in Washington, controlling deposits of approximately $4.4 billion in

1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Pacific Bank into Columbia Bank is subject to approval by the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on August 23, 2017.

4 12 CFR 262.3(b).

5 National asset and deposit data are as of March 31, 2017, unless otherwise noted.

6 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.

Washington, which represent approximately 3 percent of the total deposits of insured depository institutions in that state.

Pacific, with consolidated assets of approximately $2.6 billion, is the 332nd largest insured depository organization in the United States. Pacific controls approximately $2.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Pacific controls Pacific Bank, which operates in Oregon and Washington. Pacific is the 12th largest insured depository organization in Oregon, controlling deposits of approximately $1.3 billion in Oregon, which represent approximately 2 percent of the total deposits of insured depository institutions in that state. Pacific is the 28th largest insured depository organization in Washington, controlling deposits of approximately $686.1 million in Washington, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Columbia would become the 111th largest depository organization in the United States, with consolidated assets of approximately $12.1 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Columbia would control consolidated deposits of approximately $10.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Oregon, Columbia would remain the 7th largest depository organization, controlling deposits of approximately $4.1 billion, which represent approximately 6 percent of the total deposits of insured depository institutions in that state. In Washington, Columbia would become the 7th largest depository organization, controlling deposits of approximately $5.1 billion, which represent approximately 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 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, if 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 Columbia is Washington, and Pacific Bank is located in Oregon and Washington.[10]Columbia is well capitalized and well

[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.

managed under applicable law, and Columbia Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[11] Oregon has no statutory minimum age requirement,[12] and Pacific Bank has been in existence for more than five years.

On consummation of the proposed transaction, Columbia would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Washington imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[13] The combined organization would control approximately 3.6 percent of the total amount of deposits of insured depository institutions in Washington and approximately 5.7 percent of the total amount of deposits of insured depository institutions in Oregon, the only states in which Columbia and Pacific have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including Columbia Bank'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.[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 the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[15]

Columbia and Pacific have subsidiary depository institutions that compete directly in the Eugene, Oregon, banking market ("Eugene market"); the Portland, Oregon-Washington, banking market ("Portland market"); and the Seattle, Washington, banking market ("Seattle market").[16] 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 Columbia would control;[17] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger

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[11] 12 U.S.C. § 2901 *et seq*.

[12] Or. Rev. Stat. § 713.270.

[13] Wash. Rev. Code § 30A.49.125(6). Oregon does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

[14] 12 U.S.C. § 1842(c)(1).

[15] 12 U.S.C. § 1842(c)(1)(B).

[16] The Eugene market is defined as the Eugene metropolitan area in Lane and Linn counties, both of Oregon. The Portland market is defined as the Portland metropolitan area in Clackamas, Columbia, Marion, Multnomah, Washington, and Yamhill counties, all of Oregon; and Clark County, Washington. The Seattle market is defined as the Seattle metropolitan area in King, Pierce, and Snohomish counties; the southeastern portion of Island County; and Bainbridge Island in Kitsap County, all of Washington.

[17] 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).

Competitive Review guidelines ("DOJ Bank Merger Guidelines");[18] 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 Eugene, Portland, and Seattle markets. On consummation of the proposal, the Eugene, Portland, and Seattle markets would each remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in these markets would be small, and numerous competitors would remain in each banking market.[19]

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 Eugene, Portland, or Seattle 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.[20] 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

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

[19] Columbia operates the 13th largest depository institution in the Eugene market, controlling approximately $30.4 million in deposits, which represent 0.7 percent of market deposits. Pacific operates the largest depository institution in the same market, controlling deposits of approximately $855.2 million, which represent approximately 18.2 percent of market deposits. On consummation of the proposed transaction, Columbia would become the largest depository organization in the market, controlling deposits of approximately $885.6 million, which represent approximately 18.9 percent of market deposits. The HHI for the Eugene market would increase by 24 points to 1277, and 13 competitors would remain in the market.

Columbia operates the 8th largest depository institution in the Portland market, controlling approximately $1.2 billion in deposits, which represent 2.8 percent of market deposits. Pacific operates the 9th largest depository institution in the same market, controlling deposits of approximately $575.0 million, which represent approximately 1.3 percent of market deposits. On consummation of the proposed transaction, Columbia would become the 7th largest depository organization in the market, controlling deposits of approximately $1.8 billion, which represent approximately 4 percent of market deposits. The HHI for the Portland market would increase by 7 points to 1491, and 35 competitors would remain in the market.

Columbia operates the 7th largest depository institution in the Seattle market, controlling approximately $3.0 billion in deposits, which represent 3 percent of market deposits. Pacific operates the 19th largest depository institution in the same market, controlling deposits of approximately $596.3 million, which represent approximately 0.6 percent of market deposits. On consummation of the proposed transaction, Columbia would become the 6th largest depository organization in the market, controlling deposits of approximately $3.6 billion, which represent approximately 3.6 percent of market deposits. The HHI for the Seattle market would increase by 3 points to 1272, and53 competitors would remain in the market.

[20] 12 U.S.C. § 1842(c)(2), (5), and (6).

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.

Columbia and Pacific 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 primarily as an exchange of shares.[21]The asset quality, earnings, and liquidity of Columbia Bank and Pacific Bank are consistent with approval, and Columbia appears to have adequate resources to absorb the related costs of the proposal and to complete integration of the institutions' operations. In addition, 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 Columbia, Pacific, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by Columbia; 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 commenter.

Columbia, Pacific, and their subsidiary depository institutions are each considered to be well managed. Columbia has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Columbia's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and Columbia's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Columbia's plans for implementing the proposal. Columbia 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. Columbia would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Columbia's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Columbia plans to integrate Pacific's existing management and personnel in a manner that augments Columbia's management.[22]

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[21] To effect the transaction, each share of Pacific common stock would be converted into a right to receive Columbia common stock, based on an exchange ratio.

[22] Following consummation of the proposed transaction, a Pacific director will join the boards of directors of Columbia and Columbia Bank. Further, Columbia represents that additional key leaders from Pacific are expected to join Columbia.

Based on all the facts of record, including Columbia'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 Columbia and Pacific 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, 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 Columbia Bank and Pacific Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Columbia; and the public comment received on the proposal.

Public Comment on the Proposal

In this case, a commenter objected to the proposal on the basis of Columbia Bank's CRA performance. The commenter's concerns focus on alleged small business lending weaknesses in several counties in Oregon and Washington. Specifically, the commenter argued that the bank made a disproportionality small number of CRA-reportable small business loans from 2013 to 2015, as compared to other lenders, in four counties in Oregon and Washington. The commenter also commended Pacific Bank's practice of serving non-profit organizations, but questioned whether Columbia would continue this practice

[23] 12 U.S.C. § 1842(c)(2).
[24] 12 U.S.C. § 2901(b).
[25] 12 U.S.C. § 2903.

following consummation of the proposed transaction.[26] The commenter requested that the application include a forward-looking community benefits plan detailing how Columbia Bank would address the CRA-related concerns identified by the commenter.[27]

Businesses of the Involved Institutions and Response to the Public Comment

Columbia operates primarily through Columbia Bank and provides a broad range of financial products and services to consumers and businesses. Through its network of branches across Idaho, Oregon, and Washington, the bank offers a variety of products and services, including checking, savings, and certificate of deposit accounts; commercial, residential, agricultural, and consumer loans; business checking and savings accounts; credit card and merchant card services; wealth management services; and international banking.

Pacific operates primarily through Pacific Bank and offers a range of retail and commercial banking products and services through branches in Oregon and Washington. Its products and services include checking, savings, and certificate of deposit accounts; merchant card services; wealth management; and mobile banking. Pacific Bank focuses on commercial lending to community-based businesses, healthcare professionals, and non-profit organizations.

Columbia disputes the commenter's allegations regarding its small business lending record and asserts that Columbia Bank is fully committed to meeting its responsibilities under the CRA. Columbia challenges the methodology used by the commenter in reaching its conclusions about the bank's lending record and asserts that using a different methodology would result in a more meaningful measure of the community impact of the bank's lending in the communities it serves. Columbia represents that it offers a wide range of small business products, engages in outreach to small businesses, including through partnerships with community organizations, and is consistently seeking ways to improve its performance. Columbia notes that it offers a large suite of secured and unsecured small business loan products, in amounts starting as low as $500 and going up to $1,000,000, and has a centralized small business lending team. The bank further notes that it engages in targeted marketing to small businesses through television, online, and branch location promotions and advertisements, as well as through numerous established community partnerships.

Columbia represents that the bank has migrated the majority of its small business lending to a centralized underwriting environment to ensure an objective, systematic, and consistent process across its footprint. According to Columbia, lending decisions are guided by Columbia Bank's credit policies with an overarching goal of increasing the bank's capacity to originate higher volumes of loans to businesses in its communities in a fair and consistent way. If a loan does not meet approval guidelines for Columbia Bank's standard loan

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[26] While recognizing that Columbia Bank is primarily a commercial lender, the commenter also encouraged the bank to consider initiatives and partnerships with community groups that would enable it to play a more active role in providing access to homeownership to LMI and minority individuals.

[27] The commenter noted Columbia Bank's "Low Satisfactory" ratings on the Lending and Service Tests for the state of Oregon and the Portland-Vancouver-Hillsboro Metropolitan Statistical Area ("MSA"), and on the Service Test for the state of Washington, in the bank's 2014 CRA examination, and asserted that the bank's community benefits plan should indicate how the bank would improve its performance in these areas. 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 n. 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); *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 ("AAs").

products, Columbia represents that the application is reviewed for eligibility for a range of Small Business Administration programs.[28]

In response to the commenter's concerns about Columbia's commitment to continuing Pacific Bank's efforts in serving non-profit organizations, Columbia asserts that it plans to retain, and potentially expand across its footprint, the successful aspects of Pacific Bank's work with the non-profit community.

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.[29] In this case, the Board considered the supervisory views of 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.[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"),[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 amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's 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

[28] In response to the commenter's encouragement to Columbia Bank to consider initiatives and partnerships that would allow it to play a more active role in providing homeownership access to LMI and minority individuals, Columbia asserts that even though the bank primarily focuses on commercial banking, it offers residential loan products and a full range of secondary market-qualifying mortgage loan products in its AAs. Columbia represents that it will consider engaging in new initiatives and partnerships aimed at these goals.

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

[30] 12 U.S.C. § 2906.

[31] 12 U.S.C. § 2801 *et seq*.

individuals;[32] (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 Columbia Bank

Columbia Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 30, 2017 ("Columbia Bank Evaluation").[33] The bank received a "Low Satisfactory" rating for the Lending Test, an "Outstanding" rating for the Investment Test, and a "High Satisfactory" rating for the Service Test.[34] Although Columbia Bank's overall rating took into consideration its performance in each of its state and multistate metropolitan AAs, examiners gave the greatest weight to Columbia Bank's performance in the states of Washington and Oregon, and the Portland-Vancouver CSA, given that Columbia Bank's loan production and branch infrastructure are concentrated in those areas.[35] Examiners noted that the scope of the CRA evaluation was influenced by a CRA-related comment that was received from a community group during the onsite examination.[36]

For the Lending Test, examiners found that Columbia Bank's overall lending activity reflected good responsiveness to the credit needs of its combined AA. Examiners found that the bank originated a substantial majority of small business, small farm, and home mortgage loans within its AAs and that the geographic distribution of loans reflected good penetration throughout its AAs.[37] Examiners also found that Columbia Bank utilized innovative and/or flexible lending practices to serve community credit needs, including those of small businesses.[38] Examiners found that Columbia Bank's overall distribution of borrowers reflected poor penetration among businesses of different sizes and retail customers of different income levels; however, the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AAs, including low-income individuals and/or very small businesses, consistent with safe and sound banking practices. Further, examiners found that the bank originated a relatively high level of community development loans, the majority of which were directed toward affordable housing, which examiners cited as a credit need identified by community contacts within the bank's AAs.

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[32] 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).

[33] The Columbia Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The examiners reviewed residential mortgage, small business, and farm loans from January 1, 2014, through December 31, 2016. The evaluation period for community development lending, investments, and services was March 31, 2014, through March 30, 2017.

[34] The Columbia Bank Evaluation included full-scope evaluations of the Seattle-Tacoma, Washington, Combined Statistical Area ("CSA"); the Portland-Vancouver-Salem, Multi-State CSA ("Portland-Vancouver CSA"); Non-Metropolitan, Oregon Non-Metropolitan Statistical Area ("Non-MSA"), and Non-Metropolitan, Idaho Non-MSA. Limited-scope evaluations were performed in the Kennewick-Richland, Washington MSA; Spokane-Spokane Valley, Washington MSA; Bellingham, Washington MSA; Yakima, Washington MSA; Longview, Washington MSA; Lewiston, Idaho - Washington MSA; Walla-Walla, Washington MSA; Non-Metropolitan, Washington Non-MSA; Bend-Redmond, Oregon, MSA; Salem, Oregon MSA; Eugene-Springfield, Oregon MSA; Boise City, Idaho MSA; and Coeur D'Alene, Idaho MSA.

[35] Columbia Bank received a "Satisfactory" overall rating in each of its state and multistate metropolitan AAs.

[36] That comment is identical to the comment that was submitted on this proposal.

[37] Examiners noted that the geographic distribution of loans was assessed by comparing the institution's lending performance in LMI geographies to aggregate data for the institution or the performance of other lenders, while considering relevant demographic information.

[38] Examiners noted that these programs included Small Business Administration loans, Washington State's Linked Deposit Program, and Business Oregon's Capital Access Program.

For the states of Oregon and Washington and the Portland-Vancouver CSA,[39] all areas of concern to the commenter, examiners found that Columbia Bank's lending levels reflected good responsiveness to AA credit needs overall. Columbia Bank's small business market share exceeded its deposit share in Oregon, Washington, and the Portland-Vancouver CSA. Examiners found that the geographic distribution of small business loans reflected excellent dispersion in Washington and the Portland-Vancouver CSA, and adequate dispersion in Oregon. Further, examiners determined that the bank made a relatively high level of community development loans in its Oregon AAs, and an adequate level in its Washington AAs and the Portland-Vancouver CSA.

Examiners found that Columbia Bank used innovative and/or flexible lending practices in Oregon, Washington, and the Portland-Vancouver CSA. The distribution of loans reflected adequate penetration among businesses of different sizes and among customers of different income levels in Oregon, but poor penetration among businesses of different sizes and among customers of different income levels in Washington and the Portland-Vancouver CSA. In each of these geographic areas, examiners found that the distribution of small farm borrowers reflected excellent penetration among farm customers of different sizes. Examiners identified possible contributing factors for poor lending penetration among businesses of different sizes in certain AAs, including Columbia Bank's recent formation of a Small Business Lending Center, which led to more consistent underwriting for small business loans and increased consideration of affiliate income in credit decisions. Examiners also noted that Columbia Bank continued to interact with community groups in hopes of addressing, through a cooperative working relationship, any small business lending concerns raised by the CRA-related comment.

Examiners found that, overall, the bank had an excellent level of qualified community development investments and grants, particularly those that were not routinely provided by private investors. Examiners noted that the bank's investments supported economic development and the provision of affordable housing. Examiners further observed that the bank's qualified investments and grants during the evaluation period represented a significant increase from the prior evaluation period. In the states of Washington and Oregon and the Portland-Vancouver CSA, examiners found that the bank had excellent levels of community development investments and grants and that the bank exhibited good responsiveness to credit and community development needs.

Examiners found that Columbia Bank's delivery systems were accessible to all portions of its AAs. To the extent changes had been made, examiners noted that the bank's opening and closing of branches generally had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and/or to LMI individuals. Examiners found that services did not vary in a way that inconvenienced portions of the AAs, particularly LMI geographies and/or LMI individuals. Examiners noted that Columbia Bank provided a relatively high level of community development services given its size and resources.

In the states of Washington and Oregon, examiners rated Columbia Bank "High Satisfactory" for the Service Test, while in the Portland-Vancouver CSA, examiners rated Columbia Bank "Low Satisfactory." In both states and the Portland-Vancouver CSA, examiners found that the opening and closing of branches generally had not adversely affected the accessibility of delivery systems in the bank's AAs, particularly in LMI geographies and/or to LMI individuals. Examiners also found that in the states of Oregon and Washington, Columbia Bank's business hours did not vary in a way that inconvenienced

[39] For purposes of the Columbia Bank Evaluation, the Portland-Vancouver CSA was not included in either the State of Oregon or the State of Washington ratings.

portions of the AAs, particularly LMI geographies and/or LMI individuals. For the Portland-Vancouver CSA, examiners noted that Columbia Bank's business hours and services were tailored to the convenience and needs of the AAs, particularly LMI geographies and/or LMI individuals. Examiners found that Columbia Bank provided a relatively high level of community development services in the states of Oregon and Washington, but a limited level of community development services in the Portland-Vancouver CSA.

CRA Performance of Pacific Bank

Pacific Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of February 24, 2014 ("Pacific Bank Evaluation").[40] The bank received a "High Satisfactory" rating for the Lending Test and a "Low Satisfactory" rating for the Investment Test and the Service Test.[41] Examiners noted that the bank's performance in the Eugene AA was weighted the most heavily in the overall rating.

Examiners concluded that Pacific Bank's lending activity reflected excellent responsiveness to the credit needs of its combined AAs and that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged individuals and very small businesses. Examiners also found that the bank originated a majority of loans inside its AAs.

Examiners found that the geographic distribution of the bank's loans reflected excellent penetration throughout the combined AAs, particularly in LMI geographies. The distribution of the bank's borrowers reflected good penetration among businesses of different sizes. Further, examiners found that the bank made an adequate level of community development loans.

Examiners determined that the bank made an adequate level of qualified community development investments and grants, although rarely in a leadership position. Further, examiners concluded that Pacific Bank's branch locations, banking hours, and alternative delivery systems were readily accessible to all portions of its AAs, including LMI geographies and individuals, and that services did not vary in a way that inconvenienced portions of its AAs. Moreover, examiners concluded that the bank provided an adequate level of qualified community development services during the review period.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding Columbia Bank's CRA, consumer compliance, and fair lending records. The Board has considered the results of a recent consumer compliance examination of Columbia Bank conducted by FDIC examiners, which included a review of Columbia Bank's policies and procedures for complying with fair lending and other consumer compliance laws. The Board also considered and consulted with the FDIC regarding the recently conducted CRA evaluation of Columbia Bank, the scope of which was impacted by the comment on this proposal. The FDIC considered the same comment that was submitted to the Board in connection with

[40] The Pacific Bank Evaluation was conducted using the Large Bank Examination Procedures. Examiners reviewed small business loans from 2011 through 2013. Examiners did not review home mortgage loans reported pursuant to HMDA data-collection requirements or small farm loans. The evaluation period for community development loans, investments, and services was from January 25, 2011, through February 23, 2014.

[41] The Pacific Bank Evaluation included full-scope evaluations of three AAs: the Eugene AA (composed of Lane County in Oregon); the Portland-Vancouver-Beaverton AA (composed of Multnomah, Clackamas, and Washington counties in Oregon, and Clark County in Washington); and the Seattle AA (composed of King County, Washington).

its review of the merger of Columbia Bank and Pacific Bank, and, after a complete review of the record, the FDIC determined that the proposal met the standards of the Bank Merger Act and approved the bank merger without conditions.

The Board has taken the results of the FDIC's examinations and its consultations with the FDIC into account in evaluating this proposal, including in considering whether Columbia Bank has the experience and resources to ensure that policies and programs are implemented in a manner 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 considers other potential effects of the proposal on the convenience and needs of the communities to be served. Columbia represents that, following consummation of the proposed transaction, the combined organization would have an enhanced ability to meet the convenience and needs of the community, which would benefit customers of Columbia Bank and legacy customers of Pacific Bank. Columbia represents that the current suite of products and services offered by each bank would continue to be available, and Pacific Bank's customers would benefit from an expanded suite of business and consumer products and services, including import and export letters of credit and documentary collections, same-day ACH origination, mobile wallet debit card functions, consumer credit cards, foundation accounts, and home equity lines of credit that include a fixed-rate conversion option. Further, Columbia represents that existing and future customers of both banks would benefit from a larger 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, consultations with the FDIC, confidential supervisory information, information provided by Columbia, 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."[42]

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

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

resulting firm.[43] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[44]

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.[45]

In this case, the Board has considered information relevant to risks to the stability of the United States 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.[46] 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 United States 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 Columbia 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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[43] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[45] 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.

[46] Columbia primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, wealth management, private banking, investment advisory and management services, trust services and operations, and treasury management. Pacific offers commercial and consumer banking services, commercial real estate lending, and treasury management. In each of the activities in which it engages, Columbia 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.

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 October 6, 2017.

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

Ann E. Misback
Secretary of the Board

Reliable Community Bancshares, Inc .
Perryville, Missouri

MAB Acquisition Corp.
Perryville, Missouri

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2017–28 (October 26, 2017)

Reliable Community Bancshares, Inc. ("Reliable"), a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] and its subsidiary, MAB Acquisition Corp. ("MAB," and together with Reliable, "Applicants"), both of Perryville, Missouri, have requested the Board's approval under section 3 of the BHC Act[2] to acquire Mid America Banking Corporation ("Mid America"), Rolla, and thereby indirectly acquire Mid America Bank & Trust Company ("Mid America Bank"), Dixon, both of Missouri. As part of the proposal, MAB would become a bank holding company. Following the proposed acquisition, Mid America Bank would be merged into Reliable's subsidiary bank, The Bank of Missouri ("Bank of Missouri"), Perryville, Missouri.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 95613 (December 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.

Reliable, with consolidated assets of approximately $1.4 billion, is the 541st largest insured depository organization in the United States.[5] Reliable controls approximately $1.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] Reliable controls Bank of Missouri, which operates only in Missouri. Reliable is the 22nd largest insured depository organization in Missouri, controlling deposits of approximately $1.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[7]

Mid America, with consolidated assets of approximately $159.0 million, is the 3407th largest insured depository organization in the United States. Mid America controls approximately $122.6 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Mid America controls Mid America Bank, which operates only in Missouri.[8] Mid America is the 153rd largest insured depository organization in Missouri, 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 Mid America Bank into Bank of Missouri, which is not expected to occur for some time following Applicants' acquisition of Mid America, is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to section18(c) of the Federal Deposit Insurance Corporation Act. 12 U.S.C. § 1828(c).

4 12 CFR 262.3(b).

5 National asset and deposit data, market share, and ranking are as of June 30, 2017, unless otherwise noted.

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

7 State asset data, market share, and ranking data are as of June30, 2016, unless otherwise noted.

8 The proposal does not raise interstate issues under section 3(d) of the BHC Act because Missouri is the home state of both Reliable and Mid America Bank, and Mid America Bank operates only in Missouri. See 12 U.S.C. § 1842(d).

approximately $123.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Reliable would become the 495th largest insured depository organization in the United States, with consolidated assets of approximately $1.5 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Reliable would control consolidated deposits of approximately $1.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Missouri, Reliable would remain the 22nd largest depository organization, controlling deposits of approximately $1.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

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]

Bank of Missouri and Mid America Bank do not compete directly in any 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 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.

[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).

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.

Reliable and Bank of Missouri are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.[12] The asset quality, earnings, and liquidity of both Bank of Missouri and Mid America Bank are consistent with approval, and Reliable 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 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 Reliable, Mid America, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Reliable, 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.

Reliable and its subsidiary depository institution are considered to be well managed. Reliable's directors and senior executive officers have substantial knowledge of and experience in the banking and financial sectors, and Reliable's risk-management program appears consistent with approval of this expansionary proposal.The Board also has considered Reliable's plans for implementing the proposal. Reliable 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. Reliable would implement a combination of its own and Mid America's risk-management policies, procedures, and controls at the combined organization, and this combination is considered acceptable from a supervisory perspective. In addition, Reliable'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 Reliable'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 Reliable and Mid America 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.[13] 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

[12] Applicants would effect the acquisition by merging Mid America with and into MAB, with MAB as the survivor. At the time of the merger, each share of Mid America common stock would be converted into a right to receive Reliable common stock and/or cash, based on an exchange ratio. Reliable would fund the cash portion of the exchange primarily through a third-party loan. Any additional cash needed in connection with the acquisition would be funded by a dividend from Bank of Missouri to Reliable.

[13] 12 U.S.C. § 1842(c)(2).

places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act of 1977 ("CRA").[14] 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,[15] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[16]

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, and information provided by the applicant. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Bank of Missouri and Mid America Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, and information provided by Reliable.

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.[17] In this case, the Board considered the views of the Federal Reserve Bank of St. Louis ("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.[18] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation 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 data reported under the Home Mortgage Disclosure Act of

[14] 12 U.S.C. §2901 *et seq*.

[15] 12 U.S.C. § 2901(b).

[16] 12 U.S.C. § 2903.

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

[18] 12 U.S.C. § 2906.

1975 ("HMDA"),[19] automated loan reports, and other reports generated by the institution 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 institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas ("AAs"), 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.[20] 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.[21]

CRA Performance of Bank of Missouri

Bank of Missouri was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of January 26, 2015 ("Bank of Missouri Evaluation").[22] The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test.

Examiners found that Bank of Missouri's average net loan-to deposit ratio, which is a measure of the overall level of lending, was reasonable given the asset size and financial condition of the bank. Examiners also found that a substantial majority of the bank's HMDA and small business loans was originated within the bank's AAs, illustrating a commitment to meeting the credit needs of these areas, and that the geographic distribution of loans reflected a reasonable dispersion within the bank's AAs. Examiners noted that the bank's loan distribution by borrower income characteristics reflected a reasonable penetration among businesses of different revenue sizes and among individuals of different income levels. Further, examiners noted that Bank of Missouri had not received any CRA complaints since the bank's previous CRA evaluation.

Examiners also determined that Bank of Missouri demonstrated an adequate responsiveness to the community development needs of its AAs through qualified community development lending, investment, and service activity, considering the capacity of the bank and the need for and availability of such opportunities.

CRA Performance of Mid America Bank

Mid America Bank was assigned an overall rating of "Needs to Improve" at its most recent CRA performance evaluation by the Reserve Bank, as of April 22, 2013 ("Mid America

[19] 12 U.S.C. § 2801 *et seq*.

[20] *See* 12 CFR 228.26(b).

[21] *See* 12 CFR 228.26(c).

[22] The Bank of Missouri Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed HMDA loans reported by Bank of Missouri in 2012, 2013, and the first three quarters of 2014, and small business loans originated by the bank between January 1, 2014, and December 18, 2014. For the Community Development Test, examiners reviewed community development lending, investments, and services based on data from July 23, 2012, through January 26, 2015. The Bank of Missouri Evaluation covered the bank's seven AAs, including full-scope reviews of the Cape Girardeau, Missouri; Columbia, Missouri; Perryville, Missouri; and Springfield, Missouri, AAs and limited-scope reviews of the bank's Branson, Missouri; Scott City, Missouri; and Poplar Bluff, Missouri, AAs.

Bank Evaluation").[23] Examiners noted that this rating was primarily based on the bank's substantive violations of section 5 of the Federal Trade Commission Act ("FTC Act"), which prohibits unfair or deceptive acts or practices, and the bank's lack of adequate controls in place to prevent such practices.[24] The Board has entered into a Consent Order with Mid America Bank for these violations of section 5 of the FTC Act, which occurred as a result of practices related to Mid America's balance transfer credit card portfolios offered to consumers through third parties. Pursuant to the Consent Order, Mid America Bank has agreed to pay restitution of approximately $5 million to affected cardholders and to submit to the Reserve Bank a written plan to strengthen the oversight by Mid America Bank's board of directors of the bank's compliance risk management program. This order is conditioned on Reliable's compliance with a commitment to cause Bank of Missouri, as successor to Mid America Bank, to comply with the obligations of the Consent Order.

Examiners found that Mid America Bank's loan distribution among borrowers of different income levels, including LMI borrowers, and among businesses of different revenue sizes, was reasonable. However, examiners noted that the bank's geographic distribution of loans reflected poor dispersion throughout the bank's AA. Examiners noted that the bank's CRA performance would have been considered satisfactory but for the bank's violations of the FTC Act.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the FDIC regarding Bank of Missouri's CRA, consumer compliance, and fair lending records. The Board has considered the results of the most recent consumer compliance examination of Bank of Missouri conducted by the FDIC, 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 the most recent consumer compliance examination of Mid America Bank conducted by the Reserve Bank, actions Mid America Bank has committed to take to address its past violations of section 5 of the FTC Act, and actions Mid America Bank has already taken to strengthen its current and future compliance with section 5 of the FTC Act.

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. Reliable represents that it has no plans to discontinue any significant product or service currently offered by Bank of Missouri or Mid America Bank. Reliable also represents that, following the proposed transaction, customers of Mid America Bank would have access to a broader range of products and services than those currently available to Mid America Bank customers. Additionally, Reliable represents that customers of Mid America Bank would benefit from a more expansive branch network. Reliable asserts that, following the proposed transaction, Bank of Missouri would continue to provide a level of service consistent with or exceeding Bank of Missouri's current CRA performance. Reliable represents that Bank of Missouri would be able to integrate Mid America Bank's business into its operations in a manner that would prevent further violations of law such as those noted in the Mid America Bank Evaluation.

[23] The Mid America Bank Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed loans originated by the bank from January 1, 2012, through December 31, 2012. The Mid America Bank Evaluation included a review of the bank's AA, which includes all of Phelps and Pulaski counties, Missouri, and the southern portion of Maries County, Missouri.

[24] 5 U.S.C. § 45.

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, consultation with the FDIC, confidential supervisory information, information provided by Reliable, 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."[25]

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.[26] 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.[27]

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 propose 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.[28]

In this case, the Board has considered information relevant to risks to the stability of the United States 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 a variety of consumer and

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

[26] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[28] *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.

commercial banking activities.[29] 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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 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 October 26, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

[29] Reliable primarily offers consumer and business loan and deposit products, with a focus on commercial and home mortgage lending. Mid America primarily offers commercial, residential, and consumer loan and deposit products. In each of the activities in which it engages, Reliable 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.

First Horizon National Corporation
Memphis, Tennessee

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2017-29 (October 30, 2017)

First Horizon National Corporation ("First Horizon"), Memphis, Tennessee, 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 Capital Bank Financial Corp. ("CBFC"), Charlotte, North Carolina, and thereby indirectly acquire CBFC's subsidiary bank, Capital Bank Corp. ("Capital Bank"), Raleigh, North Carolina. Following the proposed merger, Capital Bank would be merged into First Horizon's subsidiary bank, First Tennessee Bank, National Association ("First Tennessee Bank"), also of Memphis, Tennessee.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 28659 (June 23, 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.

First Horizon, with consolidated assets of approximately $29.4 billion, is the 64th largest insured depository organization in the United States. First Horizon controls approximately $22.3 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 Horizon controls First Tennessee Bank, which operates in Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. First Horizon is the largest insured depository organization in Tennessee, controlling deposits of approximately $19.8 billion, which represent 14.3 percent of the total deposits of insured depository institutions in that state. First Horizon is the 31st largest insured depository organization in North Carolina, controlling deposits of approximately $542.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. First Horizon is the 117th largest insured depository organization in Virginia, controlling deposits of approximately $14.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. First Horizon is the 82nd largest insured depository organization in South Carolina, controlling deposits of approximately $11.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. First Horizon is the 220th largest insured depository organization in Florida, controlling deposits of approximately $1.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[6]

CBFC, with consolidated assets of approximately $10.1 billion, is the 127th largest insured depository organization in the United States. CBFC controls approximately $8.1 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. CBFC controls Capital Bank, which operates

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Capital Bank into First Tennessee Bank, which is expected to occur immediately after First Horizon's merger with CBFC, 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 16, 2017.

4 12 CFR 262.3(b).

5 Nationwide asset and deposit data are as of June 30, 2017, unless otherwise noted.

6 State deposit data are as of June 30, 2016, unless otherwise noted.

in Florida, North Carolina, South Carolina, Tennessee, and Virginia. CBFC is the 15th largest insured depository organization in Tennessee, controlling deposits of approximately $1.5 billion, which represent 1.1 percent of the total deposits of insured depository institutions in that state. CBFC is the 9th largest insured depository organization in North Carolina, controlling deposits of approximately $4.4 billion, which represent 1.3 percent of the total deposits of insured depository institutions in that state. CBFC is the 29th largest insured depository organization in South Carolina, controlling deposits of approximately $370.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. CBFC is the 39th largest insured depository organization in Florida, controlling deposits of approximately $1.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. CBFC is the 111th largest insured depository organization in Virginia, controlling deposits of approximately $26.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, First Horizon would become the 54th largest insured depository organization in the United States, with consolidated assets of approximately $40 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. First Horizon would control total deposits of approximately $30.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Tennessee, First Horizon would remain the largest insured depository organization, controlling deposits of approximately $21.3 billion, which represent approximately 15.4 percent of the total deposits of insured depository institutions in that state. In North Carolina, First Horizon would become the 8th largest insured depository organization, controlling deposits of approximately $4.9 billion, which represent 1.4 percent of the total deposits of insured depository institutions in that state. In South Carolina, First Horizon would become the 28th largest insured depository organization, controlling deposits of approximately $381.8 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Florida, First Horizon would become the 39th largest insured depository organization, controlling deposits of approximately $1.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Virginia, First Horizon would become the 104th largest insured depository organization, controlling deposits of approximately $40.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank 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

[7] 12 U.S.C. § 1842(d)(1)(A).
[8] 12 U.S.C. § 1842(d)(1)(B).

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 First Horizon is Tennessee, and Capital Bank is located in North Carolina, South Carolina, Tennessee, Virginia, and Florida.[10] First Horizon is well capitalized and well managed under applicable law, and First Tennessee Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[11] There are no minimum age requirements under the laws of North Carolina, South Carolina, Virginia, or Florida that would apply to First Horizon's acquisition of CBFC, and Capital Bank has been in existence for more than five years.[12]

On consummation of the proposed transaction, First Horizon would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, First Horizon would not control 30 percent or more of the total deposits of insured depository institutions in any state in which First Horizon and CBFC have overlapping banking operations.[13] The Board has considered all other requirements under section 3(d) of the BHC Act, including First Tennessee Bank'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.[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 the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[15]

First Horizon and CBFC have subsidiary depository institutions that compete directly in 11 banking markets in North Carolina, South Carolina, and Tennessee.[16] 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

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[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.

[11] 12 U.S.C. § 2901 *et seq*.

[12] *See* N.C. Gen. Stat. ch. 53C; S.C. Code Ann. §§ 34-25-50 and 34-25; Va. Code Ann. §6.2-849 – 859; Fla. Stat. § 658.2953.

[13] Tennessee, South Carolina, and Florida impose a 30 percent limit on deposit concentration within their states. *See* Tenn. Code Ann § 45-2-1404; S.C. Code Ann. §34-25-240; Fla. Stat. § 658.2953(5)(b). North Carolina and Virginia do not have any such restrictions.

[14] 12 U.S.C. § 1842(c)(1).

[15] 12 U.S.C. § 1842(c)(1)(B).

[16] All of these banking markets are defined in the Appendix, except for the Greene County banking market ("Greene County market"); the Lawrence County banking market ("Lawrence County market"); and the Morristown area banking market ("Morristown area market"), all in Tennessee, which are defined in the discussion below.

("market deposits") that First Horizon would control;[17] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[18] other characteristics of the markets; and, as discussed below, commitments made by First Horizon to divest two Capital Bank branches in the Greene County market.

Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Johnson City-Bristol, Knoxville, Nashville, Sevierville, Raleigh, Winston-Salem, Charlotte, and Charleston markets.[19] On consummation of the proposal, the change in the HHI in the Nashville market would be small, and the market would remain unconcentrated. The change in the HHI in the Johnson City-Bristol, Knoxville, Sevierville, Raleigh, and Charleston markets would be small, and the markets would remain moderately concentrated. The Winston-Salem and Charlotte markets would remain highly concentrated, but the changes in the HHI in these markets would be small. In each of these banking markets, numerous competitors would remain.

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Greene County, Lawrence County, and Morristown area markets warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Greene County, Tennessee, Banking Market. Using initial screening data, First Horizon is the third largest depository organization in the Greene County market, controlling approximately $181.7 million in deposits, which represent approximately 22.5 percent of market deposits.[20] CBFC is the largest depository organization in the Greene County market, controlling approximately $211.6 million in deposits, which represent approximately 26.2 percent of market deposits. On consummation, First Horizon would become the largest depository organization in the Greene County market, controlling approximately $359.6 million in market deposits, which would represent approximately 48.6 percent of market deposits. The HHI in this market would increase by 1175 points, from 1981 to 3156.

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[17] Local deposit and market share data are as of June 30,2016, and, unless otherwise indicated, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 52 (1991).

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

[19] The competitive effects of the proposal in these markets are described in the Appendix.

[20] The Greene County market is defined as Greene County, Tennessee.

To mitigate the potentially adverse competitive effects of the proposal in the Greene County market, First Horizon has committed to divest two of Capital Bank's six branches in the Greene County market to a competitively suitable purchaser.[21] In addition to the divestiture, 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 Greene County market.[22] The competitive effects are mitigated by several factors that indicate that the increase in concentration in the Greene County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market. One thrift institution in the market has a commercial and industrial loan portfolio similar to those of commercial banks in the Greene County market,[23] as measured in terms of the ratios of those types of loans to total loans and assets.[24] The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, two credit unions exert a competitive influence in the Greene County market. Both 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 market.[25] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

After accounting for the branch divestitures and weighting the deposits of the thrift at 100 percent and the credit unions at 50 percent, First Horizon would control approximately

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[21] As a condition of consummating the proposal, First Horizon has committed that it will execute, before consummation of the proposal, a sales agreement with a competitively suitable institution for the sale of the two branches. First Horizon also has committed to complete the divestiture within 180days after consummation of the proposed merger. In addition, First Horizon has committed that, if the proposed divestiture is not completed within the 180-dayperiod, First Horizon would transfer the unsold branches to an independent trustee, who would be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. *See, e.g., BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

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

[23] The standard treatment of thrifts in the competitive analysis is to give their deposits 50-percent weighting to reflect their limited lending to small businesses relative to banks' lending levels. However, the Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. *See, e.g., Banknorth Group, Inc*., 75 *Federal Reserve Bulletin* 703 (1989). Where, as here, the facts and circumstances of a banking market indicate that a particular thrift serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products, the Board has concluded that competition from such a thrift closely approximates competition from a commercial bank and that deposits controlled by the institution should be weighted at 100 percent in market-share calculations. *See, e.g., KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *River Valley Bancorp*, FRB Order No. 2012-10 (October 17, 2012); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); and *Banknorth Group, Inc., supra*.

[24] This thrift institution has a ratio of commercial and industrial loans to assets of 9.6 percent. This is comparable to the ratio of some thrift institutions that the Board has previously found to be full competitors of commercial banks. *Id*.

[25] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp*., FRB Order No. 2016-10 (June 28, 2016); *Mitsubishi UFJ Financial Group, Inc*., FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc*. (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc*., 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

34.5 percent of market deposits, and the HHI would increase by 486 points to a level of 1934.[26] Although the adjusted levels still exceed the DOJ Bank Merger Guidelines, certain factors indicate that the competitive effects of the proposal would not likely be significantly adverse. After consummation of the proposal, a minimum of seven depository institutions would remain in the Greene County market. Further, First Horizon and CBFC engage in low levels of small business lending in the Greene County market, and analysis of available data suggests the transaction is unlikely to have an adverse competitive impact on small business lending in the market.[27] In addition, recent entry and expansionary activity suggests that the market is attractive to potential competitors. In 2016, one bank entered the market through an acquisition and a credit union entered the market de novo through the establishment of a branch. Further, a thrift established an additional branch in the market in April 2017.

Lawrence County, Tennessee, Banking Market. Using initial screening data, First Horizon is the fourth largest depository organization in the Lawrence County market, controlling approximately $67.2 million in deposits, which represent approximately 11.3 percent of market deposits.[28] CBFC is the second largest depository organization in the Lawrence County market, controlling approximately $87.8 million in deposits, which represent approximately 14.8 percent of market deposits. On consummation, First Horizon would become the second largest depository organization in the Lawrence County market, controlling approximately $154.9 million in market deposits, which would represent approximately 26.1 percent of market deposits. The HHI in this market would increase by 334 points, from 1750 to 2084.

The competitive effects of the proposal in this market are mitigated by several factors that indicate that the increase in concentration in the Lawrence County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market. A credit union exerts a competitive influence in the Lawrence County 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 market. Taking into account the limited lending done by this credit union to small businesses relative to commercial banks' lending levels, the Board finds that these circumstances warrant including the deposits of this credit union at a 50percent weight in estimating market influence. Taking into account this adjustment, First Horizon would control approximately 25.4 percent of market deposits upon consummation of the transaction, and the HHI effects of the transaction would exceed the DOJ Guidelines by a less significant amount, with an increase of 317 points to a level of 1988. Seven other insured depository institutions would remain in the market, including four with over 10 percent market share, one of which would have 30.5 percent market share. In addition, recent entry and expansionary activity suggests that the market is attractive to potential competitors. One bank entered the market de novo this year with the establishment of a loan production office.

Morristown Area, Tennessee, Banking Market. Based on initial screening data, First Horizon is the largest depository organization in the Morristown area market, controlling approximately $228.8 million in deposits, which represent approximately 23.7 percent of market deposits.[29] CBFC is the sixth largest depository organization in the Morristown

[26] This analysis assumes that both branches are divested to an out-of-market firm. Any potential purchaser must be deemed competitively suitable by the Board.

[27] Analysis of the Greene County market using available data on small business lending results in an HHI reflective of a highly concentrated market, but the increase in the HHI following the merger would be minimal.

[28] The Lawrence County market is defined as Lawrence County, Tennessee.

[29] The Morristown market is defined as Hamblen County, eastern Grainger County, and northern Jefferson County, all in Tennessee.

area market, controlling approximately $61.9 million in deposits, which represent approximately 6.4 percent of market deposits. On consummation, First Horizon would remain the largest depository organization in the Morristown area market, controlling approximately $290.8 million in market deposits, which would represent approximately 30.1 percent of market deposits. The HHI in this market would increase by 303 points, from 1540 to 1843.

Factors indicate that the increase in concentration in the Morristown area market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, four credit unions exert a competitive influence in the Morristown area market. These 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 market. 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. Adjusting to reflect competition by these credit unions, the market concentration level in the Morristown area market as measured by the HHI would increase by 214 points, from a level of 1183 to 1397, the market share of First Horizon resulting from the transaction would be 25.3 percent, and numerous competitors would remain.

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, with the proposed divestiture of branches in the Greene County market, would not likely have a significantly adverse effect on competition in any relevant banking market, including the aforementioned 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, including the proposed divestiture commitments, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the 11 banking markets in which First Horizon and CBFC compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[30] 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

[30] 12 U.S.C. § 1842(c)(2), (5), and (6).

adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

First Horizon and CBFC 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.[31] The asset quality, earnings, and liquidity of both First Tennessee Bank and Capital Bank are consistent with approval, and First Horizon appears to have adequate resources to absorb the related 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 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 Horizon, CBFC, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Horizon; the Board's supervisory experiences 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.

First Horizon, CBFC, and their subsidiary depository institutions are each considered to be well managed. First Horizon has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of First Horizon have substantial knowledge of and experience in the banking and financial services sectors, and First Horizon's risk-management program appears consistent with approval of this expansionary proposal.[32]

The Board also has considered First Horizon's plans for implementing the proposal. First Horizon 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. First Horizon would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, First Horizon's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and First Horizon plans to integrate CBFC's existing management and personnel in a manner that augments First Horizon's management.[33]

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[31] As part of the proposed transaction, each share of CBFC common stock would be converted into a right to receive cash or First Horizon common stock, or a combination of the two, based on a fixed exchange ratio. First Horizon has the financial resources to fund the transaction.

[32] On February 8, 2017, the OCC entered into a consent order with First Tennessee Bank regarding unfair billing practices that the OCC identified related to an identity theft protection product that the bank offered through a third-party provider from 2000–2006. *See First Tennessee Bank*, N.A., OCC Consent Order for a Civil Money Penalty, No. 2017-018 and 2017-015 (February 8, 2017). The Board has consulted with the OCC regarding this matter. The OCC indicated in First Tennessee Bank's most recent CRA performance evaluation that to remediate, the bank strengthened its risk-management policies and practices, discontinued the product altogether, including for existing customers, and developed a plan to reimburse fees paid by all customers. Further, the OCC reviewed information pertaining to this matter and other matters noted in the bank's CRA performance evaluation in connection with its review of First Tennessee Bank's application to merge with Capital Bank, and did not identify any concerns regarding such matters that would impact the proposed transaction. Letter from Stephen A. Lybarger, Deputy Comptroller for District Licensing, OCC, to Jason Cabral, Esq., Sullivan & Cromwell (October 16, 2017) ("OCC Letter dated October 16, 2017").

[33] Following consummation of the proposed transaction, two CBFC directors will join the boards of directors of First Horizon and First Tennessee Bank.

Based on all of the facts of record, including First Horizon's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of First Horizon and CBFC 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.[34] 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,[35] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[36]

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 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 First Tennessee Bank and Capital Bank; the fair lending and compliance records of both banks; the supervisory views of the OCC, the Federal Deposit Insurance Corporation ("FDIC"), and the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by First Horizon; and the public comments received on the proposal.

Public Comments on the Proposal

The Board received comments from over 20 commenters supporting the proposal. The commenters are charitable and community organizations, as well as businesses, that described benefits that First Horizon has provided to the communities that they serve. These commenters described various projects and partnerships between First Horizon and community groups that have benefited the community, including initiatives focused on enhancing economic mobility, financial services, and homeownership for LMI individuals. Commenters also highlighted First Horizon's support for organizations that provide finan-

[34] 12 U.S.C. § 1842(c)(2).
[35] 12 U.S.C. § 2901(b).
[36] 12 U.S.C. § 2903.

cial education services to individuals and capital access to underserved businesses, as well as an organization that provides various support services for the African American community in the Winston-Salem, North Carolina, area.

One commenter objected to the proposal based on alleged weaknesses in the CRA and fair lending records of First Tennessee Bank and Capital Bank. The commenter alleged that, based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA")[37] and First Tennessee Bank's most recent CRA performance evaluation, First Tennessee Bank has displayed a poor record of lending to LMI individuals and communities, particularly in North Carolina. The commenter also alleged that, throughout its footprint, First Tennessee Bank had low levels of lending to African American and Hispanic borrowers in 2016 and that its loan application denial rates were higher for such applicants than for white applicants.[38] The commenter also alleged that First Tennessee Bank has failed to meet commitments it made in its current multi-year CRA plan, including goals related to lending and marketing to LMI borrowers and in LMI geographies, lending to small businesses, community development activities, and products and services tailored to LMI borrowers and in LMI geographies.[39]The commenter argued that the application should not be approved absent First Horizon's development of new plans and commitments to address alleged weaknesses in its fair lending and CRA programs and product and service offerings.[40] The commenter criticized First Tennessee Bank for its level of qualified community development investments in North Carolina and argued that First Tennessee Bank's current investments are not innovative.

The commenter also alleged that Capital Bank has an inconsistent record of lending to LMI borrowers and in LMI areas and that Capital Bank has a poor record of lending to

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[37] 12 U.S.C. § 2801 *et seq*.

[38] The commenter noted that in January 2016, First Tennessee Bank entered into a settlement agreement with a community organization that had submitted a fair housing complaint to the U.S. Department of Housing and Urban Development ("HUD") regarding allegations that the bank had low levels of lending to and high levels of denials of African American and Hispanic borrowers in certain geographic areas. First Horizon represents that the complainant submitted substantially similar allegations to the Federal Reserve and OCC in connection with First Horizon's applications to acquire TrustAtlantic Financial Corporation ("TrustAtlantic") and First Tennessee Bank's application to merge with Trust Atlantic Bank, and that First Tennessee Bank voluntarily settled the matter, while denying any violation of law, to avoid a lengthy and duplicative investigation by HUD. The Board approved the TrustAtlantic acquisition on September 17, 2015, and the OCC approved the related Bank Merger Act application on September 16, 2015. See First Horizon National Corporation, FRB Order No. 201524 (September 17, 2015); First Tennessee Bank, National Association, OCC CRA Decision No. 169 (September 16, 2015). In First Tennessee's CRA performance evaluation dated February 23, 2014, the OCC considered this settlement and evidence of other relevant violations of law, and the CRA rating was not lowered as a result of the evidence of discriminatory or other illegal credit practices. The OCC also reviewed information pertaining to this matter and other matters noted in the bank's CRA performance evaluation in connection with its review of First Tennessee Bank's application to merge with Capital Bank, and did not identify any concerns regarding such matters that would impact the proposed transaction. *See* OCC Letter dated October 16, 2017.

[39] The commenter also made suggestions regarding specific products and services that First Tennessee Bank should offer and recommended other changes to First Tennessee Bank's current product and service offerings. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes the costs charged for them. *See, e.g., PacWest Bancorp*, 102 *Federal Reserve Bulletin* 82, 88 n. 24(2015).

[40] 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., United Bancshares, Inc*., FRB Order No. 2017-10 at 12 n. 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); *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("AAs").

African American and Hispanic borrowers.[41] The commenter was particularly critical of Capital Bank's lending performance in North Carolina. The commenter further alleged that Capital Bank's current community development investments are not innovative or creative.

Businesses of the Involved Institutions and Response to the Adverse Comment

First Horizon provides a diversified range of financial services, primarily through its principal subsidiary, First Tennessee Bank, which operates through a branch network in Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Services provided by First Horizon include general banking services for consumers, businesses, financial institutions, and governments; fixed income sales and trading; underwriting of bank-eligible securities; loan sales; investment and financial advisory services; credit card products; equipment finance services; and retail insurance sales.

CBFC is the holding company of Capital Bank, which is a full-service bank offering a range of consumer and commercial products and services. Capital Bank offers a variety of commercial loan products; residential mortgage loans; investment, trust, and cash management products and services to small and medium-size businesses and individuals; and a range of deposit products. It offers such products and services through branches in Florida, North Carolina, South Carolina, Tennessee, and Virginia.

In response to the commenter's allegations, First Horizon asserts that First Tennessee Bank's CRA performance and its record and efforts since its last CRA evaluation merit approval of the application. First Horizon represents that First Tennessee Bank has been and remains highly committed to meeting the needs of all customers, including LMI and minority individuals. In this regard, First Horizon notes that First Tennessee Bank offers a variety of loan and deposit products and other services designed to meet the needs of its community, and its products and services are equally available across its footprint. First Horizon asserts that First Tennessee Bank has launched certain products that are targeted toward LMI and minority individuals, including an affordable lending product that expands eligibility for financing homes in low-income communities. First Horizon asserts that First Tennessee Bank has hired five full-time community development managers in its major markets, who are tasked with building relationships and establishing partnerships with non-profits, affordable housing providers, and community development organizations. According to First Horizon, the community development managers will also work with community groups to promote new credit product opportunities for LMI and minority borrowers.

First Horizon further represents that First Tennessee Bank's commitment to the communities it serves has been enhanced in recent years with the development of a comprehensive multi-year CRA plan. First Horizon notes that this plan was required by and presented to the OCC, and that the OCC had no objection to implementation of the plan as written.[42] First Horizon represents that this plan reflects measurable CRA lending, investment, and

[41] The commenter focused on Capital Bank's lending performance to LMI individuals and areas in the Raleigh and Asheville, North Carolina, markets and the bank's lending performance to African American and Hispanic borrowers in North Carolina and Florida, based on HMDA data reported for 2016.

[42] In connection with its approval of First Tennessee Bank's application to merge with TrustAtlantic Bank in 2015, the OCC required First Tennessee Bank to develop a CRA Plan to address certain CRA performance weaknesses that the OCC identified at the time. *See* Letter from Stephen A. Lybarger, Deputy Comptroller for District Licensing, OCC, to Jackie Prester, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (September 16, 2015); *First Horizon National Corporation*, FRB Order No. 2015-24, 23-24 (September 27, 2015). As discussed in more detail below, the Board has consulted with the OCC regarding its views of First Tennessee Bank's CRA performance since its last CRA evaluation.

service commitments for First Tennessee Bank across its CRA AAs. First Horizon denies the commenter's allegation that First Tennessee Bank is not in a position to meet its goals under this CRA plan and asserts that First Tennessee Bank has already met or exceeded the majority of its commitments under its CRA plan and that its remaining commitments are on track for completion by the end of 2017.

In response to the commenter's concerns regarding Capital Bank's CRA and fair lending record, First Horizon notes that Capital Bank received an overall CRA rating of "Satisfactory" in its most recent CRA evaluation and that Capital Bank's rating on the Lending Test was "High Satisfactory." First Horizon represents that Capital Bank establishes CRA lending, investment, and services benchmarks, as well as minority lending benchmarks, and that Capital Bank actively monitors its progress in attaining these benchmarks and reports these findings to senior management and its board of directors on a regular basis. First Horizon represents that Capital Bank launched a multifaceted outreach effort this year in order to attract minority applicants. This effort included targeted product mailings to prospective applicants and ongoing contact with applicable businesses and nonprofit organizations. Further, First Horizon asserts that Capital Bank has made efforts to recruit and retain a diverse team of mortgage loan originators with an established record of serving the credit needs of LMI and minority individuals throughout the bank's footprint.

First Horizon denies the commenter's allegations that Capital Bank has fair lending shortcomings. First Horizon represents that Capital Bank performs fair lending risk assessments annually and that Capital Bank's residential mortgage lending activity is thoroughly analyzed and reviewed using statistical and regression analysis, supplemented by additional data quality reviews. First Horizon acknowledges that a violation of Regulation B[43] was identified by the FDIC in Capital Bank's 2016 CRA evaluation. However, First Horizon notes that examiners stated that the violation was limited to a single loan product that has since been discontinued and that Capital Bank immediately implemented changes to policies, procedures, training programs, internal assessments, and other practices to prevent future discriminatory or other illegal credit practices.

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.[44] In this case, the Board considered the supervisory views of the OCC, FDIC, and CFPB.

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.[45] 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.

[43] 12 CFR 1002.

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

[45] 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 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 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;[46] (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.[47] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of First Tennessee Bank

First Tennessee Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of April 7, 2014 ("First Tennessee Bank Evaluation").[48] First Tennessee Bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test. For the state of North Carolina, an area of particular concern to the commenter, First Tennessee Bank had a CRA rating of "Satisfactory."

Examiners found that First Tennessee Bank originated a significant majority of its loans inside its AAs and that the bank's lending activity was adequate. Examiners found that

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[46] 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).

[47] Other information relevant to credit decisions could include credit history, debt-to-income ratio, and loan-to-value ratio. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[48] The First Tennessee Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed HDMA and small business loans originated from January 1, 2010, through December 31, 2013. The evaluation period for community development loans, investments, and services was from January 11, 2010, through April 7, 2014. As of the evaluation date, the bank's AAs included parts of Georgia, Mississippi, North Carolina, and Tennessee. Examiners conducted full-scope reviews in at least one AA in each state where the bank had a financial center. Examiners also conducted full-scope reviews in two Multistate Metropolitan Statistical Areas ("MMSAs") where the bank operated branches in at least two states within the MMSA: the Memphis, Tennessee-Mississippi-Arkansas, MMSA and the Chattanooga, Tennessee-Georgia, MMSA.

First Tennessee Bank's geographic distribution of loans was adequate, noting that its excellent geographic distribution of small loans to businesses was offset by poor geographic distribution of home mortgage loans. Overall, examiners found that the distribution of loans by income level of the borrower was poor, as the bank's distribution of home mortgage loans by income level of the borrower was found to be adequate, but distribution of loans to businesses with different revenue sizes was found to be very poor. Examiners explained that the bank's community development lending had a significantly positive impact on the Lending Test in all rating areas and the bank's community development loans supported affordable housing initiatives, activities that promoted economic development within the bank's AAs, activities that revitalized or stabilized LMI census tracts, and operational activities of organizations that provide services to LMI individuals and families. Examiners found that First Tennessee Bank's level of community development lending elevated its otherwise adequate lending performance to good.

In North Carolina, examiners noted that First Tennessee Bank's home mortgage and small business lending activity was adequate and that its community development loan performance and community development lending levels were good. The bank's overall geographic distribution and borrower income distribution were found to be very poor.[49] Examiners noted, however, that the bank had a very limited presence in North Carolina, with only two full-service branches, one of which was limited to wealth management and commercial banking. Examiners also explained that the banking industry in the state was very competitive and noted that there was a low level of owner-occupied units and a high level of rental units in the Winston-Salem MSA AA, the AA given the most weight in the evaluation of First Tennessee Bank's performance in North Carolina.

Examiners found that First Tennessee Bank had a good level of qualified community development investments that were highly responsive to identified community development needs. Examiners noted that the community needs supported by First Tennessee Bank's investments included affordable housing, economic development, and services targeting LMI individuals. In North Carolina, First Tennessee Bank was rated "High Satisfactory" for the Investment Test, and examiners found that First Tennessee Bank had a good level of community development investments that reflected a high level of responsiveness to identified community development needs. Examiners noted that the bank's investments helped various nonprofit organizations in North Carolina fund their community development programs and continue to provide services targeted to LMI individuals and families.

Examiners found that First Tennessee Bank's branches were accessible to geographies and individuals of different income levels and that First Tennessee Bank provided an excellent level of community development services that were highly responsive to identified community development needs in the bank's AAs. Community development services noted by examiners in various AAs included services to organizations with a focus on serving LMI individuals, promoting economic development, and revitalizing and stabilizing AAs. In North Carolina, examiners found that First Tennessee Bank's overall level of community development service performance was excellent, but that First Tennessee Bank had a branch distribution that was accessible to limited portions of its AA.

Examiners noted that they considered evidence of discriminatory or other illegal credit practices in rating First Tennessee Bank's CRA performance and that the bank's CRA performance rating was not lowered as a result of their findings. In making this determination, examiners considered the nature, extent, and strength of the evidence of the prac-

[49] Examiners noted that they analyzed First Tennessee Bank's home mortgage and small business lending activity to identify any gaps in geographic distribution of loans and did not identify any unexplained conspicuous gaps.

tices; the extent to which the institution had policies and procedures in place to prevent the practices; the extent to which the institution had taken or had committed to take corrective action, including voluntary corrective action resulting from self-assessment; and other relevant information.[50]

First Tennessee Bank's Activities since the First Tennessee Bank Evaluation

First Horizon asserts that, since the First Tennessee Bank Evaluation, First Tennessee Bank has been very active with lending, investment, and service activities that promote community development and the goals and objectives of the CRA. First Horizon represents that First Tennessee Bank has been working to increase its home mortgage lending to LMI tracts and individuals, as well as small businesses in LMI tracts. The bank's efforts include the development of an affordable mortgage product designed to serve the needs of LMI homebuyers; utilization of the LenderLive mortgage platform, which allows access to Fannie Mae and Freddie Mac affordable mortgage options; and continuing support to organizations that are funding small businesses.

In addition, First Horizon represents that First Tennessee Bank has made various community development loans that are responsive to community development and credit needs. According to First Horizon, such loans have supported affordable housing for LMI individuals; community services targeted to LMI individuals; economic development through the financing of small businesses that resulted in permanent job creation and/or retention; revitalization of LMI census tracts or other qualified geographies; and neighborhood stabilization projects to stimulate growth, stability, and investment in distressed areas. Further, First Horizon represents that First Tennessee Bank has continued to support its communities through a highly active volunteer program and has made a number of qualified grants targeted to community needs, including through a community development fund that it established to support agencies serving LMI communities and individuals. First Horizon also represents that First Tennessee Bank has established a partnership with a national nonprofit organization, the mission of which is to strengthen the economy by empowering individuals earning less than $50,000 a year. First Horizon represents that, through this partnership, First Tennessee Bank has assisted thousands of individuals with financial education and counseling, including through the placement of certified financial counselors in the bank's branches to provide credit counseling, budgeting, and other financial empowerment training to individuals.

CRA Performance of Capital Bank

Capital Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of February 22, 2016 ("Capital Bank Evaluation").[51] The bank received "High Satisfactory" ratings for the Lending Test and the Investment Test and a "Low Satisfactory" rating for the Service Test.

Examiners found that Capital Bank's lending levels reflected adequate responsiveness to credit needs within its AAs and that a high percentage of its loans were made within its

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[50] As discussed above, in making this determination, OCC examiners considered the facts underlying the 2016settlement agreement between First Tennessee Bank and a complainant to HUD that was of concern to the adverse commenter.

[51] The Capital Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reported pursuant to HMDA and the CRA from January 1, 2011, through October 31, 2015. The evaluation period for community development investments and services was from July 16, 2010, through February 22, 2016. The Capital Bank Evaluation included a review of lending in all of the bank's AAs. Special weight was given to AAs in which the bank conducted the most lending and deposit activities, which were located primarily in North Carolina and Florida.

AAs. Examiners further found that the geographic distribution of Capital Bank's loans reflected good penetration throughout its AAs. Examiners noted that Capital Bank's distribution of borrowers reflected adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners found that the institution exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners stated that Capital Bank used flexible lending practices in order to serve the credit needs of its AAs and that the bank made a relatively high level of community development loans.

In North Carolina, examiners found that Capital Bank's lending levels reflected good responsiveness to the credit needs of the bank's AAs. Examiners noted that the geographic distribution of Capital Bank's lending reflected good penetration, and the borrower distribution reflected adequate penetration, throughout its North Carolina AAs. For the Raleigh Metropolitan Statistical Area AA,[52] examiners noted that the bank's level of lending reflected adequate responsiveness to the AA's credit needs, and the geographic distribution of its lending reflected adequate penetration, but that the borrower distribution reflected poor penetration. Examiners noted that the bank used flexible lending practices and made a relatively high level of community development loans in this AA. For the Asheville Metropolitan Statistical Area AA,[53] examiners found that Capital Bank's level of lending reflected adequate responsiveness to the credit needs of the AA. Examiners found that the bank's geographic distribution of lending in the AA reflected good penetration, but that the borrower distribution reflected poor penetration. Examiners noted that the bank used flexible lending practices and made a relatively high level of community development loans in the AA.

Examiners found that Capital Bank made a significant level of qualified community development investments and grants, occasionally in a leadership position, particularly those that were not routinely provided by private investors. Examiners further noted that the bank exhibited good responsiveness to credit and community economic development needs, but that the institution rarely used innovative or complex investments to support community development initiatives.

Examiners found that the bank's delivery systems were reasonably accessible to essentially all portions of the bank's AAs. Examiners also found that, to the extent changes had been made, the institution's record of opening and closing branches generally had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals, and that services and business hours did not vary in a way that inconvenienced certain portions of the AAs, particularly LMI geographies and individuals. Examiners further noted that the bank provided an adequate level of community development services within its AAs.

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 Horizon represents that the combined organization, with its greater size, capabilities, and breadth of products, would be able to offer a number of services that are not currently available to customers of First Tennessee Bank and Capital Bank as separate entities. In addition, First Horizon asserts that current Capital Bank customers would gain access to a broader suite of products and services,

[52] The Raleigh Metropolitan Statistical Area AA consists of Johnston and Wake counties in North Carolina.

[53] The Asheville Metropolitan Statistical Area AA consists of Buncombe and Madison counties in North Carolina.

including a "lifeline" checking account for consumers who otherwise would not be able to qualify for a checking account, prepaid cards, financial planning and investment management services, wealth advisory services, a full-service trust department, and more dynamic digital and mobile banking products. Moreover, First Horizon represents that customers of both banks would benefit from an expanded branch and ATM network. First Horizon also represents that, following consummation of the proposed transaction, First Tennessee Bank would increase its support for LMI individuals and geographies across Capital Bank's footprint by increasing its contributions to First Tennessee Bank's community development fund. First Horizon also would expand its partnership with a national nonprofit organization that provides financial counseling in First Tennessee Bank branches.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the OCC regarding First Tennessee Bank's CRA, consumer compliance, and fair lending records. The OCC reviewed the bank merger underlying this proposal, including the comments received by the Board. The Board has also considered the results of the most recent consumer compliance examination of First Tennessee Bank conducted by OCC examiners.

The Board also consulted with the FDIC, the primary supervisor of Capital Bank, regarding Capital Bank's CRA, consumer compliance, and fair lending records. The Board considered the results of a recent consumer compliance examination of Capital Bank conducted by the FDIC, which included a review of the bank's compliance management system, particularly with respect to areas exhibiting the potential risk for consumer harm. Examiners also conducted transaction testing and conducted a fair lending review.

The Board also consulted with the CFPB regarding First Tennessee Bank's consumer compliance record.

The Board has taken the consultations with the OCC, FDIC, and CFPB, and the information discussed above, into account in evaluating the proposed transaction, including in considering whether First Horizon 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.

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 OCC, FDIC and CFPB, confidential supervisory information, information provided by First Horizon, 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 risk to the stability of the United States banking or financial system."[54]

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.[55] 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.[56]

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.[57]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is greater than $10 billion in assets but 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.[58] 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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

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

[55] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[57] *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.

[58] As discussed *supra*, in the text on pages 19-20, First Horizon and CBFC offer a broad range of retail, and First Horizon offers a broad range of commercial, banking products and services. First Horizon has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis.

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

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

By order of the Board of Governors, effective October 30, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

Appendix

First Horizon/CBFC 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
Johnson City-Bristol, Tennessee-Virginia ("Johnson City-Bristol") – includes Carter, Hawkins, Sullivan, Unicoi, and Washington counties in Tennessee; and the independent city of Bristol, Scott County, and the Tyler and Wilson County subdivisions in Washington County, all in Virginia.						
First Horizon Pre-Consummation	1	$1.11B	18.67			
CBFC	10	$224.0M	3.77			
First Horizon Post-Consummation	1	$1.33B	22.44	1028	141	30
Knoxville, Tennessee ("Knoxville")– includes Anderson, Blount, Knox, Loudon, Morgan, Roane, and Union counties; Grainger County excluding District 5 in eastern Grainger County; Jefferson County excluding Districts 3, 8, and 9 in northern and eastern Jefferson County; and Districts 6 and 9 in western Sevier County.						
First Horizon Pre-Consummation	2	$2.72B	17.51			
CBFC	16	$182.6M	1.18			
First Horizon Post-Consummation	2	$2.90B	18.69	1073	41	43
Nashville, Tennessee ("Nashville") – includes Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, and Wilson counties.						
First Horizon Pre-Consummation	5	$3.27B	6.67			
CBFC	14	$547.2M	1.12			
First Horizon Post-Consummation	5	$3.82B	7.79	943	15	63
Raleigh, North Carolina ("Raleigh")– includes Franklin, Granville, Johnston, Wake, and Harnett counties excluding the Anderson Creek Barbeque, Johnsonville, and Stewarts Creek townships in Harnett County.						
First Horizon Pre-Consummation	14	$399.3M	1.38			
CBFC	8	$1.10B	3.82			
First Horizon Post-Consummation	7	$1.50B	5.2	1281	11	32
Sevierville, Tennessee ("Sevierville")– includes Cocke County, District 8 in eastern Jefferson County, and Sevier County excluding Districts 6 and 9 in western Sevier County.						
First Horizon Pre-Consummation	8	$108.9M	4.49			
CBFC	12	$28.0M	1.16			
First Horizon Post-Consummation	6	$136.9M	5.65	1440	10	11
Winston-Salem, North Carolina ("Winston-Salem")– includes Davie, Forsyth, Stokes, and Yadkin counties.						
First Horizon Pre-Consummation	12	$102.2M	0.3			
CBFC	6	$419.8M	1.23			
First Horizon Post-Consummation	6	$521.9M	1.52	6772	1	17
Charlotte, North Carolina-South Carolina ("Charlotte")– includes Anson, Cabarrus, Gaston, Lincoln, Mecklenburg, and Union counties in North 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; the King's Mountain township in Cleveland County, North Carolina; and Lancaster and York Counties in South Carolina.						
First Horizon Pre-Consummation	41	< $0.1M	0			
CBFC	12	$561.8M	0.28			
First Horizon Post-Consummation	12	$561.8M	0.28	5894	0	41
Charleston, South Carolina ("Charleston") – includes Berkeley, Charleston, and Dorchester counties, plus the southeastern portion of Colleton County, located east of the South Edisto River on Edisto Island.						
First Horizon Pre-Consummation	28	$11.1M	0.09			
CBFC	21	$40.8M	0.33			
First Horizon Post-Consummation	21	$51.9M	0.42	1222	0	32

Data and rankings are as of June 30, 2016. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Southside Bancshares, Inc.
Tyler, Texas

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2017-30 (October 30, 2017)

Southside Bancshares, Inc. ("Southside"), Tyler, Texas, 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 Diboll State Bancshares, Inc. ("Diboll"), and thereby indirectly acquire First Bank & Trust East Texas ("First Bank"), both of Diboll, Texas. Following the proposed acquisition, First Bank would be merged into Southside's subsidiary bank, Southside Bank, Tyler, Texas.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 33496 (July 20, 2017)).[4] The time for submitting comments has expired.

Southside, with consolidated assets of approximately $5.6 billion, is the 192nd largest insured depository organization in the United States.[5] Southside controls approximately $3.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] Southside controls Southside Bank, which operates only in Texas. Southside is the 21st largest insured depository organization in Texas, controlling deposits of approximately $3.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[7]

Diboll, with assets of approximately $993.8 million, is the 729th largest insured depository organization in the United States, controlling approximately $888 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Diboll controls First Bank, which operates only in Texas. Diboll is the 76th largest insured depository organization in Texas, controlling deposits of approximately $867.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Southside would become the 175th largest insured depository organization in the United States, with consolidated assets of approximately $6.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Southside would control consolidated deposits of approximately $4.5 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. Southside would become the 20th largest insured depository organization in Texas, controlling deposits of $4.5 billion, 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 First Bank into Southside 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). The FDIC approved the bank merger on August 25, 2017.

4 12 CFR 262.3(b).

5 National asset data, market share, and ranking data are as of June 30, 2017, unless otherwise noted.

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

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

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 communities to be served.[9]

Southside and Diboll have subsidiary depository institutions that compete directly in the Tyler, Texas, banking market ("Tyler market");[10] the Palestine, Texas, banking market ("Palestine Market");[11] and the Longview, Texas, banking market ("Longview Market").[12] 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 markets; the relative share of total deposits in insured depository institutions in the markets ("market deposits") that Southside would control;[13] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[14] and other characteristics of the market.

Banking Markets Within Established Guidelines. Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Palestine and Longview banking markets.[15] On consummation of the proposal, the Longview market would remain unconcentrated, and the Palestine market would remain moderately concentrated. In each of these banking markets, numerous competitors would remain.

Banking Market Warranting Special Scrutiny. The competitive effects of the proposal in the Tyler market warrants a detailed review because the proposal would result in the

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[8] 12 U.S.C. § 1842(c)(1)(A).

[9] 12 U.S.C. § 1842(c)(1)(B).

[10] The Tyler market includes Smith County; the southern portion of Wood County, including the cities of Alba, Mineola, and Hawkins; the eastern portion of Van Zandt County, including the cities of Van and Ben Wheeler; the eastern portion of Henderson County, including the cities of Brownsboro and Larue; and the northwest portion of Cherokee County, including the city of Mount Selman, all in Texas.

[11] The Palestine market includes Anderson County, including the cities of Elkhart, Frankston, and Palestine, all in Texas.

[12] The Longview market includes Gregg, Harrison, Marion, and Upshur counties and the northern two thirds of Rusk County, including the cities of Henderson and New London, all in Texas.

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

[14] Under the DOJ 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.

[15] These two banking markets and the competitive effects of the proposal in these markets are described in Appendix A.

market deposit share of Southside exceeding 35 percent when using initial competitive screening data. Southside is the largest depository organization in the Tyler market, controlling deposits of approximately $2.36 billion, which represent approximately 35.98 percent of market deposits. Diboll is the 22nd largest depository organization in the market, controlling deposits of approximately $24.5 million, which represent approximately 0.37 percent of market deposits. On consummation of the proposal, the combined entity would be the largest depository organization in the Tyler market, controlling deposits of approximately $2.38 billion, which would represent approximately 36.35 percent of market deposits. The HHI in the market would increase by 27 points, from 1,602 to 1,629.

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 Tyler market.[16] Factors indicate that the increase in concentration in the Tyler market, as measured by market share, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of six community credit unions in the Tyler market. The institutions offer a wide range of consumer banking products, operate street level branches, and have broad membership criteria that includes almost all of the residents in the relevant banking market.[17]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 commercial and industrial lending done by these credit unions relative to commercial banks' lending levels.

In this case, adjustments to reflect competition from credit unions reduce the measured concentration level in the Tyler market. Specifically, after consummation, the market share of Southside in the Tyler market resulting from the transaction would decrease from 36.35, the unadjusted percentage, to 35.23 percent, the adjusted amount. The HHI would increase by 25 from 1,507 to 1,532.

The Board has also examined other aspects of the structure of the Tyler 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 Tyler market. After consummation of the proposal, Southside would face competition from 28 other depository institutions in the market, one of which would control more than 10 percent of market deposits and two of which would each control more than 5 percent of market deposits. The presence of these viable competitors suggests that Southside would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Southside in the Tyler market. This conclusion is supported in this case by an analysis of private pricing data, which indicates that Southside's fees and interest rates for deposit products in the Tyler market are close to the median prices of other banks in the market and do not deviate substantially from Southside's prices in markets where Southside is not the dominant firm. Moreover, although Southside would continue to hold

[16] 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).

[17] 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).

a dominate market share position, the change in market share would be *de minimis* and the market would remain moderately concentrated.

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 Longview, Palestine, and Tyler 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, particularly the structure of the relevant markets and the number of remaining competitors, as well as the 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 Longview, Palestine, or Tyler 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.[18] 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, 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 involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Southside and Diboll 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 Southside Bank and First Bank.[19] The asset quality, earnings, and liquidity of both Southside and Diboll are consistent with approval, and Southside appears to have adequate resources to absorb the related costs of the proposal and to complete integration of the institutions' operations. In addition, 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

[18] 12 U.S.C. §§ 1842(c)(2), (5), and (6).

[19] To effect the holding company merger, a wholly owned subsidiary of Southside formed to facilitate the transaction would merge with Diboll, with Diboll as the surviving entity, and immediately thereafter Diboll would merge with Southside, with Southside as the surviving entity. Upon consummation of the merger of Diboll with Southside, each share of Diboll common stock would be exchanged for a portion of the aggregate merger consideration, which would consist of Southside common stock and cash. First Bank would then merge with and into Southside Bank, with Southside Bank as the surviving entity. Southside has the financial resources to effect the transaction.

of Southside, Diboll, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Southside; the Board's supervisory experiences and those of the FDIC with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

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

The Board also has considered Southside's plans for implementing the proposal. Southside 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. Southside would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Southside's management has the experience and resources to operate the combined organization in a safe and sound manner, and Southside plans to integrate First Bank's existing senior management in a manner that augments Southside Bank's management.[20]

Based on all the facts of record, including the supervisory records of Southside, Diboll, 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 Southside and Diboll 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, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[21] 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").[22] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[23] and requires the appropriate federal financial supervisory agency to 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 their recent fair lending examinations. Fair lending laws require all lending institutions to provide appli-

[20] On consummation, two members currently on the board of directors of Diboll will be appointed to the board of Southside.

[21] 12 U.S.C. § 1842(c)(2).

[22] 12 U.S.C. § 2901 *et seq.*; 12 CFR 225.13(b)(3).

[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

cants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. The Board 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 Southside Bank and First Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, and information provided by Southside.

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 of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.[25] In this case, the Board considered the supervisory views of 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.

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,[27] 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-

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

[26] 12 U.S.C. § 2906.

[27] 12 U.S.C. § 2801 *et seq*.

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. Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts 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.[29]

CRA Performance of Southside Bank

Southside Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the FDIC, as of October 19, 2015 ("Southside Bank Evaluation").[30] The bank received "Outstanding" ratings for each of the Investment Test and the Service Test and a "High Satisfactory" rating for the Lending Test. Southside Bank's performance in the Tyler MSA AA was weighted most heavily by examiners due to the level of the bank's activity in that area.

Examiners concluded that Southside Bank's performance demonstrated an excellent responsiveness to credit needs in its assessment areas. In particular, examiners found that Southside Bank exhibited excellent performance regarding the level of its lending activity, including home mortgage and small business lending. Examiners noted that a high percentage of the bank's loans were originated inside its AAs, including the bank's small business and home mortgage loans. Examiners further noted that, based on 2013 peer data on lending activity, Southside Bank ranked first among 54 CRA-reporting institutions in the Tyler MSA AA.

Examiners also found that the bank exhibited an overall good record of lending to borrowers of different income and revenue levels. In reaching this conclusion, examiners considered the bank's good record of lending to small businesses of different revenue levels to offset the bank's adequate record of lending to home mortgage borrowers of different income levels. Examiners also concluded that the geographic distribution of the bank's lending was good. Examiners noted that Southside Bank made use of innovative and flexible lending practices in order to serve the needs of its AAs, including LMI borrowers and small businesses. Examiners observed that Southside Bank participates in several affordable housing programs that provide loans with relaxed qualifications or provide grant money for down payment and closing cost assistance.

Examiners also considered the bank to be a leader in community development lending. Examiners found that Southside Bank's management made extraordinary efforts to iden-

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[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 amounts 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] *See* 12 CFR 228.26(c).

[30] The Southside Bank Evaluation was conducted using the 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 July 29, 2013, and October 19, 2015. The evaluation period for community development lending, investments, and services was July 29, 2013, through October19,2015.

The Southside Bank Evaluation included a full-scope evaluation of the Tyler Metropolitan Statistical Area ("MSA") AA. Limited-scope evaluations were performed for the Longview MSA AA; Dallas-Plano-Irving Metropolitan District ("MD") AA; Fort Worth-Arlington MD AA; and the Austin-Round Rock-San Marcos MSA AA. Data from non-metropolitan areas in Texas were aggregated to form one non-metropolitan AA, and examiners conducted a limited-scope evaluation of this AA.

tify and locate community development lending opportunities, as evidenced by the variety and geographic range of the bank's community development loans.

Examiners also concluded that Southside Bank's responsiveness to credit and community development needs was excellent. In reaching this conclusion, examiners noted that all of the bank's investments and donations benefitted the bank's AAs or the state of Texas. Examiners also determined that the level of the bank's qualified investments and donations was excellent. They noted that a majority of the bank's investments were made in school districts in Texas, including 62 school districts where the majority of students are economically disadvantaged.

In addition, examiners found that Southside Bank provided delivery systems that were readily accessible to its customers. The bank's delivery channels included online and mobile banking, automatic teller machines, and branches. Examiners concluded that the bank tailored its retail banking locations and services to meet the needs of LMI individuals. In particular, examiners found that changes to Southside Bank's branch network over the evaluation period had improved accessibility for LMI individuals and noted that the bank had tailored its hours and service locations to meet the needs of LMI individuals.

CRA Performance of First Bank

First Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of May 31, 2016 ("First Bank Evaluation").[31] First Bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test. Although First 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 bank's non-MSA AAs due to the higher volume of loans in those areas.

For the Lending Test, examiners focused their evaluation on First Bank's small business and home mortgage loans. Examiners found that First Bank's loan-to-deposit ratio was reasonable given its size, business strategy, and financial condition relative to the needs of the bank's AAs. Examiners found that First Bank originated a majority of its lending within its AAs. Specifically, examiners noted that First Bank originated a majority of its small business and mortgage loans inside of its AAs measured both by number and dollar volume. Examiners also found that First Bank's distribution of small business loans among borrowers of different incomes and revenues was reasonable. Similarly, examiners determined that First Bank demonstrated a reasonable record of geographically distributing its small business loans throughout its AAs. Examiners also considered the bank's geographic distribution of home mortgage loans to be reasonable.

With respect to community development, examiners considered First Bank's community development loans, community development investments, and community development

[31] The First Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed small business, small farm, home mortgage, and consumer loans originated by the bank from August19,2013, through May 31, 2016. Because commercial loans and home mortgage loans together comprised approximately 60.5 percent of the bank's loan portfolio, examiners focused the Lending Test on such loans. For the Community Development Test, examiners reviewed the bank's qualified community development lending, investments, and service activities from August19,2013, through May 31, 2016. Examiners included qualified investments from the previous examination period if the investments were still outstanding.

The First Bank Evaluation included full-scope reviews of First Bank's performance in its non-MSA AAs in Anderson County, Texas, and in Nacogdoches, San Augustine, Sabine, Angelina, and Jasper counties, all in Texas. Examiners conducted limited-scope reviews of performance in the Houston-Woodlands-Sugar Land, Texas MSA AA, the Longview, Texas MSA AA, and the Tyler, Texas MSA AA.

services. Examiners found that First Bank's record of community development lending was excellent. In addition, examiners considered First Bank's responsiveness to community development needs to be excellent given the bank's capacity and the availability of opportunities in the bank's AAs. Examiners found that First Bank exhibited an adequate record of providing community development investments and donations and an excellent record of providing community development loans. Examiners noted that the bank directed a substantial majority of community development activities towards efforts to revitalize and stabilize geographies within its AAs. In addition, examiners concluded that the bank demonstrated an adequate record of providing community development services. This conclusion was based on excellent performance regarding the availability of services, but adequate performance regarding the types of services.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding Southside Bank's CRA, consumer compliance, and fair lending records. The Board has considered the results of the most recent consumer compliance examination of Southside Bank conducted by the FDIC, which included a review of Southside Bank's policies and procedures for complying with fair lending and other consumer compliance laws.

The Board has taken the results of the FDIC's examinations and its consultations with the FDIC into account in evaluating this proposal, including in considering whether Southside Bank has the experience and resources to ensure that policies and programs are implemented in a manner 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 considers other potential effects of the proposal on the convenience and needs of the communities to be served. Southside represents that upon consummation of the proposal, existing customers of First Bank would have access to a more expansive line of products and services. Southside also represents that the acquisition would reduce expenses for both institutions and thus make available expanded resources to the communities currently served by Southside Bank and First Bank. Southside represents that, following the proposed transaction, it will continue to provide a level of service consistent with Southside 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, consultations with the FDIC, confidential supervisory information, information provided by Southside, 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."[32]

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.[33] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[34]

The Board'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.[35]

In this case, the Board has considered information relevant to risks to the stability of the United States 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.[36] The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

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[32] 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).

[33] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[35] *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.

[36] Southside primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, wealth management services, and treasury management. Diboll primarily offers commercial and consumer banking services, commercial real estate lending, and trust services. In each of the activities in which it engages, Southside 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.

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. Approval of this proposal is specifically conditioned on compliance by Southside 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 by the Federal Reserve Bank of Dallas, acting under delegated authority.

By order of the Board of Governors, effective October 30, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

South State Corporation
Columbia, South Carolina

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2017–31 (November 14, 2017)

South State Corporation ("SSC"), Columbia, South Carolina, 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 Park Sterling Corporation ("PSC") and thereby indirectly acquire PSC's subsidiary bank, Park Sterling Bank, both of Charlotte, North Carolina. Following the proposed acquisition, Park Sterling Bank would be merged into SSC's subsidiary bank, South State Bank, Columbia, South Carolina.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 32812 (July 18, 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.

SSC, with consolidated assets of approximately $11.2 billion, is the 119th largest insured depository organization in the United States. SSC 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.[5] SSC controls South State Bank, which operates in Georgia, North Carolina, and South Carolina. SSC is the 5th largest insured depository organization in South Carolina, controlling approximately $5.6 billion in deposits, which represent approximately 7.1 percent of the total deposits of insured depository institutions in that state.[6] SSC is the 38th largest insured depository organization in North Carolina, controlling approximately $399.1 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state. SSC is the 14th largest insured depository organization in Georgia, controlling approximately $2.8 billion in deposits, which represent approximately 1.2 percent of the total deposits of insured depository institutions in that state.

PSC, with consolidated assets of approximately $3.3 billion, is the 273rd largest insured depository organization in the United States. PSC controls approximately $2.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. PSC controls Park Sterling Bank, which operates in Georgia, North Carolina, South Carolina, and Virginia. PSC is the 15th largest insured depository organization in South Carolina, controlling approximately $731.7 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state. PSC is the 18th largest insured depository organization in North Carolina, controlling approximately $965.9 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state. PSC is the 65th largest insured depository organization in Georgia, controlling

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Park Sterling Bank into South State Bank is subject to approval of the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act. *See* 12 U.S.C. § 1828(c). The FDIC approved the bank merger on October 31, 2017.

4 12 CFR 262.3(b).

5 National asset and deposit data are as of June 30, 2017, unless otherwise noted.

6 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.

approximately $240.8 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, SSC would become the 102nd largest insured depository organization in the United States, with consolidated assets of approximately $14.5 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. SSC would control total deposits of approximately $11.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In South Carolina, SSC would remain the 5th largest insured depository organization, controlling deposits of approximately $6.3 billion, which represent approximately 8 percent of the total deposits of insured depository institutions in that state. In North Carolina, SSC would become the 15th largest insured depository organization, controlling deposits of approximately $1.4 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Georgia, SSC would become the 13th largest insured depository organization, controlling deposits of approximately $3.0 billion, which represent approximately 1.3 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, 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 SSC is South Carolina, and Park Sterling Bank is located in Georgia, North Carolina, South Carolina, and Virginia.[10] SSC is well capitalized and well managed under applicable law, and South State Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[11] There are no minimum age requirements under the laws of Georgia, North Carolina, or Virginia that would apply to SSC's acquisition of Park Sterling Bank, and Park Sterling Bank has been in existence for more than five years.[12]

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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.

[11] 12 U.S.C. § 2901 *et seq*.

[12] *See* N.C. Gen. Stat. Ann. § 53-211; Ga. Code Ann. § 7-1-622; Va. Code Ann.§ 6.2-849 *et seq*.

On consummation of the proposed transaction, SSC would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, SSC would control less than 30 percent of the total deposits of insured depository institutions in Georgia, North Carolina, and South Carolina, the only states in which SSC and PSC have overlapping banking operations.[13] The Board has considered all other requirements under section 3(d) of the BHC Act, including South State Bank'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.[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 the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[15]

SSC and PSC have subsidiary depository institutions that compete directly in the Charleston, Columbia, Greenville, Greenwood, and Newberry County banking markets, all of which are located in South Carolina.[16] The depository institution subsidiaries of SSC and PSC also compete directly in the Charlotte, North Carolina-South Carolina, banking market ("Charlotte market"),[17] the Spartanburg, South Carolina-North Carolina, banking market ("Spartanburg market"),[18] and the Wilmington, North Carolina, banking market ("Wilmington market").[19]

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

[13] Both Georgia and South Carolina impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control. *See* Ga. Code Ann. § 7-1-622(b)(2)(B); S.C. Code Ann. § 34-25-240(b). North Carolina does not impose limits on the total amount of in-state deposits that a single banking organization may control.

[14] 12 U.S.C. § 1842(c)(1).

[15] 12 U.S.C. § 1842(c)(1)(B).

[16] The Charleston, South Carolina, banking market ("Charleston market") is defined as Berkeley, Charleston, and Dorchester counties, and the southeastern part of Colleton County (east of the South Edisto River on Edisto Island), all of South Carolina. The Columbia, South Carolina, banking market ("Columbia market") is defined as Calhoun, Fairfield, Kershaw, Lexington, and Richland counties, all of South Carolina. The Greenville, South Carolina, banking market ("Greenville market") is defined as Anderson, Greenville, Laurens, and Pickens counties, all of South Carolina. The Greenwood, South Carolina, banking market ("Greenwood market") is defined as Abbeville, Greenwood, and McCormick counties, all of South Carolina. The Newberry County, South Carolina, banking market ("Newberry County market") is defined as Newberry County, South Carolina.

[17] The Charlotte market is defined as Anson, Cabarrus, Gaston, Lincoln, Mecklenburg, and Union counties, all of North Carolina; the city of Mooresville and the townships of Davidson and Coddle Creek, all in Iredell County, North Carolina; the townships of Atwell and China Grove, all in Rowan County, North Carolina; the King's Mountain township in Cleveland County, North Carolina; and Lancaster and York counties, both of South Carolina.

[18] The Spartanburg market is defined as Cherokee, Spartanburg, and Union counties, all of South Carolina, and Polk County, North Carolina.

[19] The Wilmington market is defined as New Hanover, Pender, and Brunswick (excluding the Shallotte Township) counties, all of North Carolina.

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

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for each of these markets. On consummation of the proposed transaction, the Charlotte and Columbia markets would remain highly concentrated, but the increase in the HHI in each market would be minimal (1 point or less), and numerous competitors would remain.[22] The Newberry County market also would remain highly concentrated on consummation of the proposal, but the increase in the HHI would be below the threshold in the DOJ Bank Merger Guidelines.[23]Further, six competitors would remain in the market, including a market leader with 29.35 percent market share and three other competitors that would each have an over 10 percent market share.

On consummation of the proposal, the Charleston, Greenwood, Spartanburg, and Wilmington markets would remain moderately concentrated, as measured by the HHI, and the Greenville market would remain unconcentrated. Numerous competitors would remain in each market.[24]

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[20] 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).*

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

[22] SSC operates the 10th largest depository institution in the Charlotte market, controlling approximately $567.9 million in deposits, which represent approximately 0.3 percent of market deposits. PSC operates the 7th largest depository institution in the same market, controlling approximately $819.1 million in deposits, which represent approximately 0.4 percent of market deposits. On consummation of the proposed transaction, SSC would become the 7th largest depository organization in the market, controlling deposits of approximately $1.4 billion, which represent approximately 0.7 percent of market deposits. The HHI for the Charlotte market would increase by less than 1 point to 5894, and 42 competitors would remain in the market.

SSC operates the 8th largest depository institution in the Columbia market, controlling approximately $466.3 million in deposits, which represent approximately 2.6 percent of market deposits. PSC operates the 17th largest depository institution in the same market, controlling approximately $50.1 million in deposits, which represent approximately 0.3 percent of market deposits. On consummation of the proposed transaction, SSC would become the 7th largest depository organization in the market, controlling deposits of approximately $516.4 million, which represent approximately 2.8 percent of market deposits. The HHI for the Columbia market would increase by 1 point to 2028, and 25 competitors would remain in the market.

[23] SSC operates the 6th largest depository institution in the Newberry County market, controlling approximately $30.3 million in deposits, which represent approximately 6.3 percent of market deposits. PSC operates the 3rd largest depository institution in the same market, controlling approximately $75.6 million in deposits, which represent approximately 15.7 percent of market deposits. On consummation of the proposed transaction, SSC would become the 2nd largest depository organization in the market, controlling deposits of approximately $105.9 million, which represent approximately 22.0 percent of market deposits. The HHI for the Newberry County market would increase by 197 points to 2015, and 6 competitors would remain in the market.

[24] SSC operates the 3rd largest depository institution in the Charleston market, controlling approximately $1.5 billion in deposits, which represent approximately 12.6 percent of market deposits. PSC operates the 27th largest depository institution in the same market, controlling approximately $12.6 million in deposits, which represent approximately 0.1 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. 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 Charleston, Columbia, Greenville, Greenwood, Newberry County, Charlotte, Spartanburg, or Wilmington 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.[25] 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

SSC would remain the 3rd largest depository organization in the market, controlling deposits of approximately $1.5 billion, which represent approximately 12.7 percent of market deposits. The HHI for the Charleston market would increase by 2 points to 1224, and 33 competitors would remain in the market.

SSC operates the 6th largest depository institution in the Greenwood market, controlling approximately $86.9 million in deposits, which represent approximately 7.5 percent of market deposits. PSC operates the 3rd largest depository institution in the same market, controlling approximately $180.2 million in deposits, which represent approximately 15.5 percent of market deposits. On consummation of the proposed transaction, SSC would become the largest depository organization in the market, controlling deposits of approximately $267.2 million, which represent approximately 23.0 percent of market deposits. The HHI for the Greenwood market would increase by 232 points to 1728, and 10 competitors would remain in the market.

SSC operates the 20th largest depository institution in the Spartanburg market, controlling approximately $33.5 million in deposits, which represent approximately 0.6 percent of market deposits. PSC operates the 16th largest depository institution in the same market, controlling approximately $109.0 million in deposits, which represent approximately 1.8 percent of market deposits. On consummation of the proposed transaction, SSC would become the 15th largest depository organization in the market, controlling deposits of approximately $142.4 million, which represent approximately 2.4 percent of market deposits. The HHI for the Spartanburg market would increase by 2 points to 1002, and 22 competitors would remain in the market.

SSC operates the 11th largest depository institution in the Wilmington market, controlling approximately $159.3 million in deposits, which represent approximately 2.3 percent of market deposits. PSC operates the 13th largest depository institution in the same market, controlling approximately $69.5 million in deposits, which represent approximately 1.0 percent of market deposits. On consummation of the proposed transaction, SSC would become the 9th largest depository organization in the market, controlling deposits of approximately $228.7 million, which represent approximately 3.3 percent of market deposits. The HHI for the Wilmington market would increase by 5 points to 1280, and 21 competitors would remain in the market.

SSC operates the 7th largest depository institution in the Greenville market, controlling approximately $773.4 million in deposits, which represent approximately 5.1 percent of market deposits. PSC operates the 14th largest depository institution in the same market, controlling approximately $217.9 million in deposits, which represent approximately 1.4 percent of market deposits. On consummation of the proposed transaction, SSC would become the 5th largest depository organization in the market, controlling deposits of approximately $991.2 million, which represent approximately 6.5 percent of market deposits. The HHI for the Greenville market would increase by 14 points to 921, and 35 competitors would remain in the market.

[25] 12 U.S.C. § 1842(c)(2), (5), and (6).

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.

SSC and PSC 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 primarily as a share exchange, with a subsequent merger of the subsidiary depository institutions.[26] The asset quality, earnings, and liquidity of both South State Bank and Park Sterling Bank are consistent with approval, and SSC appears to have adequate resources to absorb the related 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 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 SSC, PSC, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by SSC; 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 commenter.

SSC, PSC, and their subsidiary depository institutions are each considered to be well managed. SSC has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of SSC have knowledge of and experience in the banking and financial services sectors, and SSC's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered SSC's plans for implementing the proposal. SSC 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. SSC would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, SSC's management has the experience and resources to operate the combined organization in a safe and sound manner, and SSC plans to integrate PSC's existing management and personnel in a manner that augments SSC's management.[27]

Based on all of the facts of record, including SSC'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 SSC and PSC in combating money-laundering activities, are consistent with approval.

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[26] As part of the proposed transaction, each share of PSC common stock would be converted into a right to receive shares of SSC common stock based on an exchange ratio. Certain stock options granted by PSC would be cancelled and converted into the right to receive a cash amount based on an exchange ratio. SSC has the financial resources to effect the proposed transaction.

[27] SSC anticipates that, on consummation of the proposed transaction, PSC's chief executive officer and an independent member of PSC's board of directors would be appointed to the boards of directors of SSC and South State 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.[28] 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,[29] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[30]

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 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 South State Bank and Park Sterling Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by SSC; and the public comment received on the proposal.

Public Comment on the Proposal

A commenter objected to the proposal on the basis of alleged disparities in South State Bank's lending to African Americans and Hispanics, as compared to whites, in the Columbia, South Carolina Metropolitan Statistical Area ("Columbia MSA"), the Charlotte, North Carolina MSA ("Charlotte MSA"), and the Atlanta, Georgia MSA ("Atlanta MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[31] for 2015. Specifically, the commenter alleged that South State Bank originated low levels of home mortgage loans to African American and Hispanic borrowers and had high denial rates for home purchase loan applications from such borrowers, compared to white borrowers, in each MSA. In addition, the commenter asserted that South State Bank should provide additional information concerning the branches that it plans to close in connection with the proposed transaction, as well as its criteria for closing branches.

Businesses of the Involved Institutions and Response to the Public Comment

SSC operates primarily through South State Bank, offering a broad range of financial products and services to consumers and businesses. Through its network of branches

[28] 12 U.S.C. § 1842(c)(2).
[29] 12 U.S.C. § 2901(b).
[30] 12 U.S.C. § 2903.
[31] 12 U.S.C. § 2801 *et seq.*

across Georgia, North Carolina, and South Carolina, the bank offers a variety of banking products and services, including consumer and commercial loans, real estate mortgages, personal checking and savings accounts, business checking and savings accounts, and private banking and asset management services.

PSC operates primarily through Park Sterling Bank and offers a wide variety of banking products and services to its customers in branches across Georgia, North Carolina, South Carolina, and Virginia. These products and services include retail and commercial banking services; commercial, consumer, and mortgage loans; and trust and investment services.

SSC disputes the commenter's allegations that South State Bank has engaged in discriminatory lending practices and represents that it is firmly committed to making its credit products and services available to customers on a fair and equitable basis and in strict compliance with fair lending laws and regulations. SSC asserts that the denial rates referenced by the commenter reflect determinations based on nondiscriminatory factors, including debt-to-income ratios, credit and employment history, and collateral. SSC represents that it maintains a fair lending program with policies and procedures that help ensure compliance with CRA and fair lending requirements. These include a second review program for denied consumer loans, periodic testing and monitoring of South State Bank's HMDA data, and periodic analyses of the bank's consumer lending products to detect possible disparate treatment with respect to credit decisions and pricing. In addition, SSC represents that it conducts extensive fair lending compliance training for its employees and provides periodic reporting of fair lending compliance risk assessments, issues, and trends to senior management and directors.

SSC acknowledges that South State Bank plans to close or consolidate certain branches of the combined organization following consummation of the proposed transaction, but disputes the commenter's allegations that it has not publicized which branches it intends to close. SSC asserts that South State Bank has been transparent to the public by disclosing the locations of the branches that it plans to close or consolidate and providing explanations for its decisions. SSC represents that South State Bank considered a variety of factors in identifying branches for closure, including the proximity of other branch locations, the financial performance and future prospects of the relevant branches, and the impact of branch closures on customers and the community. SSC represents that customers would receive prior notice before any branches are closed or consolidated. Moreover, SSC represents that any branch closures would be completed in accordance with regulatory requirements associated with closing branches.[32]

SSC represents that South State Bank offers a variety of mortgage loan products and programs designed to increase affordable housing opportunities for LMI individuals and communities. Specifically, SSC represents that South State Bank has proprietary loan programs for underserved markets and participates in a variety of national, state, and local mortgage lending programs designed to assist LMI individuals and LMI or minority communities. SSC contends that South State Bank offers, among its proprietary programs, an affordable home mortgage loan product available to borrowers purchasing homes in high minority census tracts and borrowers meeting certain income thresholds, which allows loan-to-value ratios of up to 100 percent. SSC asserts that South State Bank has taken steps to increase its home mortgage lending to African American, Hispanic, and LMI

[32] 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 (June 29, 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.

borrowers, including partnering with local organizations that promote affordable housing, home ownership, and economic development opportunities. SSC represents that South State Bank has hired community mortgage loan originators in various markets who have a specific focus on community outreach and mortgage originations in markets where South State Bank's minority applications intake rate falls below certain benchmarks. In addition, SSC represents that South State Bank has been increasing its outreach efforts to further promote its mortgage lending products and services and recently announced a new $100 million mortgage lending initiative to assist LMI and minority communities.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.[33] In this case, the Board considered the supervisory views of 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.[34] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the 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 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;[35] (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

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

[34] 12 U.S.C. § 2906.

[35] 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).

innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[36] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of South State Bank

South State Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of October 31, 2016 ("South State Bank Evaluation").[37] The bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.

Examiners found that South State Bank's overall lending levels reflected good responsiveness to the credit needs of its AAs. According to examiners, the bank originated a substantial majority of its loans within its AAs, and the distribution of its loans reflected adequate penetration among retail customers of different income levels and businesses of different sizes. Regarding the bank's distribution of borrowers, examiners found that the bank's home mortgage lending performance to LMI borrowers was generally consistent with or below aggregate and demographic data, and the bank's lending performance to small businesses was generally below aggregate and demographic data. However, examiners found that South State Bank's geographic distribution of loans reflected good penetration throughout its AAs and noted that its home mortgage and small business lending performance in LMI census tracts was generally consistent with or above aggregate and demographic data. Moreover, examiners noted that the bank used flexible lending practices in order to serve the credit needs of its AAs and participated in or used several programs to help borrowers who otherwise might not qualify for credit. The bank's innovative or flexible lending practices noted by examiners included an affordable housing residential mortgage loan program that the bank designed to meet the needs of LMI families and affordable home mortgage loans that featured down-payment assistance.

In the Columbia MSA and Charlotte MMSA, both areas of concern to the commenter, the bank's lending levels were found to reflect generally adequate responsiveness to the AAs' credit needs, and, in the Atlanta-Sandy Springs-Roswell MSA ("Atlanta MSA"), another area of concern to the commenter, examiners found that the bank's lending performance reflected good responsiveness to the credit needs of the AA. According to examiners, the

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[36] Other information relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[37] The South State Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small loans made to businesses and farms reported under CRA data collection requirements from January 1, 2014, through the second quarter of 2016. The evaluation period for community development loans, investments, and services was July 2, 2014, through October 31, 2016. As of the evaluation date, the bank had 16 AAs located in three states and two multistate MSAs. The South State Bank Evaluation included full-scope evaluations of the bank's AAs in the following locations: Charleston-North Charleston, Greenville-Anderson-Mauldin, Columbia ("Columbia MSA"), and Hilton Head Beach-Bluffton-Beaufort MSAs, all of South Carolina, as well as the South Carolina non-MSA; Savannah, Georgia, MSA and Georgia non-MSA; Wilmington, North Carolina, MSA; and the Multistate MSAs ("MMSAs") of Charlotte-Concord-Gastonia, North Carolina-South Carolina ("Charlotte MMSA") and Myrtle Beach-Conway-North Myrtle Beach, North Carolina-South Carolina. Limited scope evaluations were performed for the bank's other AAs.

geographic distribution of the bank's HMDA lending was found to be adequate in the Columbia MSA and the Atlanta MSA and generally adequate in the Charlotte MMSA. The bank's distribution of borrowers for HMDA lending was found to reflect adequate penetration among retail customers of different income levels in both the Columbia MSA and Charlotte MMSA. In the Atlanta MSA, examiners found that the bank's distribution of borrowers for HMDA lending reflected good penetration among retail customers of different income levels, and the bank's level of home purchase lending to low-income borrowers was significantly above aggregate and demographic data. In the Columbia and Atlanta MSAs, examiners found that the bank made an adequate level of community development loans; however, examiners determined that the bank's level of community development lending was low in the Charlotte MMSA. In each of these three geographic areas, examiners found that the bank used flexible lending practices.

Examiners found that South State Bank maintained a significant level of qualified investments. In light of the available investment opportunities, examiners found that the level and innovation of the bank's qualified investments demonstrated good responsiveness to the credit and community development needs of its AAs. Examiners noted that the bank occasionally used innovative and complex investments to support community development initiatives and that the majority of its investments by number and dollar volume benefited affordable housing, followed by economic development and stabilization. Examiners found that the bank demonstrated adequate responsiveness to meeting the community development investment needs of the Columbia MSA and Charlotte MMSA and good responsiveness to meeting the community development investment needs of the Atlanta MSA.

Examiners found South State Bank's delivery systems to be reasonably accessible to essentially all portions of its AAs. Examiners found that the bank's opening and closing of branches generally did not adversely affect the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners determined that the bank's services and business hours did not vary in a way that inconvenienced parts of its AAs. Examiners found that, overall, the bank provided a relatively high level of community development services in its AAs, including to organizations that promoted affordable housing, economic and small business development, financial education, and other community development goals. Examiners found that the bank provided a relatively high level of community development services in the Columbia MSA and Charlotte MMSA and that the bank was a leader in providing community development services in the Atlanta MSA.

South State Bank's Activities Since the South State Bank Evaluation

SSC represents that, since the South State Bank Evaluation, South State Bank has furthered its commitment to community reinvestment and to serving the needs of LMI geographies and individuals in all of its communities. According to SSC, the bank has done so through a range of initiatives, including community development service activities, community development loans and investments, and lending to small businesses and LMI borrowers. SSC represents that South State Bank has demonstrated its commitment to flexible and innovative lending by participating in several loan programs that provide financing to LMI borrowers or small businesses in LMI geographies. SSC also represents that South State Bank made a variety of community development loans and investments to promote job creation and improve services in LMI geographies. SSC contends that the bank has provided financial literacy training for youth, young adults, adults, and small business owners and has supported organizations that provide targeted services to LMI individuals and communities.

CRA Performance of Park Sterling Bank

Park Sterling Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of April 24, 2017 ("Park Sterling Bank Evaluation"),[38] with a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and Service Test.

Examiners concluded that Park Sterling Bank's overall lending levels reflected good responsiveness to the credit needs of the bank's AAs. Examiners found that a high percentage of the bank's loans, by number and dollar amount, was originated in its AAs. Examiners found that the geographic distribution of the bank's loans reflected good penetration throughout the bank's AAs. The distribution of the bank's borrowers was found to reflect poor penetration among retail customers of different income levels and adequate penetration among businesses of different sizes. Examiners found the bank to be a leader in making community development loans. Examiners noted that the bank extended a substantial number and dollar amount of community development loans, with most of the loans directly targeted at affordable housing for LMI families.

Examiners found that Park Sterling Bank maintained an adequate level of qualified investments, particularly those that were not routinely provided by private investors. Examiners found that the volume and percentage of the bank's investments were commensurate with those provided by similarly situated banks. The majority of the bank's investments by number and dollar amount was found to have benefited affordable housing, followed by economic development and revitalization or stabilization.

Examiners found that the bank's delivery systems were reasonably accessible to essentially all portions of the bank's AAs. To the extent that changes had been made, examiners determined that the bank's opening and closing of branches throughout the AAs had improved the accessibility of the bank's delivery systems, especially in LMI geographies or to LMI individuals. Examiners also found that Park Sterling Bank's banking hours and services did not vary in a way that inconvenienced portions of the bank's AAs, particularly LMI geographies or individuals. Examiners found that the bank provided an adequate level of community development services within its AAs, and such services supported a variety of community organizations that promoted affordable housing, economic development, financial education, and small business development.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the FDIC regarding South State Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed the bank merger underlying this proposal and, in so doing, considered the comment received by the Board. In addition, the Board consulted with the Consumer Financial Protection Bureau ("CFPB").

The Board has considered the results of the most recent consumer compliance examination of South State Bank conducted by the FDIC, which included a review of the bank's

[38] The Park Sterling Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small loans made to businesses and farms reported under CRA data collection requirements from January 1, 2015, through December 31, 2016. The evaluation period for community development lending, investments, and services was April 12, 2014, through April 24, 2017. The Park Sterling Bank Evaluation included full-scope evaluations of the bank's AAs in the following locations: Charlotte-Concord-Gastonia, North Carolina-South Carolina Multistate MSA; Greenville-Anderson-Mauldin, South Carolina MSA; South Carolina non-MSA; Wilmington, North Carolina MSA; Georgia non-MSA; and Richmond, Virginia MSA. Limited-scope evaluations were performed in the bank's other AAs.

compliance management system and the bank's compliance with consumer protection laws, including fair lending laws and regulations. Examiners also conducted transaction testing and a fair lending review.

The Board has taken the consultations with the FDIC and the CFPB and the information discussed above into account in evaluating the proposed transaction, including in considering whether SSC 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 considers other potential effects of the proposal on the convenience and needs of the communities to be served. SSC represents that, as a result of the proposal, existing customers of South State Bank and Park Sterling Bank would benefit from an expanded branch and ATM network and a broader range of financial products and services. Moreover, SSC represents that the proposed transaction would create potential expense-saving opportunities, which would create opportunities to pass savings on to customers of the combined organization.

SSC contends that the combined organization would have a greater focus on consumer lending, as additional Park Sterling Bank employees would be trained as consumer lenders, and the organization would be able to offer higher unsecured loan amounts. SSC asserts that current small business and commercial customers of Park Sterling Bank would gain access to a broader retail network, focused on delivering small business loans, as well as to enhanced small business lending through South State Bank's participation and experience in Small Business Administration lending and other state and federal loan assistance programs.

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, confidential supervisory information, information provided by SSC, 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."[39]

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

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

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]

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.[42]

In this case, the Board has considered information relevant to risks to the stability of the United States 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 and commercial banking activities.[43] 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 United States 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.[44] In reaching its conclusion, the Board has consid-

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[40] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[42] *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.

[43] SSC and PSC offer a range of retail and commercial banking products and services. SSC has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis.

[44] 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

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 SSC 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 Federal Reserve Bank of Richmond, acting under delegated authority.

By order of the Board of Governors, effective November 15, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

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.

National Bank Holdings Corporation
Greenwood Village, Colorado

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-34 (November 28, 2017)

National Bank Holdings Corporation ("NBH"), Greenwood Village, Colorado, 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 Peoples, Inc. ("Peoples"), Lawrence, Kansas, and thereby indirectly acquire Peoples Bank, Lawrence, Kansas, and Peoples National Bank ("PNB"), Colorado Springs, Colorado.

In addition, NBH's subsidiary state member bank, NBH Bank (together with NBH, "Applicants"), Greenwood Village, Colorado, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Peoples Bank and PNB, with NBH Bank as the surviving entity.[3] NBH Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main offices and branches of Peoples Bank and PNB.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 37589 (August 11, 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.

NBH, with consolidated assets of approximately $4.7 billion, is the 212th largest insured depository organization in the United States. NBH controls approximately $3.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] NBH controls NBH Bank, which operates in Colorado, Kansas, Missouri, and Texas. NBH is the 25th largest insured depository organization in Kansas, controlling deposits of approximately $574.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[7] NBH is the 15th largest insured depository organization in Colorado, controlling deposits of approximately $1.5 billion, which represent approximately 1.2 percent of the total deposits of insured depository institutions in that state.

Peoples, with consolidated assets of approximately $924.3 million, is the 796th largest insured depository organization in the United States.[8] Peoples controls approximately

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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. In addition, NBH Bank has applied under section 9 of the FRA to establish branches at certain locations of Peoples Bank that currently only provide limited services. The locations of all of the branches to be established 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, 2017, unless otherwise noted.

7 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.

8 The Winter Trust of 12/3/74 ("Winter Trust"), Lawrence, Kansas, is a registered bank holding company that controls Peoples. After consummation of the proposed transaction, the Winter Trust is expected to deregister as a bank holding company.

$724.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Peoples controls Peoples Bank, which operates in Kansas and New Mexico, and PNB, which operates in Colorado. Peoples is the 69th largest insured depository organization in Kansas, controlling deposits of approximately $220.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. Peoples is the 42nd largest insured depository organization in Colorado, controlling deposits of approximately $265.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, NBH would become the 192nd largest insured depository organization in the United States, with consolidated assets of approximately $5.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. NBH would control consolidated deposits of approximately $4.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Kansas, NBH would become the 14th largest insured depository organization, controlling deposits of approximately $794.5 million, which represent approximately 1.1 percent of the total deposits of insured depository institutions in that state. In Colorado, NBH would become the 14th largest insured depository organization, controlling deposits of approximately $1.8 billion, which represent approximately 1.4 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[9] Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.[10] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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.[11] In addition, under section 3(d) of the BHC Act, 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, if 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 operations.[12]

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[9] 12 U.S.C. § 1842(d)(1)(A).

[10] 12 U.S.C. § 1831u(a)(1).

[11] 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

[12] 12 U.S.C. § 1842(d)(2)(A) & (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, 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. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C.§1841(o)(4)–(7).

For purposes of the BHC Act, the home state of NBH is Missouri, Peoples Bank is located in Kansas and New Mexico, and PNB is located in Colorado.[13] For purposes of section 44 of the FDI Act, the home state of NBH Bank is Colorado, and the home states of Peoples Bank and PNB are Kansas and Colorado, respectively.[14] NBH and NBH Bank are well capitalized and well managed under applicable law, and NBH Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[15] Kansas has a five-year minimum age requirement and there are no minimum age requirements under the laws of Colorado or New Mexico that would apply to the proposal.[16] Peoples Bank and PNB have each been in existence for more than 5 years.

On consummation of the proposed transaction, NBH would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Each of Kansas, Colorado, and New Mexico imposes a limit on the total amount of in-state deposits that a single banking organization may control. Specifically, Kansas imposes a 15 percent deposit limit, Colorado imposes a 25 percent deposit limit, and New Mexico imposes a 40 percent deposit limit.[17] The combined organization would control approximately 1.1 percent of the total amount of deposits of insured depository institutions in Kansas, approximately 1.4 percent of the total amount of deposits of insured depository institutions in Colorado, and less than 1 percent of the total amount of deposits of insured depository institutions in New Mexico. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act, including NBH Bank'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 both statutes.

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.[18] 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.[19]

NBH and Peoples have subsidiary depository institutions that compete directly in the Colorado Springs, Colorado, banking market ("Colorado Springs market") and the Kansas City, Missouri, banking market ("Kansas City market").[20] The Board has considered the competitive effects of the proposal in these banking markets. In particular, the

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[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] For purposes of section 44 of the FDI Act, a state bank's home state is the state in which the bank is chartered, and a national bank's home state is the state in which the main office of the bank is located. 12 U.S.C. § 1831u(g)(4).

[15] 12 U.S.C. § 2901 *et seq*.

[16] *See* Kan. Stat. Ann. § 9-541.

[17] *See* Kan. Stat. Ann. § 9-520; Colo. Rev. Stat. § 11-104-202(4); N.M. Stat. Ann. § 58-1C-5(B).

[18] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[19] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[20] The Colorado Springs market includes the Colorado Springs, Colorado, Ranally Metropolitan Area ("RMA"), and the non-RMA portions of El Paso and Teller counties, both of Colorado. The Kansas City market is defined as Cass, Clay, Jackson, Lafayette, Platte, and Ray counties, all of Missouri; the towns of Trimble and Holt in Clinton County, Missouri; the towns of Chilhowee, Holden, and Kingsville in Johnson County,

Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits of insured depository institutions in the markets ("market deposits") that NBH would control;[21] the concentration levels of market deposits and the increases 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");[22] 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 Colorado Springs and Kansas City markets. On consummation of the proposal, the Colorado Springs market would remain moderately concentrated and 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 these markets would be small, and numerous competitors would remain in each banking market.[23]

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 Colorado Springs or Kansas City markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Missouri; the towns of Adrian, Amsterdam, and Butler in Bates County, Missouri; Franklin, Johnson, Leavenworth, Miami, and Wyandotte counties, all of Kansas; and Linn County, Kansas (excluding the towns of Blue Mound and Prescott).

[21] 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).

[22] 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.

[23] NBH operates the 36th largest depository institution in the Colorado Springs market, controlling approximately $18.1 million in deposits, which represent approximately 0.2 percent of market deposits. Peoples operates the 8th largest depository institution in the same market, controlling deposits of approximately $211.4 million, which represent approximately 2.8 percent of market deposits. On consummation of the proposed transaction, NBH would become the 8th largest depository organization in the market, controlling deposits of approximately $229.4 million, which represent approximately 3 percent of market deposits. The HHI for the Colorado Springs market would increase by 2 points to 1068, and 38 competitors would remain in the market.

NBH operates the 6th largest depository institution in the Kansas City market, controlling approximately $1.6 billion in deposits, which represent approximately 3.2 percent of market deposits. Peoples operates the 34th largest depository institution in the same market, controlling deposits of approximately $174.5 million, which represent approximately 0.4 percent of market deposits. On consummation of the proposed transaction, NBH would remain the 6th largest depository organization in the market, controlling deposits of approximately $1.7 billion, which represent approximately 3.5 percent of market deposits. The HHI for the Kansas City market would increase by 3 points to 847, and 115 competitors would remain in the market.

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.[24] 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, 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 involved in the proposal in light of their financial and managerial resources and the proposed business plan.

NBH and NBH Bank are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, with subsequent mergers of Peoples Bank and PNB with and into NBH Bank.[25] The asset quality, earnings, and liquidity of NBH Bank, Peoples Bank, and PNB are each consistent with approval, and NBH appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects 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 NBH, Peoples, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by NBH, 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.

NBH and its subsidiary depository institution are each considered to be well managed. NBH has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. NBH's directors and senior executive officers have substantial knowledge of and experience in the banking and financial sectors, and NBH's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered NBH's plans for implementing the proposal. NBH 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. NBH would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, NBH's management has the experience and resources to operate the combined

[24] 12 U.S.C. §§ 1842(c)(2), (5) & (6), and 1828(c)(5) & (11).

[25] To effect the transaction, each share of Peoples common stock would be converted into a right to receive cash and NBH common stock, based on an exchange ratio. NBH has the financial resources to effect the proposed transaction.

organization in a safe and sound manner, and NBH plans to integrate the existing management and personnel of Peoples in a manner that augments NBH's management.[26]

Based on all the facts of record, including NBH'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 NBH and Peoples 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.[27] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.[28] 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,[29] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[30]

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, and information provided by the applicants. 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 NBH Bank, Peoples Bank, and PNB; the compliance records of each bank; the supervisory views of the Federal Reserve Bank of Kansas City ("Reserve Bank"); confidential supervisory information; and information provided by NBH.

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 infor-

[26] Following consummation of the proposed transaction, certain officers and employees of Peoples Bank and PNB will join NBH Bank.

[27] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[28] 12 U.S.C. § 2901 *et seq*.

[29] 12 U.S.C. § 2901(b).

[30] 12 U.S.C. § 2903.

mation and views provided by the appropriate federal supervisors.[31] In this case, the Board considered the views of the 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.[32] 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"),[33] 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;[34] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of NBH Bank

NBH Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of December 5, 2016 ("NBH Bank Evaluation").[35] The bank received an "Outstanding" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and Service Test.[36] Examiners found that NBH

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[31] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* S48506, 48548 (July 25, 2016).

[32] 12 U.S.C. § 2906.

[33] 12 U.S.C. § 2801 *et seq*.

[34] Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

[35] The NBH Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA, business, and farm loans, as well as community development activities (loans, investments, and services), from January 1, 2011, through December 31, 2015.

[36] The NBH Bank Evaluation included full-scope evaluations in the Kansas City, Combined Statistical Area; Denver, Colorado Metropolitan Statistical Area ("MSA"); Rural Colorado AA; Northwest Rural Missouri AA; and the Dallas, Texas Metropolitan Division. Limited scope evaluations were performed in the Colorado Springs, Colorado MSA; Fort Collins, Colorado MSA; Greeley, Colorado MSA; Pueblo, Colorado MSA; Grand Junction, Colorado MSA; North Central Rural Missouri AA; Northeast Rural Missouri AA; and Austin, Texas MSA.

Bank's overall lending activity reflected good responsiveness to the credit needs of its AAs. Examiners found that the bank originated a substantial majority of its HMDA, business, and farm loans within its AAs and that the geographic distribution of the bank's HMDA, business, and farm loans was good. In addition, examiners noted that the bank's loan distribution reflected good penetration among borrowers of different income levels and businesses and farms of different sizes. Examiners noted that NBH Bank was a leader in making loans that revitalized and stabilized LMI geographies, as well as loans for economic development.

Examiners determined that NBH Bank demonstrated an adequate responsiveness to the community development needs of its AAs through investments and service activity. Examiners found that the bank's community development investments primarily consisted of mortgage-backed securities comprised of loans to LMI borrowers or secured by a residential mortgage within an LMI census tract. In addition, examiners found that the bank's products, services, and business hours did not vary in a way that inconvenienced customers in its AAs, particularly those in LMI geographies and individuals.

CRA Performance of Peoples Bank

Peoples Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of August 6, 2012 ("Peoples Bank Evaluation").[37] The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test.[38]

Examiners found that Peoples Bank's average net loan-to-deposit ratio, which is a measure of the overall level of lending, was more than reasonable given the bank's size and financial condition and the credit needs of the bank's AAs. Examiners also found that a majority of the bank's home purchase, home improvement, and business loans were originated within the bank's AAs and that the geographic and borrower distribution of loans reflected reasonable penetration throughout the bank's AAs.

Examiners noted that Peoples Bank's community development performance, which included loans, donations, and services, demonstrated adequate responsiveness to community development needs throughout its AAs. The bank was found to have performed service activities for various organizations, particularly those providing community services targeted to LMI individuals or families.

CRA Performance of PNB

PNB was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of June 6, 2011 ("PNB Evaluation").[39] Examiners found that PNB's loan-to-deposit ratio was excellent, given area competition and the credit needs of the community. Examiners also found that the majority of the bank's loans by number and dollar amount were originated within its AA

[37] The Peoples Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. Examiners reviewed HMDA loans from 2010 and 2011 and business loans from a six-month period that ended June 12, 2012. Examiners also reviewed community development activities (loans, investments, and services), from June 21, 2010, through August 6, 2012.

[38] The Peoples Bank Evaluation included full-scope evaluations in the Kansas City, Missouri-Kansas MSA, and the Albuquerque, New Mexico MSA. Limited scope evaluations were performed in the Lawrence, Kansas MSA and Non-Metropolitan, Taos County, New Mexico Non-MSA.

[39] The PNB Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed commercial real estate loans from January 2006 through May 2011, and HMDA loans from January 1, 2010, through March 31, 2011. The PNB Evaluation included a full-scope review of the bank's AA, the El Paso County, Colorado MSA.

and its overall lending to borrowers of different incomes and to small businesses was reasonable. Examiners determined that the bank's lending to small businesses was excellent and noted that the bank's distribution of loans to small businesses exceeded the demographic comparator.

Examiners found that the geographic distribution of PNB's residential real estate loans reflected reasonable dispersion throughout the geographies for different income levels. Examiners also found that the geographic distribution of PNB's business loans within the bank's AA was excellent.

Additional Convenience and Needs Considerations

The Board has entered into a Consent Order with Peoples Bank with respect to deceptive practices in violation of section 5 of the Federal Trade Commission Act,[40] which were centered in Peoples Bank's national mortgage business line. This business line, which is separate and apart from the Bank's community banking operations, is being terminated and is not being assumed by NBH as part of this proposal. Pursuant to the Consent Order, Peoples Bank has agreed to pay restitution to affected customers and to set aside at least $2.8 million for this purpose. Because NBH is not a party to the Consent Order, this order is conditioned on NBH's commitment to cause NBH Bank to comply with Peoples Bank's restitution and related Consent Order obligations.

The Board also considered other potential effects of the proposal on the convenience and needs of the communities to be served. NBH represents that it does not have any plans to discontinue any product or service currently offered by Peoples Bank or PNB. NBH represents that, following the proposed transaction, its customers would gain access to products and services not currently offered by NBH Bank, including wealth and investment services through a third-party broker-dealer relationship and health savings accounts and payroll services through another third-party relationship. In addition, NBH represents that the proposed transaction would provide expanded product capabilities to customers of Peoples Bank and PNB, including access to NBH Bank's credit card offerings, a merchant-funded debit card cash back program, and various online banking features, such as wire transfers, person-to-person payments, and personal financial management tools. In addition, NBH represents that customers of NBH and Peoples would benefit from a larger branch and ATM 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 consumer protection laws, confidential supervisory information, information provided by NBH, 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

[40] 15 U.S.C. § 45.

consider a proposal's "risk to the stability of the United States banking or financial system."[41]

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.[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 United States 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 consumer and commercial banking activities.[45] 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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

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[41] Dodd-Frank Act §§ 604(d) & (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).

[42] Many of the metrics considered by the Board measure an institution's activities relative to the United States 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 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.

[45] NBH offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Peoples also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, NBH 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.

Establishment of Branches

NBH Bank has applied under section 9 of the FRA to establish branches at the current locations of Peoples Bank and PNB.[46]The Board has assessed the factors it is required to consider when reviewing an application under that section.[47] Specifically, the Board has considered NBH 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 BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants 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 applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective November 28, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

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[46] *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. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also 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) & (c). In addition, under section 44 of the FDI Act, a bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, NBH Bank's branches would be permissible under applicable state law. *See* Kan. Stat. Ann. § 9-1111(b); Colo. Rev. Stat. §§ 11-105-602 and 603; N.M. Stat. Ann. § 58-5-2.

[47] 12 U.S.C. § 322; 12 CFR 208.6.

Appendix

Branches to Be Established by NBH Bank

1. 745 New Hampshire Street, Lawrence, Kansas 66044
2. 4831 West 6th Street, Lawrence, Kansas 66049
3. 1506 South Main Street, Ottawa, Kansas 66067
4. 434 South Main Street, Ottawa, Kansas 66067
5. 7579 West 151st Street, Overland Park, Kansas 66223
6. 3045 Iowa Street, Lawrence, Kansas 66046
7. 212 South Broadway Street, Louisburg, Kansas 66053
8. 13180 Metcalf Avenue, Overland Park, Kansas 66213
9. 5 Supermarket Road, Questa, New Mexico 87556
10. 121 East Main Street, Red River, New Mexico 87558
11. 710 Paseo Del Pueblo Sur, Suite A, Taos, New Mexico 87571
12. 219 Paseo Del Pueblo Norte, Taos, New Mexico 87571
13. 2155 Louisiana Boulevard Northeast, Suite 1000, Albuquerque, New Mexico, 87110
14. 1356 Paseo Del Pueblo Sur, Taos, New Mexico 87571
15. 19 North Tejon, Suite 100, Colorado Springs, Colorado 80903
16. 5175 North Academy Boulevard, Colorado Springs, Colorado 80918
17. 13725 Struthers Road, Suite 200, Colorado Springs, Colorado 80921
18. 400 Harrison Avenue, Leadville, Colorado 80461
19. 1899 Woodmoor Drive, Monument, Colorado 80132
20. 651 Scott Avenue, Woodland Park, Colorado 80863

CenterState Bank Corporation
Winter Haven, Florida

Order Approving the Acquisition of a Bank Holding Company
FRB Order. No 2017–35 (December 6, 2017)

CenterState Bank Corporation ("CenterState"), Winter Haven, Florida, 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 HCBF Holding Company, Inc. ("HCBF"), and thereby indirectly acquire Harbor Community Bank ("Harbor Bank"), both of Fort Pierce, Florida. Following the proposed acquisition, Harbor Bank would be merged into CenterState's subsidiary bank, CenterState Bank, National Association ("CenterState Bank"), Winter Haven, Florida.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 45587 (September 29, 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.

CenterState, with consolidated assets of approximately $6.8 billion, is the 171st largest insured depository organization in the United States.[5] CenterState controls 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.[6] CenterState controls CenterState Bank, which operates only in Florida. CenterState is the 21st largest insured depository organization in Florida, controlling deposits of approximately $4.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[7]

HCBF, with consolidated assets of approximately $2.2 billion, is the 415th largest depository organization in the United States. HCBF controls approximately $1.8 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. HCBF controls Harbor Bank, which operates only in Florida.[8] HCBF is the 44th largest insured depository organization in Florida, controlling deposits of approximately $1.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, CenterState would become the 148th largest insured depository organization in the United States, with consolidated assets of approximately $9.2 billion after adjustments, which represent less than 1 percent of the total assets of

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Harbor Bank into CenterState Bank, which is expected to occur immediately after CenterState's acquisition of HCBF, is subject to the approval of the Office of the Comptroller of the Currency ("OCC"), pursuant to section18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the bank merger on November 29, 2017.

4 12 CFR 262.3(b).

5 National asset and deposit data and market share are as of September 30, 2017, unless otherwise noted. National ranking data are as of June 30, 2017.

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

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

8 The proposal does not raise interstate issues under section 3(d) of the BHC Act because Florida is the home state of both CenterState and Harbor Bank, and Harbor Bank operates only in Florida. *See* 12 U.S.C. § 1842(d).

insured depository organizations in the United States. CenterState would control consolidated deposits of approximately $7.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Florida, CenterState would become the 17th largest depository organization, controlling deposits of approximately $5.6 billion, which represent approximately 1.0 percent of the total deposits of insured depository institutions in that state.[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.[10] 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.[11]

CenterState and HCBF have subsidiary depository institutions that compete directly in 11 banking markets in Florida. 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 markets, the relative shares of the total deposits in insured depository institutions in the markets ("market deposits") that CenterState 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 markets.

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[9] In addition to the proposed acquisition of HCBF, CenterState has proposed to acquire Sunshine Bancorp, Inc. ("Sunshine"), a savings and loan holding company, and Sunshine's subsidiary federal savings association, Sunshine Bank, both of Plant City, Florida. The OCC approved CenterState Bank's application for the merger of Sunshine Bank into CenterState Bank on October 26, 2017. The General Counsel of the Board has opined that no regulatory purpose would be served by requiring a filing under section3of the BHC Act for CenterState to acquire Sunshine. Letter to Beth S. DeSimone dated September 21, 2017; *see also* 12 CFR225.12(d)(2). CenterState plans to complete the acquisition of Sunshine in the first calendar quarter of 2018.

Upon consummation of CenterState's proposed acquisition of both Sunshine and HCBF, CenterState would become the 136th largest insured depository organization in the United States, with consolidated assets of approximately $10.2 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. CenterState would control consolidated deposits of approximately $7.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Florida, CenterState would become the 16th largest depository organization, controlling deposits of approximately $6.3 billion, which represent approximately 1.2 percent of the total deposits of insured depository institutions in that state.

[10] 12 U.S.C. § 1842(c)(1)(A).

[11] 12 U.S.C. § 1842(c)(1)(B).

[12] Local deposit and market share data are as of June 30, 2017, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 52 (1991).

[13] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that 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.

Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Fort Pierce, Gainesville, Indian River, Ocala, Okeechobee, Orlando, Saint Augustine, Sarasota, Tampa Bay, and West Palm Beach banking markets.[14] On consummation, the Sarasota and West Palm Beach banking markets would remain unconcentrated, the Okeechobee banking market would remain highly concentrated, and the other seven banking markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in these markets would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in these banking markets.

Banking Market Warranting Special Scrutiny

The competitive effects that consummation of the proposal would have in the Palatka Area, Florida, banking market ("Palatka banking market")[15] warrant a detailed review because the proposal would result in concentration levels which exceed the thresholds in the DOJ Bank Merge Guidelines.[16] Using the initial competitive screening data, CenterState is the fourth largest depository organization in the Palatka banking market, controlling deposits of approximately $78.6 million, which represent approximately 14.2 percent of market deposits. HCBF is the sixth largest depository organization in the market, controlling deposits of approximately $60.5 million, which represent approximately 10.9 percent of market deposits. On consummation of the proposal, the combined entity would be the largest depository organization in the Palatka market, controlling deposits of approximately $139.1 million, which would represent approximately 25.2 percent of market deposits. The HHI in the market would increase by 311 points, from 1,820 to 2,131.

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 Palatka banking market.[17] Factors indicate that the increase in concentration in the Palatka 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 two credit unions in the Palatka banking market. These 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.[18] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50 percent weight in estimating

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[14] The banking markets and the competitive effects of the proposal in these markets are described in the Appendix. Consummation of the proposal would be within the thresholds of the DOJ Bank Merger Guidelines in these markets even if CenterState's proposed acquisition of Sunshine is taken into account.

[15] The Palatka banking market is defined as Putnam County and the Hastings area of St. Johns County, both in Florida.

[16] The analysis of this banking market would not change if CenterState's proposed acquisition of Sunshine is taken into account, as Sunshine does not operate in the Palatka banking market.

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

[18] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., Central Bancompany, Inc*., FRB Order No. 2017-03 (February 8, 2017); *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).

market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

After consummation, adjusting to reflect competition from these credit unions, the market concentration level in the Palatka banking market as measured by the HHI would increase by 236 points, from a level of 1,466 to 1,701, and the market share of CenterState resulting from the transaction would increase from 12.4 percent to 21.9 percent.

The Board also has examined other aspects of the structure of the Palatka banking 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 Palatka market. After consummation of the proposal, CenterState would face competition from the two credit unions and five commercial banks. Excluding CenterState, four of these competitors would each control over 10 percent of market deposits, including one with a market share of over 20 percent. The presence of these viable competitors suggests that CenterState would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on CenterState in the Palatka banking market.

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 Palatka 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, in particular the structure of the relevant markets, the number of remaining competitors, 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 Palatka banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[19] 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. 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.

[19] 12 U.S.C. § 1842(c)(2), (5), and (6).

CenterState and CenterState Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is funded primarily through an exchange of shares, with a subsequent merger of the subsidiary depository institutions.[20] The asset quality, earnings, and liquidity of both CenterState Bank and Harbor Bank are consistent with approval, and CenterState 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 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 CenterState, HCBF, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by CenterState; 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.

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

The Board also has considered CenterState's plans for implementing the proposal. CenterState 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. CenterState would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, CenterState'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 CenterState'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 CenterState and HCBF 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.[21] 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

[20] At the time of the merger, each share of HCBF common stock would be converted into a right to receive CenterState common stock and cash, based on an exchange ratio. CenterState would fund the cash portion of the exchange through available cash and borrowing from a third party. CenterState has the financial resources to fund the transaction.

[21] 12 U.S.C. § 1842(c)(2).

Community Reinvestment Act of 1977 ("CRA").[22] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' 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 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, and information provided by the applicant. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of CenterState Bank and Harbor Bank, the compliance records of both banks, supervisory information from the OCC and the Federal Deposit Insurance Corporation ("FDIC"), and information provided by CenterState.

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 provided by the appropriate federal supervisors.[25] In this case, the Board considered the supervisory views of the OCC 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.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution, such as CenterState Bank, in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[27] in addition to small business, small farm, and

[22] 12 U.S.C. §2901 *et seq*.

[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

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

[26] 12 U.S.C. § 2906.

[27] 12 U.S.C. § 2801 *et seq*.

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;[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.[29] Large institutions are also subject to an investment test that evaluates the number and amounts of qualified investments that benefit their assessment areas and 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.[30] Intermediate small banks, such as Harbor Bank, 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.[31]

CRA Performance of CenterState Bank

CenterState Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of April 6, 2015 ("CenterState Bank Evaluation").[32] The bank received "High Satisfactory" ratings for the Lending Test and the Service Test and a "Low Satisfactory" rating for the Investment Test.[33]

Examiners found that CenterState Bank's overall lending activity in its AAs was good and noted that the majority of the bank's loans were originated in the bank's AAs. Examiners noted that the bank's home mortgage lending reflected adequate penetration among different geographies and borrower income levels. Additionally, examiners noted that the bank's small loans to businesses reflected an excellent penetration among different geographies and borrower income levels. Examiners also found that the bank's community development lending had a positive impact on the bank's overall lending performance.

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[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] *See* 12 CFR 228.22(b).

[30] *See* 12 CFR 228.21 *et seq*.

[31] *See* 12 CFR 228.26(c).

[32] The CenterState Bank Evaluation was conducted using the Large Bank CRA Examination Procedures. Examiners reviewed HMDA loans and small business loans reported by CenterState Bank for 2012, 2013, and 2014. Examiners reviewed community development activities from March 6, 2012, through April 6, 2015.

[33] The CenterState Bank Examination included full-scope evaluations of three AAs, the Lakeland-Winter Haven, Florida, Metropolitan Statistical Area ("MSA"); the Orlando-Kissimmee-Sanford, Florida, MSA; and the Tampa-St. Petersburg-Clearwater, Florida MSA. Limited-scope evaluations were performed in the Fort Lauderdale-Pompano Beach-Deerfield Beach, Florida, Metropolitan Division ("MD"); West Palm Beach-Boca Raton-Delray Beach, Florida, MD; Deltona-Daytona Beach-Ormond Beach, Florida, MSA; Homosassa Springs, Florida, MSA; Jacksonville, Florida, MSA; Ocala, Florida, MSA; Port St. Lucie, Florida, MSA; Sebastian-Vero Beach, Florida, MSA; The Villages, Florida, MSA; and in Hendry, Okeechobee, and Putnam counties, all in Florida.

Examiners found that the bank's performance under the Investment Test was adequate. Examiners noted that the bank had a significant level of qualified investments, but that its investments were statewide or regional in scope and were, therefore, less responsive to AA needs. Examiners found that the bank's performance under the Service Test was good. Examiners noted that the bank's retail delivery systems were accessible to the bank's geographies and to individuals of different income levels within its AAs. Examiners also noted that the bank provided an adequate level of community services.

CRA Performance of Harbor Bank

Harbor Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of August 8, 2016 ("Harbor Bank Evaluation").[34] The bank received "Satisfactory" ratings for the Lending Test and the Community Development Test.[35]

Examiners found that Harbor Bank's loan-to-deposit ratio was reasonable given the institution's size and financial condition and the credit needs of the bank's AAs. Examiners noted that a substantial majority of the bank's loans were originated within the bank's AAs and that the geographic distribution of the bank's loans reflected a reasonable dispersion throughout the bank's AAs. Examiners also noted that the distribution of borrowers reflected a reasonable penetration among individuals of different income levels and businesses of different sizes. Additionally, examiners noted that Harbor Bank had not received any CRA-related complaints since its previous evaluation.

Examiners found that Harbor Bank demonstrated an adequate responsiveness to the community development needs of its AAs. Examiners noted that the institution met those needs through community development loans, qualified investments, and community development services, as appropriate.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of CenterState Bank conducted by the OCC, 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 the most recent consumer compliance examination of Harbor Bank conducted by the FDIC, which included a review of the bank's consumer compliance function.

The Board has taken this information, as well as the CRA performance records of CenterState Bank and Harbor Bank, into account in evaluating the proposed transaction, including in considering whether CenterState has the experience and resources to ensure that it helps to meet the credit needs of the communities within its AAs.

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[34] The Harbor Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the Lending Test and the Community Development Test. Examiners reviewed HMDA loans reported by the bank for 2014, 2015, and the first six months of 2016, as well as small business loans originated by the bank in 2015 and the first six months of 2016. Examiners reviewed community development activities from July 23, 2013, through August 8, 2016.

[35] The Harbor Bank Evaluation included full-scope evaluations of ten AAs, all located within Florida: the Port St. Lucie AA (composed of Martin and St. Lucie counties); the Orlando AA (composed of Lake, Orange, Osceola, and Seminole counties); the St. Johns AA (composed of St. Johns County); the North Port AA (composed of Manatee and Sarasota counties); the Gainesville AA (composed of Alachua and Gilchrist counties); the Highlands AA (composed of Highlands County); the Marion AA (composed of Marion County); the Indian River AA (composed of Indian River County); the Palm Beach AA (composed of portions of Palm Beach County); and an AA composed of Okeechobee and Putnam counties.

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. CenterState represents that it has no plans to discontinue any significant product or service currently offered by CenterState Bank or Harbor Bank. CenterState also represents that, following the proposed transaction, customers of Harbor Bank would have access to a broader range of products and services than is currently available to them. CenterState asserts that, following the proposed transaction, CenterState Bank would continue to provide a level of service consistent with or exceeding CenterState 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 consumer protection laws, supervisory information from the OCC and the FDIC, information provided by CenterState, 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 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.[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 United States 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 United States 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 a variety of consumer and 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 a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all 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 CenterState 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 Federal Reserve Bank of Atlanta, acting under delegated authority.

By order of the Board of Governors, effective December 6, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

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[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.

[40] CenterState primarily offers consumer and business loan and deposit products, with a focus on commercial lending. HCBF primarily offers commercial, residential, and consumer loan and deposit products, with a focus on home mortgage lending. In each of the activities in which it engages, CenterState 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.

Appendix

CenterState/HCBF 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
Fort Pierce Area, Florida ("Fort Pierce")– includes St. Lucie County and Martin County minus the towns of Indiantown and Hobe Sound.						
CenterState Pre-Consummation	8	$439.1M	5.07			
HCBF	10	$316.6M	3.65			
CenterState Post-Consummation	5	$755.7M	8.72	1071	37	18
Gainesville Area, Florida ("Gainesville")– includes Alachua, Gilchrist, and Levy counties.						
CenterState Pre-Consummation	11	$76.6M	1.64			
HCBF	8	$187.6M	4.03			
CenterState Post-Consummation	8	$264.2M	5.67	1301	13	18
Indian River County, Florida ("Indian River")– includes Indian River County.						
CenterState Pre-Consummation	14	$68.0M	1.66			
HCBF	15	$41.8M	1.02			
CenterState Post-Consummation	12	$109.8M	2.68	1035	3	15
Ocala Area, Florida ("Ocala") – includes Marion County and the town of Citrus Springs in Citrus County.						
CenterState Pre-Consummation	7	$360.4M	6			
HCBF	15	$59.4M	0.99			
CenterState Post-Consummation	7	$419.7M	6.99	1145	12	21
Okeechobee County, Florida ("Okeechobee")– includes Okeechobee County.						
CenterState Pre-Consummation	4	$63.5M	12.44			
HCBF	6	$35.0M	6.87			
CenterState Post-Consummation	3	$98.5M	19.31	2067	171	5
Orlando Area, Florida ("Orlando")– includes Orange, Osceola, and Seminole counties, the western half of Volusia County, and the towns of Clermont and Groveland in Lake County.						
CenterState Pre-Consummation	14	$598.6M	1.3			
HCBF	25	$163.4M	0.35			
CenterState Post-Consummation	11	$762.0M	1.65	1346	1	42
Saint Augustine Area, Florida ("Saint Augustine")– includes St. Johns County minus the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, Switzerland, and Hastings.						
CenterState Pre-Consummation	15	$20.2M	0.99			
HCBF	4	$213.2M	10.47			
CenterState Post-Consummation	4	$233.4M	11.47	1148	21	14
Sarasota Area, Florida ("Sarasota")– includes Manatee County, Sarasota County less the portion that is both east of the Myakka River and south of Interstate 75 (including the town of North Port), the peninsular portion of Charlotte County west of the Myakka River that includes the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West, and Placida, and Gasparilla Island, including the town of Boca Grande in Lee County.						
CenterState Pre-Consummation	17	$292.1M	1.43			
HCBF	20	$235.8M	1.15			
CenterState Post-Consummation	10	$527.9M	2.58	942	1	35
Tampa Bay Area, Florida ("Tampa Bay")– includes Hernando, Hillsborough, Pinellas, and Pasco counties.						
CenterState Pre-Consummation	14	$824.9M	1.02			
HCBF	30	$238.1M	0.29			
CenterState Post-Consummation	11	$1,062.9M	1.31	1137	1	56
West Palm Beach Area, Florida ("West Palm Beach")– includes Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County.						
CenterState Pre-Consummation	19	$377.5M	0.75			
HCBF	36	$67.0M	0.13			
CenterState Post-Consummation	18	$444.5M	0.89	991	0	47

Note: Data and rankings are as of June 30, 2017. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Robertson Holding Company, L.P.
Harrogate, Tennessee

Unified Shares, LLC
Harrogate, Tennessee

Commercial Bancgroup, Inc.
Harrogate, Tennessee

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, the Establishment of Branches, and Determination on Financial Holding Company Elections
FRB Order No. 2017–36 (December 15, 2017)

Commercial Bancgroup, Inc., and its parent companies, Robertson Holding Company, L.P., and Unified Shares, LLC, all of Harrogate, Tennessee (collectively, "Commercial"), all 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] for Commercial Bancgroup, Inc. to merge with Citizens Bancorp, Inc. ("Citizens"), and thereby indirectly acquire Citizens' subsidiary bank, Citizens Bank, both of New Tazewell, Tennessee.

In addition, Commercial's subsidiary state member bank, Commercial Bank, Harrogate, Tennessee, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Citizens Bank, with Commercial Bank as the surviving entity.[3] Commercial 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 Citizens Bank.[4] Robertson Holding Company, L.P., and Unified Shares, LLC, have filed with the Board elections to become financial holding companies 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 (82 *Federal Register* 44183 (September 21, 2017)).[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, 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").

Commercial is the 784th largest insured depository organization in the United States. Commercial controls approximately $760.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] Commercial controls Commercial Bank, which operates in Tennessee and Kentucky. Commercial is the 42nd largest insured depository organization in

1 12 U.S.C. § 1841 *et seq*.
2 12 U.S.C. § 1842.
3 12 U.S.C. § 1828(c).
4 12 U.S.C. § 321. These branch locations are listed in the Appendix.
5 12 U.S.C. §§ 1843(k) and (*l*); 12 CFR 225.82.
6 12 CFR 262.3(b).
7 National deposit, market share, and ranking data are as of June 30,2017, unless otherwise noted.

Tennessee, controlling approximately $536.2 million in deposits, which represent approximately 0.4 percent of the total deposits of insured depository institutions in that state.[8]

Citizens is the 3001st largest insured depository organization in the United States. Citizens controls approximately $179.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Citizens controls Citizens Bank, which operates in Tennessee.[9] Citizens is the 115th largest insured depository organization in Tennessee, controlling approximately $146.9 million in deposits, which represent approximately 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Commercial would become the 635th largest insured depository organization in the United States, with consolidated assets of approximately $1.1 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Commercial would control consolidated deposits of approximately $939.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Tennessee, Commercial would become the 31st largest insured depository organization, controlling deposits of approximately $683.1 million, which represent approximately 0.5 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.[10] 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.[11]

Commercial and Citizens have subsidiary depository institutions that compete directly in the Middlesboro Area, KY-TN-VA banking market ("Middlesboro market").[12] 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 of insured depository institutions in the market ("market deposits") that Commercial would control;[13] 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");[14] and other characteristics of the Middlesboro market.

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[8] State deposit, market share, and ranking data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[9] The proposal does not raise interstate issues under section 3(d) of the BHC Act because Tennessee is the home state of both Commercial and Citizens Bank, and Citizens Bank operates only in Tennessee. *See* 12 U.S.C. § 1842(d).

[10] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[11] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[12] The Middlesboro market is defined as Bell County, Kentucky, and Claiborne County, Tennessee; plus the towns of Rose Hill and Ewing in Lee County, Virginia.

[13] Local deposit and market share data are as of June 30, 2017.

[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

The competitive effects of the proposal in the Middlesboro market warrant a detailed review because the proposal would result in a concentration level that would exceed the thresholds in the DOJ Bank Merger Guidelines and would result in the market deposit share of Commercial exceeding 35 percent when using initial competitive screening data. Commercial is the largest competitor in the Middlesboro market, controlling approximately $281.6 million in deposits, which represent approximately 22.7 percent of market deposits. Citizens is the fifth largest depository organization in the Middlesboro market, controlling approximately $110.9 million in deposits, which represent approximately 12.6 percent of market deposits. On consummation of the proposal, Commercial would remain the largest depository organization in the Middlesboro market, controlling approximately $392.5 million in market deposits, which would represent approximately 35.3 percent of market deposits. The HHI in this market would increase by 571 points, from 1626 to 2197.

The Board has considered whether 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 Middlesboro market.[15] Several factors indicate that the increase in concentration in the Middlesboro market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market.

The Middlesboro market is a relatively small, rural banking market and would continue to be served by nine depository institutions after consummation of the proposal. These include, apart from Commercial, one depository institution with more than a 20 percent share of market deposits, two depository institutions each with more than a 14 percent share of market deposits, and one depository institution with more than a five percent share of market deposits. In addition, the Board has considered the competitive influence of two credit unions among the nine depository institutions remaining in the Middlesboro market. These credit unions have broad membership criteria, offer a wide range of consumer banking products and operate street-level branches.[16] Separated by state lines, each of these credit unions serves only a portion of the Middlesboro market. For that reason, the Board does not find that circumstances support including the deposits of these credit unions in its calculations to estimate market influence. Nevertheless, the presence of these viable credit unions, along with the other depository institutions in the Middlesboro market, suggests that Commercial would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Commercial in the Middlesboro market.[17] The presence of the nine depository institu-

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 (August19,2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[15] 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).

[16] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp*., FRB Order No. 2016-10 (June 28, 2016); *Mitsubishi UFJ Financial Group, Inc*., FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc*. (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc*., 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc*., 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

[17] An additional assessment of the transaction, based on competitors' shares of the total number of branches in the market, also supports the view that the structural effects of the transaction would not substantially lessen competition. Branches are one way banks attract customers and are able to provide services to customers throughout the market. *See, e.g.*, Katherine Ho and Joy Ishi, "Location and Competition in Retail Banking," *International Journal of Industrial Organization*, vol. 29, no. 5, pp. 537-546 (2011); Astrid Dick, "Demand Esti-

tions, including Commercial, together indicates that the structural effects of the transaction would not substantially lessen competition.

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 Middlesboro 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 market, the number of remaining competitors, 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 Middlesboro 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.[18] 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. 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.

Commercial and Commercial Bank are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger with a subsequent merger of the subsidiary depository institutions.[19] The asset quality, earnings, and liquidity of both Commercial Bank and Citizens Bank are consistent with approval, and Commercial appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects under the proposal are considered consistent with approval.

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mation and Consumer Welfare in the Banking Industry," *Journal of Banking and Finance*, vol. 32, no. 8, pp. 1661-1676 (2008); and Robert M. Adams, Kenneth P. Brevoort, and Elizabeth K. Kiser, "Who Competes with Whom? The Case of Depository Institutions," *Journal of Industrial Economics*, vol. 55, no. 1, pp. 141-167 (2007). The increase in pro forma branch HHI, defined as the sum of the squared branch share for each institution in the market (where the branch share is defined as an institution's number of branches in the market divided by the total number of branches in the market), in the Middlesboro market would be 255 points to a level of 1786.

[18] 12 U.S.C. §§ 1842(c)(2), (5), & (6), and 1828(c)(5) & (11).

[19] As part of the proposed transaction, each share of Citizens' common stock would be converted into a right to receive cash based on a formula related to Citizens' total equity on the last day of the month preceding closing. Commercial has the financial resources to effect the proposed transaction.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Commercial, Citizens, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Commercial; 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.

Commercial, Citizens, and their subsidiary depository institutions are each considered to be well managed. Commercial has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of Commercial have substantial knowledge of and experience in the banking and financial services sectors, and Commercial's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Commercial's plans for implementing the proposal. Commercial 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. Commercial would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Commercial's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all of the facts of record, including Commercial'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 Commercial and Citizens 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.[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 these communities, 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 bank expansionary proposals.[23]

[20] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).
[21] 12 U.S.C. § 2901 *et seq*.
[22] 12 U.S.C. § 2901(b).
[23] 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 the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicants. 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 Commercial Bank and Citizens Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") and the FDIC; confidential supervisory information; and information provided by Commercial.

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.[24] In this case, the Board considered the supervisory views of the 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.[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 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 data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[26] automated loan reports, and other reports generated by the institution 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 institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas ("AAs"), 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 any written complaints about its performance.[27] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts of their community development loans and qualified investments, the extent to which they

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

[25] 12 U.S.C. § 2906.

[26] 12 U.S.C. § 2801 *et seq*.

[27] *See* 12 CFR 228.26(b).

provide community development services, and their responsiveness to community development lending, investment, and service needs.[28]

CRA Performance of Commercial Bank

Commercial Bank was assigned an overall "Satisfactory" rating by the Reserve Bank at its most recent CRA performance evaluation, as of September 21, 2015 ("Commercial Bank Evaluation").[29] The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test."[30] Greater weight was given to performance in Tennessee because of the higher percentage of bank deposits, branches, and loans in that state.

Examiners concluded that Commercial Bank was responding to the credit needs of its AAs. In particular, examiners found that the loan-to-deposit ratio was reasonable given the bank's size, financial condition, and AA credit needs. Examiners noted that the geographic distribution of loans reflected reasonable dispersion throughout the AAs and that the distribution of loans reflected reasonable penetration among individuals of different income levels and businesses of different sizes.

Examiners noted that Commercial Bank's community development performance, which included loans, investments, and services, demonstrated adequate responsiveness to community development needs throughout the bank's AAs. Examiners also noted that bank representatives provided community service hours to benefit LMI families and small businesses throughout the bank's AAs.

CRA Performance of Citizens Bank

Citizens Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 9, 2015 ("Citizens Bank Evaluation").[31] Examiners focused on the bank's loan-to-deposit ratio and lending record within the bank's AAs. Examiners found that Citizens Bank's loan-to-deposit ratio reflected reasonable responsiveness to the credit needs of the AAs, given the institution's size, financial condition and AAs. Examiners also found that the majority of the bank's home mortgage and small business lending was originated within its AAs, and its overall lending to borrowers of different incomes was reasonable. Examiners determined that the bank's small business lending reflected excellent performance.

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[28] *See* 12 CFR 228.26(c).

[29] The Commercial Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed HMDA-reportable loans and a sample of commercial loans originated from January1,2013, through December31,2014. The evaluation period for community development lending, investments, and services was from April17,2012, to September 20,2015.

[30] The Commercial Bank Evaluation included a full scope evaluation of the bank's AA consisting of Knox and Union counties within the Knoxville, Tennessee Metropolitan Statistical Area ("MSA"), as well as its AA consisting of Bell-Harlan and Knox counties in Kentucky, which are not part of an MSA. A limited scope evaluation was performed of the bank's AA consisting of Claiborne County, Tennessee, which is not part of any MSA, and of the bank's AA consisting of Sullivan County within the Kingsport-Bristol-Bristol, Tennessee-Virginia MSA.

[31] The Citizens Bank Evaluation was conducted using the Small Bank Examination Procedures. Examiners reviewed a sample of small business loans originated from January 1, 2012, to December 31, 2014, and also reviewed all HMDA-reportable loans for 2013 and 2014. The Citizens Bank Evaluation included a full scope evaluation of the bank's AA located within Claiborne County, Tennessee, which is not part of any MSA. A limited scope evaluation was performed of the portion of the bank's AA located within the Knoxville, Tennessee MSA and of the bank's AA consisting of Hamblen County, which is part of the Morristown, Tennessee MSA.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Commercial Bank 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. The Board has also considered the results of the most recent consumer compliance examination of Citizens Bank conducted by the FDIC, which included a review of the bank's consumer compliance function.

The Board has taken this information, as well as the CRA performance records of Commercial Bank and Citizens Bank, into account in evaluating the proposed transaction, including in considering whether Commercial has the experience and resources to ensure that Commercial Bank helps to meet the credit needs of the communities within its AAs.

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. Commercial represents that the combined organization, with its greater size and capabilities, would have an increased lending limit and thereby would increase the availability of credit to customers and potential customers of both banks, including small- to mid-sized businesses. In addition, Commercial represents that customers of Citizens Bank would benefit from Commercial Bank's expansive branch network, and customers of Commercial Bank would benefit from additional banking offices in Claiborne and Hamblen counties, Tennessee, as well as a loan production office in Sullivan County, Tennessee. Commercial also represents that customers in communities served by Citizens Bank will benefit from the availability of additional products and services currently offered by Commercial Bank. Finally, Commercial represents that the increased size and scale of the combined organization may permit it to develop and expand product and service offerings to its customers.

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 Reserve Bank and the FDIC, confidential supervisory information, information provided by Commercial, 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."[32]

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

[32] Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

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.[33] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[34]

The Board'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.[35]

In this case, the Board has considered information relevant to risks to the stability of the United States 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 and commercial banking activities.[36] The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States 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

Commercial Bank has applied under section 9 of the FRA to establish branches at the current locations of Citizens Bank.[37] The Board has assessed the factors it is required to

[33] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[35] *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.

[36] Commercial offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Citizens also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, Commercial 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.

[37] *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. A national bank may retain any branch following a merger that under state law may be established as a new branch of the

consider when reviewing an application under that section.[38] Specifically, the Board has considered Commercial 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.[39] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Elections

As noted, Robertson Holding Company, L.P., and Unified Shares, LLC, have elected to become financial holding companies in connection with the proposal. Robertson Holding Company, L.P., and Unified Shares, LLC, have certified that, upon consummation of the proposal, they and the depository institutions they would control would be well capitalized and well managed, and Robertson Holding Company, L.P., and Unified Shares, LLC, have provided all the information required under the Board's Regulation Y.[40] Based on all the facts of record, the Board determines that the elections by Robertson Holding Company L.P., and Unified Shares, LLC, will become effective upon consummation of the proposal if, on that date, they are well capitalized and well managed and all depository institutions they control are well capitalized, well managed, and have CRA ratings of at least "Satisfactory."

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Commercial and Commercial 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 applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective December 15, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§36(b)(2) and (c). Upon consummation, Commercial Bank's branches would be permissible under applicable state law. *See* Tenn. Code Ann. § 45-2-614.

[38] 12 U.S.C. § 322; 12 CFR 208.6.

[39] Upon consummation of the proposed transaction, Commercial Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

[40] *See* Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(*l*)(1).

Appendix

Branches to Be Established by Commercial Bank

1. 130 South Broad Street, New Tazewell, Tennessee 37825
2. 7100 Cumberland Gap Parkway, Harrogate, Tennessee 37752
3. 155 Terrace Lane, Morristown, Tennessee 37813

NATCOM Bancshares, Inc.
Superior, Wisconsin

Order Approving the Acquisition of Shares of a Bank Holding Company
FRB Order No. 2017–37 (December 18, 2017)

NATCOM Bancshares, Inc. ("Natcom"), Superior, 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 acquire 49.0 percent of the voting shares of Republic Bancshares, Inc. ("Republic"), and thereby indirectly acquire control of Republic Bank, Inc. ("Republic Bank"), both of Duluth, Minnesota.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 50128 (October 30, 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.

Natcom is the 1227th largest insured depository organization in the United States by total assets.[5] Natcom controls approximately $493.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] Natcom controls National Bank of Commerce, Superior, Wisconsin, with assets of $610.0 million, which operates in Minnesota and Wisconsin. Natcom is the 168th largest insured depository institution in Minnesota, controlling deposits of approximately $89.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[7]

Republic is the 1751st largest insured depository organization in the United States by total assets. Republic controls approximately $305.4 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Republic Bank, with assets of $398.5 million, operates in Minnesota. Republic is the 56th largest insured depository institution in Minnesota, controlling deposits of approximately $290.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Management of Republic and Republic Bank opposes Natcom's proposal and submitted comments to the Board urging denial on several grounds. The Board previously has stated, in evaluating acquisition proposals, that it must apply the criteria in the BHC Act in the same manner to all proposals, whether they are supported or opposed by the management

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The BHC Act contemplates that a bank holding company may seek to acquire less than a majority interest in another bank holding company or bank. *See* 12 U.S.C. §1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a majority interest. *See, e.g., C-B-G, Inc*., 93 *Federal Reserve Bulletin* C88 (2007) (approving the acquisition of up to 35 percent of a bank holding company); *Juniata Valley Financial Corp*., 92 *Federal Reserve Bulletin* C171 (2006) (approving the acquisition of up to 39.2 percent of a bank). The Board notes, however, that the BHC Act requires Natcom to receive the Board's approval before directly or indirectly acquiring any additional shares of Republic or RepublicBank. *See* 12 U.S.C. § 1842(a)(3).

4 12 CFR 262.3(b).

5 National asset data are as of September 30, 2017. National deposit, ranking, and market-share data are as of June 30, 2017, unless otherwise noted.

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

7 State deposit, ranking, and market-share data are as of June 30, 2016, unless otherwise noted.

of the institutions to be acquired.[8] Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the Act. The Board has long held that, if the statutory criteria are met, withholding approval based on other factors, such as whether the proposal is acceptable to the management of the organization to be acquired, would be outside the scope of factors the Board is authorized to consider under the BHC Act.[9]

In evaluating the statutory factors under the BHC Act, the Board considered the information and views presented by the commenters and the information submitted by Natcom. In addition, the Board has consulted with relevant supervisory agencies and reviewed confidential supervisory information, including examination reports of the institutions involved. After a review of all the facts of record, and for the reasons discussed in this order, the Board has concluded that the statutory factors it is required to consider under the BHC Act are consistent with approval of the proposal.

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.[10] 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.[11] 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, if 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.[12]

For purposes of the BHC Act, the home state of Natcom is Wisconsin, and Republic Bank's home state is Minnesota.[13] Minnesota has a five-year minimum age requirement, and Republic Bank has been in existence for more than five years.[14]In addition, Natcom is well capitalized and well managed under applicable law, and its subsidiary bank, National Bank of Commerce, has an "Outstanding" rating under the Community Reinvestment Act of 1977 ("CRA").[15]

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[8] *See, e.g., Central Pacific Financial Corp.*, 90 *Federal Reserve Bulletin* 93, 93 (2004); *North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767, 768 (2000); *The Bank of New York Company, Inc.*, 74 *Federal Reserve Bulletin* 257, 258–59 (1988).

[9] *See supra* note 9.

[10] 12 U.S.C. § 1842(d)(1)(A).

[11] 12 U.S.C. § 1842(d)(1)(B).

[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 national bank's home state is the state in which the main office of the bank is located.

[14] *See* Minn. Stat. § 48.93 subd. 4(6).

[15] 12 U.S.C. § 2901 *et seq.*

On consummation of the proposed transaction, Natcom would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. In addition, Natcom would control less than 30 percent of the total deposits of insured depository institutions in Minnesota, the only state in which Natcom and Republic have overlapping banking operations.[16] The Board has considered all other requirements under section 3(d) of the BHC Act, including Natcom'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 proposal that would substantially lessen competition or tend to create a monopoly in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[17]

The Board's analysis of the competitive effects of the proposal assumes a full merger between Natcom, Republic, and their subsidiary banks, with Natcom and National Bank of Commerce as the surviving entities. Accordingly, the analysis assumes that Republic Bank would not compete independently of Natcom and National Bank of Commerce.[18]

National Bank of Commerce and Republic Bank compete directly in the Duluth, Minnesota banking market ("Duluth market").[19] The Board has considered the competitive effects of the proposed acquisition in the Duluth market. In particular, the Board has considered the number of competitors that would remain in the banking market; the rela-

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[16] Minnesota does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

[17] 12 U.S.C. § 1842(c)(1).

[18] *See ANB Holding Company, Ltd.*, 83 *Federal Reserve Bulletin* 902, 903–04 (1997) (approving ANB Holding Company, Ltd.'s ("ANB") acquisition of 41 percent of Lakeside Bancshares, Inc., a bank holding company that directly competed in the same banking market as ANB).

The commenters assert that by virtue of becoming a shareholder of Republic, Natcom would be able to access sensitive business and customer information regarding both Republic and Republic Bank that would allow Natcom to engage in anti-competitive behavior. Natcom represents that it entered into a consent order with the Minnesota Department of Commerce ("Department") in connection with the Department's recent approval of a corresponding application to the state to acquire an interest in Republic. The consent order limits Natcom's rights to receive certain information that otherwise would be available to any shareholder of Republic under Minnesota law. Pursuant to the consent order, Natcom would not have access to certain information regarding Republic's share register, records of shareholder and board proceedings, articles and bylaws, certain financial statements, reports made to shareholders, certain voting trust and other shareholder control agreements, names and business addresses of the directors and principal officers, agreements incorporated by reference into the articles of incorporation, and other information that would be available to any shareholder that could show that the request was for a proper purpose. *See* Minn.Stat. § 302A.461, sub.4. Republic has appealed the Department's order approving the application to a court of competent jurisdiction, which could as a result set aside the consent order, and has requested that the Board postpone its decision until the appeal is resolved fully. Action on this proposal would not interfere with the court's ability to resolve the pending litigation. *M&P Community Bancshares, Inc* ., 92 *Federal Reserve Bulletin* C156, C156 n.7 (2006).

[19] The Duluth market is defined as Lake County; Fairbanks, Ellsburg, Ault, Kelsey, Cotton, Pequaywan, Elmer, Meadowlands, Northland, North Star, Alden, Van Buren, Ness, Alborn, New Independence, Fredenberg, Gnesen, Normanna, Halden, Floodwood, Culver, Industrial, Grand Lake, Canosia, Rice Lake, Lakewood, Duluth, Prairie Lake, Fine Lakes, Arrowhead, Stoney Brook, Brevator, Solway, and Midway townships; the cities of Hermantown, Proctor, and Duluth; Potshot Lake and Whiteface Reservoir Unorganized Territories; and Linwood Lake Unorganized Territory south of a horizontal line drawn from the northern border of Ault Township in Saint Louis County; and Carlton County (minus Split Rock, Silver, Barnum, Moose Lake, and Holyoke townships and Clear Creek Unorganized Territory), all of Minnesota; and Douglas County, Wisconsin.

tive shares of total deposits of insured depository institutions in the market ("market deposits") that Natcom would control;[20] 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");[21] and other characteristics of the market.

Using the initial competitive screening data, National Bank of Commerce is the third largest depository institution in the Duluth market, controlling approximately $421.2 million in deposits, which represent 14.3 percent of market deposits. Republic Bank is the fourth largest depository institution in the market, controlling approximately $272.7 million in deposits, which represent 9.3 percent of market deposits. If considered a combined organization on consummation of the proposal, National Bank of Commerce would be the second largest depository institution in the Duluth market, controlling approximately $694.0 million in deposits, which would represent approximately 23.6 percent of market deposits. The HHI in this market would increase 265 points, from 1578 to 1843.

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 Duluth market.[22] In particular, five credit unions exert a competitive influence in the Duluth 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.[23] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50 percent weight in calculating market influence. This weighting takes into account the limited lending done by credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration in the Duluth market is less significant than would appear from the initial competitive screening data, which focused on commercial-bank and thrift competitors. After consummation, and adjusting to

[20] 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 market share calculations on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 52(1991).

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

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

[23] The 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). In this case, Superior Choice Credit Union, Members Cooperative Credit Union, Centricity Credit Union, HarborPointe Credit Union, and Northwoods Credit Union together control approximately $357.5 million in deposits in the Duluth market that, on a 50 percent weighted basis, represent approximately 10.8 percent of market deposits.

reflect competition from credit unions in the market, the market concentration level in the Duluth market as measured by the HHI would increase by 211 points, from 1282 to 1493, a level that would be within the DOJ Bank Merger Guidelines, and the market share of Natcom would increase to 21.0 percent. In addition to the five credit unions, 20 insured depository institutions other than Natcom would remain in the market, including one insured depository institution with a market share of more than 25 percent.

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the 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 Duluth market or in any other relevant banking market. Accordingly, the Board finds 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.[24] 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. 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. 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.

Natcom and National Bank of Commerce are both well capitalized and would remain so on consummation of the proposal.[25] The proposed acquisition would be funded from Natcom's cash on hand and proceeds from a loan.[26] The asset quality, earnings, and liquidity of Natcom are consistent with approval, and Natcom 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.[27] The Board has reviewed the examination records of Natcom, Republic, and their subsid-

[24] 12 U.S.C. § 1842(c)(2), (5), and (6).

[25] The commenters asserted that the proposed acquisition will negatively impact the financial condition and operations of Republic Bank through the loss of customers and certain key employees. The Board notes that Republic and Republic Bank would both remain well capitalized on consummation of the proposal, and Natcom, which is in satisfactory financial condition, has represented that it understands its statutory obligation to serve as a source of strength for Republic Bank. *See* 12 U.S.C.§ 1831*o*-1; 12 CFR 225.4(a)(1).

[26] Natcom has the financial resources to fund the proposal and the financial strength to support the debt obligation.

[27] The commenters asserted that Natcom's becoming a shareholder of Republic would cause Republic to lose its ability to be treated as an S corporation, which would result in the loss of significant tax savings for the owners

iary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Natcom, 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.

Natcom, Republic, and their subsidiary depository institutions are each considered to be well managed. Natcom's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and Natcom's risk-management program is consistent with approval of this expansionary proposal. The existing management and the risk management policies and practices of Republic and Republic Bank would remain in place following the proposed acquisition, and these are considered satisfactory from a supervisory perspective.

Based on all the facts of record, including the supervisory record and managerial and operational resources of Natcom, 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 records of effectiveness of Natcom and Republic 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.[28] 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 these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[29] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[30]

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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of Republic. In addition, the commenters asserted that Natcom's proposal could result in litigation between the shareholders of Republic because some courts have held that selling shares in a manner that results in the loss of S-corporation status is a breach of a minority shareholder's fiduciary duty to its majority shareholder. Loss of tax benefits for the owners of a firm and potential shareholder litigation are matters of general corporate and tax law to be adjudicated by courts. Those matters do not fall within the scope of statutory factors the Board is required to consider. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

[28] 12 U.S.C. § 1842(c)(2).

[29] 12 U.S.C. § 2901(b).

[30] 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 National Bank of Commerce and Republic Bank; the fair lending and compliance records of both banks; the supervisory views of the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC"); confidential supervisory information; information provided by Natcom; and the public comments received on the proposal.

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.[31] In this case, the Board considered the supervisory views of the OCC 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.[32] 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 data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[33] 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 the institution's (1) loan-to-deposit ratio, (2) loan originations for sale to the secondary market, (3) lending-related activities in its assessment areas ("AAs"), (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 the institution's performance. In addition to the lending test, intermediate small institutions, such as National Bank of Commerce, are subject to a community development test that evaluates the number and amounts 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.[34]

CRA Performance of National Bank of Commerce

National Bank of Commerce was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of March 7, 2016 ("National Bank of

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

[32] 12 U.S.C. § 2906.

[33] 12 U.S.C. § 2801 *et seq*.

[34] *See* 12 CFR 228.26.

Commerce Evaluation").[35] National Bank of Commerce received "Outstanding" ratings for both the Lending Test and the Community Development Test.[36]

Examiners determined that the bank's loan-to-deposit ratio was reasonable given the bank's size and AA credit needs. Examiners noted that a substantial majority of National Bank of Commerce's loans were originated in its AA. Examiners also noted that National Bank of Commerce's distribution of commercial loans reflected reasonable penetration among businesses of different sizes. In addition, examiners found that the bank's geographic distribution of business loans reflected excellent dispersion throughout the bank's AA.

Examiners found that National Bank of Commerce's community development activities showed excellent responsiveness to the bank's AA needs. Examiners noted that the bank's performance in extending community development loans was excellent and that the level of qualified investments demonstrated adequate responsiveness to community needs. Examiners also found that National Bank of Commerce's community development services were excellent and that the bank offered a variety of products and services to customers of all income levels and geographies.

CRA Performance of Republic Bank

Republic Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of July 10, 2017 ("Republic Bank Evaluation").[37] Republic Bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test.[38]

Examiners found that the bank's loan-to-deposit ratio was more than reasonable given the bank's size, financial condition, and AA credit needs. Examiners noted that the majority of the bank's small business and home mortgage loans were originated in its AA. Examiners also noted that Republic Bank's distribution of borrowers reflected reasonable penetration of loans among businesses of different sizes and individuals of different income levels. Examiners found that the geographic distribution of loans reflected reasonable dispersion of loans to small businesses and excellent dispersion of loans to individuals throughout the bank's AA.

Examiners found that Republic Bank demonstrated excellent responsiveness to its AA community development needs through community development loans and services. Examiners also noted that the bank's qualified investments reflected excellent responsiveness to its AA community development needs.

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[35] The National Bank of Commerce Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending and community development tests described above. The National Bank of Commerce Evaluation reviewed a sample of commercial loans from January 1, 2014, to December 31, 2015. Examiners also reviewed community development loans, investments, and services from May 1, 2012, to December 31, 2015.

[36] The National Bank of Commerce Evaluation reviewed the bank's activities in the Duluth, Minnesota–Wisconsin multistate metropolitan statistical area.

[37] The Republic Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. Examiners reviewed a sample of selected small business loans originated or renewed between January 1, 2016, and December 31, 2016, and all home mortgage loans reported on the bank's 2015 and 2016 HMDA loan application registers. Examiners reviewed community development loans, qualified investments, and community development services since June 4, 2014.

[38] The Republic Bank Evaluation reviewed the bank's activities in eastern Carlton and southern Saint Louis counties, both in Minnesota.

Views of the OCC

The Board has considered the record of National Bank of Commerce in complying with fair lending and other consumer protection laws. The OCC conducted a recent consumer compliance examination of National Bank of Commerce, which included a review of the bank's consumer compliance program and the bank's compliance with consumer protection laws and regulations. The Board has taken this information into account in evaluating this proposal.

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 Natcom, the 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.[39]

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."[40]

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.[41] 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.[42]

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

[39] The commenters asserted that the acquisition would result in a loss of a community institution and the services that Republic and Republic Bank provide. They also noted that Republic Bank is rated "Outstanding" for CRA, implying that the transaction would negatively affect Republic Bank's CRA performance. As discussed above, Natcom is acquiring a minority interest in Republic. Natcom represents that the proposal would not result in any changes to the programs, products, or services currently offered by RepublicBank. Upon consummation of the proposed transaction, both Republic and Republic Bank would continue to operate independently. In addition, as noted above, National Bank of Commerce also is rated "Outstanding" for CRA.

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

[41] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

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.[43]

In this case, the Board has considered information relevant to risks to the stability of the United States 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. Natcom's acquisition of a minority interest in Republic would not result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. The transaction would not be likely to pose systemic risks.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all 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 Natcom 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 Minneapolis, acting under delegated authority.

By order of the Board of Governors, effective December 18, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

[43] *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.

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

Sandy Spring Bancorp, Inc.
Olney, Maryland

Order Approving the Merger of Bank Holding Companies, the Acquisition of a Nonbanking Subsidiary, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017–32 (November 22, 2017)

Sandy Spring Bancorp, Inc. ("Sandy Spring"), Olney, Maryland, 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 WashingtonFirst Bankshares, Inc. ("WashingtonFirst"), and thereby indirectly acquire WashingtonFirst Bank, both of Reston, Virginia. Sandy Spring has also requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y[3] to acquire 1st Portfolio, Inc. ("1st Portfolio"), Fairfax, Virginia, a nonbanking subsidiary of WashingtonFirst that is engaged in financial and investment advisory activities.

In addition, Sandy Spring's subsidiary state member bank, Sandy Spring Bank, Olney, Maryland, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with WashingtonFirst Bank, with Sandy Spring Bank as the surviving entity.[4] Sandy Spring 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 WashingtonFirst Bank.[5]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 31973 (July 11, 2017)).[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 sections 3 and 4 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").

Sandy Spring, with consolidated assets of approximately $5.3 billion, is the 201st largest insured depository organization in the United States. Sandy Spring controls approximately $3.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] Sandy Spring controls Sandy Spring Bank, which operates in the District of Columbia, Maryland, and Virginia. Sandy Spring is the 27th largest insured depository organization in the District of Columbia, controlling deposits of approximately $3.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction.[8]Sandy Spring is the 8th largest insured depository organization in Maryland, controlling deposits

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1 12 U.S.C. § 1841 *et seq.*

2 12 U.S.C. § 1842.

3 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

4 12 U.S.C. § 1828(c).

5 12 U.S.C. § 321. These locations are listed in the Appendix.

6 12 CFR 262.3(b).

7 National asset and deposit data are as of June 30, 2017, unless otherwise noted.

8 State deposit data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

of approximately $3.2 billion, which represent approximately 2.3 percent of the total deposits of insured depository institutions in that state. Sandy Spring is the 59th largest insured depository organization in Virginia, controlling deposits of approximately $329.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

WashingtonFirst, with consolidated assets of approximately $2.1 billion, is the 383rd largest insured depository organization in the United States. WashingtonFirst controls approximately $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. WashingtonFirst controls WashingtonFirst Bank, which operates in the District of Columbia, Maryland, and Virginia. WashingtonFirst is the 14th largest insured depository organization in the District of Columbia, controlling deposits of approximately $372.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction. WashingtonFirst is the 62nd largest insured depository organization in Maryland, controlling deposits of approximately $137.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. WashingtonFirst is the 22nd largest insured depository organization in Virginia, controlling deposits of approximately $1.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Sandy Spring would become the 165th largest insured depository organization in the United States, with consolidated assets of approximately $7.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Sandy Spring would control total deposits of approximately $5.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sandy Spring would become the 14th largest insured depository organization in the District of Columbia, controlling deposits of approximately $375.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction. Sandy Spring would remain the 8th largest insured depository organization in Maryland, controlling deposits of approximately $3.3 billion, which represent approximately 2.4 percent of the total deposits of insured depository institutions in that state. In Virginia, Sandy Spring would become the 18th largest insured depository organization, controlling deposits of $1.4 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.[9] Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.[10] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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

[9] 12 U.S.C. § 1842(d)(1)(A).
[10] 12 U.S.C. § 1831u(a)(1).

years.[11] In addition, under section 3(d) of the BHC Act, 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, 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 Sandy Spring is Maryland, and WashingtonFirst Bank is located in the District of Columbia, Maryland, and Virginia.[13]For purposes of section 44 of the FDI Act, the home state of Sandy Spring Bank is Maryland, and the home state of WashingtonFirst Bank is Virginia.[14] Sandy Spring and Sandy Spring Bank are well capitalized and well managed under applicable law, and Sandy Spring Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA"). Neither the District of Columbia nor Virginia has statutory minimum age requirements,[15] and WashingtonFirst Bank has been in existence for more than five years.

On consummation of the proposed transaction, Sandy Spring would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Maryland imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[16] The combined organization would control approximately 0.8 percent of the total amount of deposits of insured depository institutions in the District of Columbia, approximately 2.4 percent of the total amount of deposits of insured depository institutions in Maryland, and approximately 0.5 percent of the total amount of deposits of insured depository institutions in Virginia, the only states in which Sandy Spring and WashingtonFirst have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act, including Sandy Spring Bank'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 both statutes.

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.[17] Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to

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[11] 12 U.S.C. § 1842(d)(1)(B); 12 U.S.C. § 1831u(a)(5).

[12] 12 U.S.C. § 1842(d)(2)(A) and (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C.§1831u(b)(2). For purposes of section 3(d) of the BHC Act, 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. 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). For purposes of the BHC Act, 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, and a state bank's home state is the state in which the bank is chartered.

[14] For purposes of section 44 of the FDI Act, a state bank's home state is the state in which the bank is chartered. 12 U.S.C. § 1831u(g)(4).

[15] *See* D.C. Code § 26-731 - 741; Va.CodeAnn.§6.2-849 - 859.

[16] Md. Code Ann., Fin. Inst. § 5-1013. The District of Columbia and Virginia do not impose a limit on the total amount of in-state deposits that a single banking organization may control.

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

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 communities to be served.[18] In addition, as described in more detail below, the Board must consider the competitive effects of a proposal to acquire a nonbank company under the balancing test of section 4(j) of the BHC Act.[19]

Sandy Spring and WashingtonFirst have subsidiary depository institutions that compete directly in the Washington, District of Columbia-Maryland-Virginia-West Virginia banking market ("Washington market").[20] 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 of insured depository institutions in the market ("market deposits") that Sandy Spring would control;[21] 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");[22] 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 Washington market. On consummation of the proposal, the Washington market would remain unconcentrated, 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.[23]

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 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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[18] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[19] 12 U.S.C. § 1843(j)(2)(A).

[20] The Washington market includes the District of Columbia; the Maryland counties of Charles, Calvert, Frederick, Montgomery, and Prince George's; District 7 in Anne Arundel County, Maryland; the Clarksville and Savage districts in Howard County, Maryland; the Virginia counties of Arlington, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Stafford, and Warren; the Virginia cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and Jefferson County, West Virginia.

[21] 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).

[22] 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.

[23] Sandy Spring operates the 12th largest depository institution in the Washington market, controlling approximately $3.0 billion in deposits, which represent 1.6 percent of market deposits. WashingtonFirst operates the 16th largest depository institution in the same market, controlling approximately $1.6 billion in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Sandy Spring would remain the 12th largest depository organization in the market, controlling deposits of approximately $4.6 billion, which represent 2.4 percent of market deposits. The HHI for the Washington market would increase by 2 points to 998, and 77 competitors would remain in the market.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Washington 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 sections 3 and 4 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.[24] 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.

Sandy Spring and WashingtonFirst 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 primarily as an exchange of shares, with a subsequent merger of the subsidiary depository institutions.[25] The asset quality, earnings, and liquidity of Sandy Spring Bank and WashingtonFirst Bank are consistent with approval, and Sandy Spring appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, 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 Sandy Spring, WashingtonFirst, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Sandy Spring; 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.

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[24] 12 U.S.C. §§ 1842(c)(2), (5), and (6); 1843(j)(4); 1828(c)(5) and (11).

[25] To effect the holding company merger, a wholly owned subsidiary of Sandy Spring formed to facilitate the transaction would merge with WashingtonFirst, with WashingtonFirst as the surviving entity ("First-Step Merger"). At the effective time of the First-Step Merger, each share of WashingtonFirst common stock would be converted into a number of shares of Sandy Spring common stock based on an exchange ratio. Immediately thereafter, WashingtonFirst would merge with Sandy Spring, with Sandy Spring as the surviving entity. WashingtonFirst Bank would then merge with and into Sandy Spring Bank, with Sandy Spring Bank as the surviving entity. As part of the holding company merger, Sandy Spring would acquire 1st Portfolio from WashingtonFirst and immediately thereafter transfer 1st Portfolio to Sandy Spring Bank.

Sandy Spring, WashingtonFirst, and their subsidiary depository institutions are each considered to be well managed. Sandy Spring has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Sandy Spring's directors and senior executive officers have significant knowledge of and experience in the banking and financial services sectors, and Sandy Spring's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Sandy Spring's plans for implementing the proposal. Sandy Spring 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. Sandy Spring would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Sandy Spring's management has the experience and resources to operate the combined organization in a safe and sound manner.[26] Sandy Spring plans to integrate WashingtonFirst's existing management and personnel in a manner that augments Sandy Spring's management.[27]

Based on all the facts of record, including Sandy Spring'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 Sandy Spring and WashingtonFirst 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.[28] 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,[29] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community,

[26] One commenter asked the Board to consider the diversity of Sandy Spring's 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 and Bank Merger 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, Inc*. v. *Board of Governors*, 480 F.2d 749 (10th Cir. 1973). 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.

[27] On consummation, WashingtonFirst's president and chief executive officer, as well as the chairman and two additional members of its board of directors, will be appointed to the boards of directors of Sandy Spring and Sandy Spring Bank.

[28] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[29] 12 U.S.C. § 2901(b).

including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[30]

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 Sandy Spring Bank and WashingtonFirst Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Richmond ("Reserve Bank") and the FDIC; confidential supervisory information; information provided by Sandy Spring; and the public comments received on the proposal.

Public Comments Regarding the Proposal

Three commenters objected to the proposal based on alleged deficiencies in the CRA performance and fair lending record of Sandy Spring Bank.[31] All three commenters alleged low levels of lending to minority borrowers, and/or in majority-minority areas, in communities served by Sandy Spring Bank, as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA").[32] One commenter alleged high denial rates in 2015 by Sandy Spring Bank to African American applicants and low levels of lending by WashingtonFirst Bank to African American and Hispanic applicants in certain communities. Two commenters criticized Sandy Spring Bank's lending to LMI individuals and in LMI census tracts, and one such commenter also criticized the bank's lending levels to small businesses and its levels of community development loans and investments in certain communities. Specific geographic areas of concern for commenters included the District of Columbia; Montgomery County, Maryland; Prince George's County, Maryland; Baltimore City, Maryland; and Baltimore County, Maryland.

One commenter alleged that the percentages of Sandy Spring Bank's branch locations in LMI and majority-minority census tracts in Montgomery County, Maryland, and Northern Virginia are inadequate, and that the proposed transaction will not increase the bank's branching presence in LMI and majority-minority markets. Further, one commenter generally criticized the adequacy of information provided by Sandy Spring Bank regarding potential branch closings that would occur in connection with the proposed transaction.

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[30] 12 U.S.C. § 2903.

[31] Two commenters requested that the Board not approve the proposal until Sandy Spring 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 at 488 n.18 (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 ("AAs").

[32] 12 U.S.C. § 2801 *et seq*.

Businesses of the Involved Institutions and Response to the Comments

Sandy Spring provides a broad range of financial products and services, primarily through Sandy Spring Bank, which operates through a branch network in the District of Columbia, Maryland, and Virginia. Products and services offered by Sandy Spring Bank include retail and commercial banking products and services; consumer, commercial, and mortgage lending; trust and investment services; and insurance services.

WashingtonFirst operates primarily through WashingtonFirst Bank and offers a similar range of retail and commercial products and services through branches located in the District of Columbia, Maryland, and Virginia. WashingtonFirst Bank's products and services include retail and commercial banking products and services; consumer, commercial, and mortgage lending; and financial and investment advisory services.

Sandy Spring denies the commenters' allegations regarding Sandy Spring Bank's CRA and fair lending records and asserts that the bank's record of meeting the convenience and needs of the communities the bank serves is consistent with the criteria for approval of the proposal. Sandy Spring asserts that the allegations based on HMDA data do not fully represent Sandy Spring Bank's lending record. Sandy Spring represents that Sandy Spring Bank has made significant efforts in recent years to serve the credit needs of its communities, including increasing mortgage lending to LMI borrowers and in LMI census tracts. Sandy Spring also states that the bank has taken steps to enhance the delivery of products and services to LMI individuals in its AA, such as hiring mortgage bankers with experience in lending to LMI individuals, expanding and enhancing the role of its CRA and Fair Lending Committee, and adopting a Community Development and Fair Lending Implementation Plan ("Implementation Plan") containing priorities, goals, and initiatives for home mortgage, small business, and community development lending, among other areas. Sandy Spring represents that initiatives being undertaken under the plan include enhancement of products that serve LMI communities, hiring mortgage bankers and CRA specialists to originate loans in LMI communities, and outreach to educate mortgage bankers about CRA products.

Sandy Spring represents that Sandy Spring Bank's small business lending has increased in dollar amount since its last CRA performance evaluation. Moreover, Sandy Spring represents that in 2016, Sandy Spring Bank exceeded peers in small business lending in LMI census tracts within its AA and in high minority census tracts in several counties. Sandy Spring also represents that its Implementation Plan includes initiatives related to small business lending, including proactive outreach to prospective and existing business clients in LMI communities. Further, Sandy Spring denies a commenter's allegations regarding its levels of community development lending and investments and represents that its community development loans and investments have significantly increased since its last CRA performance evaluation.

Sandy Spring also asserts that it maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations. Sandy Spring contends that it has comprehensive policies and procedures that ensure both safe and sound lending and equal access to credit for creditworthy applicants, including ongoing fair lending training, internal fair lending and CRA audits, and annual assessments of underwriting and pricing decisions. Sandy Spring represents that the denial rates that a commenter referenced reflect determinations based on applicants' credit history, existing debt levels, and other non-discriminatory factors.

Sandy Spring represents that Sandy Spring Bank has a comprehensive branching strategy and procedures for determining its branch locations, and a key component of its decisions

to open or close branches is the demographics of the census tract in which the branch is located and the census tracts surrounding the branch location. Moreover, Sandy Spring asserts that with each branch decision, the overall network of branching and availability of services are considered from a CRA perspective to ensure that banking needs are met for a diversified population without exclusion. Sandy Spring represents that Sandy Spring Bank has not specifically identified branches that it intends to close in connection with the proposed transaction, but will evaluate its continued coverage in LMI and high minority census tracts as important factors when considering branch consolidation.[33]

Sandy Spring denies one commenter's allegations that WashingtonFirst Bank engages in discriminatory lending practices. Sandy Spring asserts that the allegations based on HMDA data do not fully represent WashingtonFirst Bank's lending record. Sandy Spring asserts that WashingtonFirst maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations and has comprehensive policies and procedures that ensure both safe and sound lending and equal access to credit for creditworthy applicants, such as ongoing fair lending training and internal fair lending and CRA audits.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.[34] In this case, the Board considered the views of the 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.[35] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors,

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[33] Sandy Spring also represents that once Sandy Spring Bank determines which branches it will close, it will comply with its branch closure policy and will follow all applicable regulations with respect to notice of branch closures. 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 *Federal Register* 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

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

[35] 12 U.S.C. § 2906.

including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's 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;[36] (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.[37] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Sandy Spring Bank

Sandy Spring Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of July 14, 2014 ("Sandy Spring Bank Evaluation").[38] The bank received a "Low Satisfactory" rating for the Lending Test, and "High Satisfactory" ratings for each of the Investment and the Service Tests.

Examiners concluded that, overall, the bank's lending activity was consistent with the bank's capacity and market presence. Examiners noted that a substantial majority of the bank's HMDA and small business loans were originated within the bank's AA. Examiners found that the bank's geographic lending distribution performance ranged from poor to good by loan product and year, but found the bank's geographic distribution performance to be adequate overall. Examiners also found that, overall, Sandy Spring Bank's distribution of loans by borrower income and revenue size of business was adequate. Examiners explained that this conclusion was based on findings that the bank's distribution of HMDA loans to borrowers of different income levels was adequate and its distribution of loans to businesses of different revenue sizes was good, and that greater weight was given to the bank's HMDA lending performance. Examiners also determined that Sandy Spring Bank's community development lending activity was adequate, considering the bank's

[36] 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).

[37] Other information relevant to credit decisions could include credit history, debt-to-income ratio, and loan-to-value ratio. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[38] The Sandy Spring Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed small business loans and HMDA loans reported by the institution from January 1, 2012, through December 31, 2013. The evaluation period for community development lending, investments, and services was May 21, 2012, through July 14, 2014.

Examiners evaluated the bank's performance in its single AA, which included portions of the Washington-Baltimore-Northern Virginia, District of Columbia-Maryland-Virginia-West Virginia, Combined Statistical Area. The bank's AA included all of the Bethesda-Rockville-Fredrick, Maryland, Metropolitan Division and portions of both the Baltimore-Towson, Maryland, Metropolitan Statistical Area ("MSA") and the Washington-Arlington-Alexandria, District of Columbia-Maryland-Virginia-West Virginia, Metropolitan Division. With the exception of Baltimore City and Baltimore County, where Sandy Spring Bank has a limited presence, the AA included all geographic areas of concern to the commenters.

capacity and available opportunities. Examiners noted that the bank's community development lending supported organizations focused on assisting LMI individuals, promoting affordable housing, and financing small businesses.

Examiners determined that Sandy Spring Bank maintained a significant level of qualified community development investments and that its level of responding to community development needs through investment activities was rated High Satisfactory, given the investment opportunities in the bank's AA. Examiners highlighted several investments and/or grants that supported LMI individuals and small businesses within the bank's AA.

Examiners found that the bank's systems for delivering retail banking services and its branch locations were readily accessible to all segments of the AA. Examiners also observed that the bank offered many services with no or minimal service charges, including free mobile and internet banking, free bill pay, free account alerts, no ATM fees, and free checking accounts. Examiners determined that the bank's distribution of branches was adequate, and its record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and/or individuals. While examiners noted certain differences between the hours of the bank's offices in LMI census tracts compared to middle- and upper-income census tracts, examiners determined that, when viewed comprehensively, the bank's services did not vary in a way that inconvenienced communities within its AA, including LMI geographies and/or individuals.

Examiners also found that bank employees had participated in a relatively high level of community development activities. Examiners noted that the bank and its employees provided financial expertise to a number of organizations that provide community development services that target LMI individuals, facilitate small business development, or focus on job creation. Examiners also observed that the bank participated in various community development service activities that served LMI individuals.

Sandy Spring Bank's Activities Since the Sandy Spring Bank Evaluation

Sandy Spring represents that since the Sandy Spring Bank Evaluation, Sandy Spring Bank has furthered its commitment to community reinvestment and serving the needs of LMI geographies and individuals in all of its communities through its home mortgage lending, community service activities, outreach efforts, and investments. Specifically, Sandy Spring represents that Sandy Spring Bank has continued to originate home mortgage loans to LMI borrowers and in LMI census tracts. Sandy Spring represents that Sandy Spring Bank has demonstrated its commitment to flexible and innovative lending through its participation in various affordable housing programs, and has also made a number of community development loans and donations to community organizations. Further, Sandy Spring represents that numerous Sandy Spring Bank employees have continued to serve the bank's communities by volunteering at nonprofit organizations, including organizations focused on providing services targeted to LMI individuals or communities, offering affordable housing opportunities to LMI residents, and providing financial literacy training for youth, young adults, adults, and small business owners.

CRA Performance of WashingtonFirst Bank

WashingtonFirst Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of August 18, 2014 ("WashingtonFirst Bank

Evaluation").[39] WashingtonFirst Bank received "Satisfactory" ratings for both the Lending Test and the Community Development Test.

Examiners found that WashingtonFirst Bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and AAs' credit needs. Examiners determined that WashingtonFirst Bank originated a substantial majority of its loans within its AAs. Examiners also found that the geographic distribution of WashingtonFirst Bank's loans reflected a reasonable dispersion throughout the AAs. According to examiners, the bank's geographic distribution of small business loans reflected a reasonable dispersion, and its geographic distribution of home mortgage loans reflected an excellent dispersion, throughout the AAs. Examiners also found that WashingtonFirst Bank's distribution of loans based on borrower profile displayed a reasonable level of penetration and that the bank's record of lending to businesses of different sizes and individuals of different income levels reflected reasonable performance.

With respect to community development, examiners considered WashingtonFirst Bank's community development loans, investments, and services. Examiners found that WashingtonFirst Bank demonstrated adequate responsiveness to the community development needs of the Washington MMSA, where the majority of its community development activities occurred, considering the bank's capacity and the need and availability of opportunities for community development in the AA. Examiners observed that WashingtonFirst Bank's community development lending was responsive to community credit needs because it supported community development organizations, promoted economic development, and provided affordable housing. Examiners also noted that bank management and employees provided financial advice and assistance to various community development organizations, as well as to LMI individuals and small businesses. Examiners further noted that WashingtonFirst Bank offered various cost-effective services to customers, including free checking, online banking, bill pay, telephone banking, unlimited check writing on consumer checking accounts, overdraft-protection lines of credit, and checking accounts for nonprofit organizations and small businesses.

WashingtonFirst Bank's Activities Since the WashingtonFirst Bank Evaluation

Sandy Spring represents that since the WashingtonFirst Bank Evaluation, WashingtonFirst Bank has continued to serve its communities through its home mortgage lending, community service activities, outreach efforts, and investments. Sandy Spring represents that WashingtonFirst Bank has continued to originate home mortgage loans to LMI borrowers and in LMI census tracts. Sandy Spring represents that WashingtonFirst Bank has demonstrated its commitment to flexible and innovative lending through its participation in various affordable housing programs. Further, Sandy Spring represents that numerous WashingtonFirst Bank officers and employees have continued to serve the bank's communities through volunteering and leadership roles at several nonprofit organizations, including supporting organizations that provide services targeted to LMI individuals or communities, serving on boards and committees of nonprofit organizations that offer

[39] The WashingtonFirst Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending and community development tests. For the Lending Test, examiners reviewed home mortgage loans reported pursuant to HMDA for 2012 and 2013, and small business loans reported under CRA data collection requirements for 2013. For the Community Development Test, examiners reviewed the bank's qualified community development lending, investments, and service activities from September 19, 2011, through August 18, 2014.

Examiners evaluated the bank's performance in the bank's two AAs, which included portions of the Washington-Arlington-Alexandria, District of Columbia-Virginia-Maryland-West Virginia, Multistate Metropolitan Statistical Area ("Washington MMSA"), and the Bethesda-Rockville-Fredrick, Maryland, MSA.

affordable housing opportunities to LMI residents, and providing financial literacy training for youth, veterans, small business owners, and older persons.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examinations of Sandy Spring Bank conducted by the Reserve Bank, which included a review of the bank's compliance management program and the bank's compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, the Reserve Bank evaluated Sandy Spring Bank's fair lending management program, including the bank's fair lending-related practices, policies, procedures, and internal controls.

The Board has considered the results of a recent consumer compliance review of WashingtonFirst Bank conducted by the Reserve Bank.[40] The Board also has considered the results of a compliance examination of WashingtonFirst Bank by the FDIC, which included a review of the bank's compliance management system and compliance with consumer protection laws, including fair lending laws and regulations, and of a fair lending examination of WashingtonFirst Bank, which included a review of lending products and distributions, and underwriting and pricing practices.

The Board has taken the results of these examinations into account in evaluating this proposal, including in considering whether Sandy Spring 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 effectively the credit needs of all the communities within the firm's AAs.

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. Sandy Spring represents that, following the proposed transaction, the combined organization would continue to offer a range of deposit and credit products and services that benefit the communities in which Sandy Spring Bank and WashingtonFirst Bank each presently conduct business, including credit products and services that help fulfill the needs of LMI demographics. Sandy Spring represents that customers of WashingtonFirst Bank would have access to enhanced products and services that are more expansive than those currently available to WashingtonFirst Bank customers, including several additional types of checking accounts, health savings accounts, additional IRA products, trust and fiduciary services, and a full range of personal and business insurance products. In addition, Sandy Spring asserts that customers of both institutions would benefit from a more expansive branch and ATM network. In addition, Sandy Spring represents that the proposed transaction would increase Sandy Spring Bank's lending capacity and lending limits, which would allow Sandy Spring Bank to make more and larger loans. Sandy Spring also asserts that the proposed transaction would facilitate further investments in the bank's technology, marketing, and personnel, which would enable Sandy Spring Bank to provide new services in a cost-effective way, reach more members of its communities, improve its risk-management, and develop and deliver more products and services.

[40] WashingtonFirst Bank was subject to the FDIC's jurisdiction until January 2017, when it became a state member bank. Prior to the Board's approval of WashingtonFirst Bank's application to become a state member bank, the Reserve Bank conducted a review of WashingtonFirst Bank's policies, procedures, practices, and systems.

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 Reserve Bank and FDIC, confidential supervisory information, information provided by Sandy Spring Bank, the 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 sections 3 and 4 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."[41]

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.[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 United States 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

[41] Dodd-Frank Act §§ 604(d), (e) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1828(c)(5), 1842(c)(7), and 1843(j)(2)(A).

[42] Many of the metrics considered by the Board measure an institution's activities relative to the United States 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 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.

commercial banking activities.[45] 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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Acquisition of a Nonbanking Company

As noted, Sandy Spring has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire 1st Portfolio, which engages in financial and investment advisory activities that the Board has determined by regulation are so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the BHC Act.[46] In connection with a notice under section 4(c)(8) of the BHC 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."[47]

The Board has considered that the proposed transaction would permit Sandy Spring to expand its delivery of wealth advisory and retirement planning services and enable Sandy Spring to provide services in a more cost-effective and efficient manner. 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.

Establishment of Branches

Sandy Spring Bank has applied under section 9 of the FRA to establish branches at the current locations of WashingtonFirst Bank.[48] The Board has assessed the factors it is required to consider when reviewing an application under that section, including Sandy

[45] Sandy Spring and WashingtonFirst primarily offer a range of retail and commercial banking products and services. Sandy Spring has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

[46] 12 CFR 225.28(b)(6).

[47] 12 U.S.C. § 1843(j)(2)(A).

[48] *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. Under

Spring 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.[49] 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.[50] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Sandy Spring and Sandy Spring Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the 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 November 22, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard

Ann E. Misback
Secretary of the Board

section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. *See* 12 U.S.C.§§36(d) and 1831u(d).

[49] 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposed transaction, Sandy Spring Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

[50] A commenter requested that the Board hold public hearings on the proposal. The Bank Merger Act and section 9 of the FRA do not require a public meeting or a formal public hearing on an application. Section 3(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. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the *Federal Register* on July 11, 2017, and in the relevant newspaper of general circulation (*The Washington Post*) on June 26, July 3, and July 10, 2017. The comment period ended on August 1, 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

Branches to Be Established by Sandy Spring Bank

1. 4501 North Fairfax Drive, Arlington, Virginia 22203
2. 115 North Washington Street, Alexandria, Virginia 22314
3. 7023 Little River Turnpike, Suite 101, Annandale, Virginia 22003
4. 12735 Shoppes Lane, Fairfax, Virginia 22033
5. 9851 Georgetown Pike, Great Falls, Virginia 22066
6. 13081 Worldgate Drive, Herndon, Virginia 20170
7. 1356 Chain Bridge Road, McLean, Virginia 22101
8. 11636 Plaza America Drive, Reston, Virginia 20190
9. 2095 Chain Bridge Road, Vienna, Virginia 22182
10. 10777 Main Street, Fairfax, Virginia 22030
11. 46901 Cedar Lakes Plaza, Sterling, Virginia 20164
12. 9150 Manassas Drive, Manassas Park, Virginia 20111
13. 1025 Connecticut Avenue, N.W., 1st Floor, District of Columbia 20036
14. 1146 19th Street, N.W., District of Columbia 20036
15. 7708 Woodmont Avenue, Bethesda, Maryland 20814
16. 9812 Falls Road, Suite 125, Potomac, Maryland 20854
17. 14941 Shady Grove Road, Rockville, Maryland 20850
18. 6329 Greenbelt Road, College Park, Maryland 20740
19. 6089 Oxon Hill Road, Oxon Hill, Maryland 20745

Orders Issued Under Bank Merger Act

Sandy Spring Bancorp, Inc.
Olney, Maryland

Order Approving the Merger of Bank Holding Companies, the Acquisition of a Nonbanking Subsidiary, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017–32 (November 22, 2017)

Sandy Spring Bancorp, Inc. ("Sandy Spring"), Olney, Maryland, 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 WashingtonFirst Bankshares, Inc. ("WashingtonFirst"), and thereby indirectly acquire WashingtonFirst Bank, both of Reston, Virginia. Sandy Spring has also requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y[3] to acquire 1st Portfolio, Inc. ("1st Portfolio"), Fairfax, Virginia, a nonbanking subsidiary of WashingtonFirst that is engaged in financial and investment advisory activities.

In addition, Sandy Spring's subsidiary state member bank, Sandy Spring Bank, Olney, Maryland, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with WashingtonFirst Bank, with Sandy Spring Bank as the surviving entity.[4] Sandy Spring 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 WashingtonFirst Bank.[5]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 31973 (July 11, 2017)).[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 sections 3 and 4 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").

Sandy Spring, with consolidated assets of approximately $5.3 billion, is the 201st largest insured depository organization in the United States. Sandy Spring controls approximately $3.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] Sandy Spring controls Sandy Spring Bank, which operates in the District of Columbia, Maryland, and Virginia. Sandy Spring is the 27th largest insured depository organization in the District of Columbia, controlling deposits of approximately $3.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction.[8]Sandy Spring is the 8th largest insured depository organization in Maryland, controlling deposits

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1 12 U.S.C. § 1841 *et seq.*

2 12 U.S.C. § 1842.

3 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

4 12 U.S.C. § 1828(c).

5 12 U.S.C. § 321. These locations are listed in the Appendix.

6 12 CFR 262.3(b).

7 National asset and deposit data are as of June 30, 2017, unless otherwise noted.

8 State deposit data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

of approximately $3.2 billion, which represent approximately 2.3 percent of the total deposits of insured depository institutions in that state. Sandy Spring is the 59th largest insured depository organization in Virginia, controlling deposits of approximately $329.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

WashingtonFirst, with consolidated assets of approximately $2.1 billion, is the 383rd largest insured depository organization in the United States. WashingtonFirst controls approximately $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. WashingtonFirst controls WashingtonFirst Bank, which operates in the District of Columbia, Maryland, and Virginia. WashingtonFirst is the 14th largest insured depository organization in the District of Columbia, controlling deposits of approximately $372.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction. WashingtonFirst is the 62nd largest insured depository organization in Maryland, controlling deposits of approximately $137.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. WashingtonFirst is the 22nd largest insured depository organization in Virginia, controlling deposits of approximately $1.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Sandy Spring would become the 165th largest insured depository organization in the United States, with consolidated assets of approximately $7.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Sandy Spring would control total deposits of approximately $5.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sandy Spring would become the 14th largest insured depository organization in the District of Columbia, controlling deposits of approximately $375.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction. Sandy Spring would remain the 8th largest insured depository organization in Maryland, controlling deposits of approximately $3.3 billion, which represent approximately 2.4 percent of the total deposits of insured depository institutions in that state. In Virginia, Sandy Spring would become the 18th largest insured depository organization, controlling deposits of $1.4 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.[9] Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.[10] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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

[9] 12 U.S.C. § 1842(d)(1)(A).
[10] 12 U.S.C. § 1831u(a)(1).

years.[11] In addition, under section 3(d) of the BHC Act, 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, 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 Sandy Spring is Maryland, and WashingtonFirst Bank is located in the District of Columbia, Maryland, and Virginia.[13]For purposes of section 44 of the FDI Act, the home state of Sandy Spring Bank is Maryland, and the home state of WashingtonFirst Bank is Virginia.[14] Sandy Spring and Sandy Spring Bank are well capitalized and well managed under applicable law, and Sandy Spring Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA"). Neither the District of Columbia nor Virginia has statutory minimum age requirements,[15] and WashingtonFirst Bank has been in existence for more than five years.

On consummation of the proposed transaction, Sandy Spring would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Maryland imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[16] The combined organization would control approximately 0.8 percent of the total amount of deposits of insured depository institutions in the District of Columbia, approximately 2.4 percent of the total amount of deposits of insured depository institutions in Maryland, and approximately 0.5 percent of the total amount of deposits of insured depository institutions in Virginia, the only states in which Sandy Spring and WashingtonFirst have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act, including Sandy Spring Bank'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 both statutes.

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.[17] Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to

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[11] 12 U.S.C. § 1842(d)(1)(B); 12 U.S.C. § 1831u(a)(5).

[12] 12 U.S.C. § 1842(d)(2)(A) and (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C.§1831u(b)(2). For purposes of section 3(d) of the BHC Act, 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. 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). For purposes of the BHC Act, 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, and a state bank's home state is the state in which the bank is chartered.

[14] For purposes of section 44 of the FDI Act, a state bank's home state is the state in which the bank is chartered. 12 U.S.C. § 1831u(g)(4).

[15] *See* D.C. Code § 26-731 - 741; Va.CodeAnn.§6.2-849 - 859.

[16] Md. Code Ann., Fin. Inst. § 5-1013. The District of Columbia and Virginia do not impose a limit on the total amount of in-state deposits that a single banking organization may control.

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

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 communities to be served.[18] In addition, as described in more detail below, the Board must consider the competitive effects of a proposal to acquire a nonbank company under the balancing test of section 4(j) of the BHC Act.[19]

Sandy Spring and WashingtonFirst have subsidiary depository institutions that compete directly in the Washington, District of Columbia-Maryland-Virginia-West Virginia banking market ("Washington market").[20] 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 of insured depository institutions in the market ("market deposits") that Sandy Spring would control;[21] 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");[22] 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 Washington market. On consummation of the proposal, the Washington market would remain unconcentrated, 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.[23]

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 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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[18] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[19] 12 U.S.C. § 1843(j)(2)(A).

[20] The Washington market includes the District of Columbia; the Maryland counties of Charles, Calvert, Frederick, Montgomery, and Prince George's; District 7 in Anne Arundel County, Maryland; the Clarksville and Savage districts in Howard County, Maryland; the Virginia counties of Arlington, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Stafford, and Warren; the Virginia cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and Jefferson County, West Virginia.

[21] 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).

[22] 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.

[23] Sandy Spring operates the 12th largest depository institution in the Washington market, controlling approximately $3.0 billion in deposits, which represent 1.6 percent of market deposits. WashingtonFirst operates the 16th largest depository institution in the same market, controlling approximately $1.6 billion in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Sandy Spring would remain the 12th largest depository organization in the market, controlling deposits of approximately $4.6 billion, which represent 2.4 percent of market deposits. The HHI for the Washington market would increase by 2 points to 998, and 77 competitors would remain in the market.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Washington 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 sections 3 and 4 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.[24] 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.

Sandy Spring and WashingtonFirst 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 primarily as an exchange of shares, with a subsequent merger of the subsidiary depository institutions.[25] The asset quality, earnings, and liquidity of Sandy Spring Bank and WashingtonFirst Bank are consistent with approval, and Sandy Spring appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, 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 Sandy Spring, WashingtonFirst, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Sandy Spring; 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.

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[24] 12 U.S.C. §§ 1842(c)(2), (5), and (6); 1843(j)(4); 1828(c)(5) and (11).

[25] To effect the holding company merger, a wholly owned subsidiary of Sandy Spring formed to facilitate the transaction would merge with WashingtonFirst, with WashingtonFirst as the surviving entity ("First-Step Merger"). At the effective time of the First-Step Merger, each share of WashingtonFirst common stock would be converted into a number of shares of Sandy Spring common stock based on an exchange ratio. Immediately thereafter, WashingtonFirst would merge with Sandy Spring, with Sandy Spring as the surviving entity. WashingtonFirst Bank would then merge with and into Sandy Spring Bank, with Sandy Spring Bank as the surviving entity. As part of the holding company merger, Sandy Spring would acquire 1st Portfolio from WashingtonFirst and immediately thereafter transfer 1st Portfolio to Sandy Spring Bank.

Sandy Spring, WashingtonFirst, and their subsidiary depository institutions are each considered to be well managed. Sandy Spring has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Sandy Spring's directors and senior executive officers have significant knowledge of and experience in the banking and financial services sectors, and Sandy Spring's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Sandy Spring's plans for implementing the proposal. Sandy Spring 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. Sandy Spring would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Sandy Spring's management has the experience and resources to operate the combined organization in a safe and sound manner.[26] Sandy Spring plans to integrate WashingtonFirst's existing management and personnel in a manner that augments Sandy Spring's management.[27]

Based on all the facts of record, including Sandy Spring'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 Sandy Spring and WashingtonFirst 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.[28] 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,[29] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community,

[26] One commenter asked the Board to consider the diversity of Sandy Spring's 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 and Bank Merger 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, Inc*. v. *Board of Governors*, 480 F.2d 749 (10th Cir. 1973). 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.

[27] On consummation, WashingtonFirst's president and chief executive officer, as well as the chairman and two additional members of its board of directors, will be appointed to the boards of directors of Sandy Spring and Sandy Spring Bank.

[28] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[29] 12 U.S.C. § 2901(b).

including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[30]

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 Sandy Spring Bank and WashingtonFirst Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Richmond ("Reserve Bank") and the FDIC; confidential supervisory information; information provided by Sandy Spring; and the public comments received on the proposal.

Public Comments Regarding the Proposal

Three commenters objected to the proposal based on alleged deficiencies in the CRA performance and fair lending record of Sandy Spring Bank.[31] All three commenters alleged low levels of lending to minority borrowers, and/or in majority-minority areas, in communities served by Sandy Spring Bank, as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA").[32] One commenter alleged high denial rates in 2015 by Sandy Spring Bank to African American applicants and low levels of lending by WashingtonFirst Bank to African American and Hispanic applicants in certain communities. Two commenters criticized Sandy Spring Bank's lending to LMI individuals and in LMI census tracts, and one such commenter also criticized the bank's lending levels to small businesses and its levels of community development loans and investments in certain communities. Specific geographic areas of concern for commenters included the District of Columbia; Montgomery County, Maryland; Prince George's County, Maryland; Baltimore City, Maryland; and Baltimore County, Maryland.

One commenter alleged that the percentages of Sandy Spring Bank's branch locations in LMI and majority-minority census tracts in Montgomery County, Maryland, and Northern Virginia are inadequate, and that the proposed transaction will not increase the bank's branching presence in LMI and majority-minority markets. Further, one commenter generally criticized the adequacy of information provided by Sandy Spring Bank regarding potential branch closings that would occur in connection with the proposed transaction.

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[30] 12 U.S.C. § 2903.

[31] Two commenters requested that the Board not approve the proposal until Sandy Spring 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 at 488 n.18 (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 ("AAs").

[32] 12 U.S.C. § 2801 *et seq*.

Businesses of the Involved Institutions and Response to the Comments

Sandy Spring provides a broad range of financial products and services, primarily through Sandy Spring Bank, which operates through a branch network in the District of Columbia, Maryland, and Virginia. Products and services offered by Sandy Spring Bank include retail and commercial banking products and services; consumer, commercial, and mortgage lending; trust and investment services; and insurance services.

WashingtonFirst operates primarily through WashingtonFirst Bank and offers a similar range of retail and commercial products and services through branches located in the District of Columbia, Maryland, and Virginia. WashingtonFirst Bank's products and services include retail and commercial banking products and services; consumer, commercial, and mortgage lending; and financial and investment advisory services.

Sandy Spring denies the commenters' allegations regarding Sandy Spring Bank's CRA and fair lending records and asserts that the bank's record of meeting the convenience and needs of the communities the bank serves is consistent with the criteria for approval of the proposal. Sandy Spring asserts that the allegations based on HMDA data do not fully represent Sandy Spring Bank's lending record. Sandy Spring represents that Sandy Spring Bank has made significant efforts in recent years to serve the credit needs of its communities, including increasing mortgage lending to LMI borrowers and in LMI census tracts. Sandy Spring also states that the bank has taken steps to enhance the delivery of products and services to LMI individuals in its AA, such as hiring mortgage bankers with experience in lending to LMI individuals, expanding and enhancing the role of its CRA and Fair Lending Committee, and adopting a Community Development and Fair Lending Implementation Plan ("Implementation Plan") containing priorities, goals, and initiatives for home mortgage, small business, and community development lending, among other areas. Sandy Spring represents that initiatives being undertaken under the plan include enhancement of products that serve LMI communities, hiring mortgage bankers and CRA specialists to originate loans in LMI communities, and outreach to educate mortgage bankers about CRA products.

Sandy Spring represents that Sandy Spring Bank's small business lending has increased in dollar amount since its last CRA performance evaluation. Moreover, Sandy Spring represents that in 2016, Sandy Spring Bank exceeded peers in small business lending in LMI census tracts within its AA and in high minority census tracts in several counties. Sandy Spring also represents that its Implementation Plan includes initiatives related to small business lending, including proactive outreach to prospective and existing business clients in LMI communities. Further, Sandy Spring denies a commenter's allegations regarding its levels of community development lending and investments and represents that its community development loans and investments have significantly increased since its last CRA performance evaluation.

Sandy Spring also asserts that it maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations. Sandy Spring contends that it has comprehensive policies and procedures that ensure both safe and sound lending and equal access to credit for creditworthy applicants, including ongoing fair lending training, internal fair lending and CRA audits, and annual assessments of underwriting and pricing decisions. Sandy Spring represents that the denial rates that a commenter referenced reflect determinations based on applicants' credit history, existing debt levels, and other non-discriminatory factors.

Sandy Spring represents that Sandy Spring Bank has a comprehensive branching strategy and procedures for determining its branch locations, and a key component of its decisions

to open or close branches is the demographics of the census tract in which the branch is located and the census tracts surrounding the branch location. Moreover, Sandy Spring asserts that with each branch decision, the overall network of branching and availability of services are considered from a CRA perspective to ensure that banking needs are met for a diversified population without exclusion. Sandy Spring represents that Sandy Spring Bank has not specifically identified branches that it intends to close in connection with the proposed transaction, but will evaluate its continued coverage in LMI and high minority census tracts as important factors when considering branch consolidation.[33]

Sandy Spring denies one commenter's allegations that WashingtonFirst Bank engages in discriminatory lending practices. Sandy Spring asserts that the allegations based on HMDA data do not fully represent WashingtonFirst Bank's lending record. Sandy Spring asserts that WashingtonFirst maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations and has comprehensive policies and procedures that ensure both safe and sound lending and equal access to credit for creditworthy applicants, such as ongoing fair lending training and internal fair lending and CRA audits.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.[34] In this case, the Board considered the views of the 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.[35] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors,

[33] Sandy Spring also represents that once Sandy Spring Bank determines which branches it will close, it will comply with its branch closure policy and will follow all applicable regulations with respect to notice of branch closures. 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 *Federal Register* 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

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

[35] 12 U.S.C. § 2906.

including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's 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;[36] (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.[37] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Sandy Spring Bank

Sandy Spring Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of July 14, 2014 ("Sandy Spring Bank Evaluation").[38] The bank received a "Low Satisfactory" rating for the Lending Test, and "High Satisfactory" ratings for each of the Investment and the Service Tests.

Examiners concluded that, overall, the bank's lending activity was consistent with the bank's capacity and market presence. Examiners noted that a substantial majority of the bank's HMDA and small business loans were originated within the bank's AA. Examiners found that the bank's geographic lending distribution performance ranged from poor to good by loan product and year, but found the bank's geographic distribution performance to be adequate overall. Examiners also found that, overall, Sandy Spring Bank's distribution of loans by borrower income and revenue size of business was adequate. Examiners explained that this conclusion was based on findings that the bank's distribution of HMDA loans to borrowers of different income levels was adequate and its distribution of loans to businesses of different revenue sizes was good, and that greater weight was given to the bank's HMDA lending performance. Examiners also determined that Sandy Spring Bank's community development lending activity was adequate, considering the bank's

[36] 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).

[37] Other information relevant to credit decisions could include credit history, debt-to-income ratio, and loan-to-value ratio. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[38] The Sandy Spring Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed small business loans and HMDA loans reported by the institution from January 1, 2012, through December 31, 2013. The evaluation period for community development lending, investments, and services was May 21, 2012, through July 14, 2014.

Examiners evaluated the bank's performance in its single AA, which included portions of the Washington-Baltimore-Northern Virginia, District of Columbia-Maryland-Virginia-West Virginia, Combined Statistical Area. The bank's AA included all of the Bethesda-Rockville-Fredrick, Maryland, Metropolitan Division and portions of both the Baltimore-Towson, Maryland, Metropolitan Statistical Area ("MSA") and the Washington-Arlington-Alexandria, District of Columbia-Maryland-Virginia-West Virginia, Metropolitan Division. With the exception of Baltimore City and Baltimore County, where Sandy Spring Bank has a limited presence, the AA included all geographic areas of concern to the commenters.

capacity and available opportunities. Examiners noted that the bank's community development lending supported organizations focused on assisting LMI individuals, promoting affordable housing, and financing small businesses.

Examiners determined that Sandy Spring Bank maintained a significant level of qualified community development investments and that its level of responding to community development needs through investment activities was rated High Satisfactory, given the investment opportunities in the bank's AA. Examiners highlighted several investments and/or grants that supported LMI individuals and small businesses within the bank's AA.

Examiners found that the bank's systems for delivering retail banking services and its branch locations were readily accessible to all segments of the AA. Examiners also observed that the bank offered many services with no or minimal service charges, including free mobile and internet banking, free bill pay, free account alerts, no ATM fees, and free checking accounts. Examiners determined that the bank's distribution of branches was adequate, and its record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and/or individuals. While examiners noted certain differences between the hours of the bank's offices in LMI census tracts compared to middle- and upper-income census tracts, examiners determined that, when viewed comprehensively, the bank's services did not vary in a way that inconvenienced communities within its AA, including LMI geographies and/or individuals.

Examiners also found that bank employees had participated in a relatively high level of community development activities. Examiners noted that the bank and its employees provided financial expertise to a number of organizations that provide community development services that target LMI individuals, facilitate small business development, or focus on job creation. Examiners also observed that the bank participated in various community development service activities that served LMI individuals.

Sandy Spring Bank's Activities Since the Sandy Spring Bank Evaluation

Sandy Spring represents that since the Sandy Spring Bank Evaluation, Sandy Spring Bank has furthered its commitment to community reinvestment and serving the needs of LMI geographies and individuals in all of its communities through its home mortgage lending, community service activities, outreach efforts, and investments. Specifically, Sandy Spring represents that Sandy Spring Bank has continued to originate home mortgage loans to LMI borrowers and in LMI census tracts. Sandy Spring represents that Sandy Spring Bank has demonstrated its commitment to flexible and innovative lending through its participation in various affordable housing programs, and has also made a number of community development loans and donations to community organizations. Further, Sandy Spring represents that numerous Sandy Spring Bank employees have continued to serve the bank's communities by volunteering at nonprofit organizations, including organizations focused on providing services targeted to LMI individuals or communities, offering affordable housing opportunities to LMI residents, and providing financial literacy training for youth, young adults, adults, and small business owners.

CRA Performance of WashingtonFirst Bank

WashingtonFirst Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of August 18, 2014 ("WashingtonFirst Bank

Evaluation").[39] WashingtonFirst Bank received "Satisfactory" ratings for both the Lending Test and the Community Development Test.

Examiners found that WashingtonFirst Bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and AAs' credit needs. Examiners determined that WashingtonFirst Bank originated a substantial majority of its loans within its AAs. Examiners also found that the geographic distribution of WashingtonFirst Bank's loans reflected a reasonable dispersion throughout the AAs. According to examiners, the bank's geographic distribution of small business loans reflected a reasonable dispersion, and its geographic distribution of home mortgage loans reflected an excellent dispersion, throughout the AAs. Examiners also found that WashingtonFirst Bank's distribution of loans based on borrower profile displayed a reasonable level of penetration and that the bank's record of lending to businesses of different sizes and individuals of different income levels reflected reasonable performance.

With respect to community development, examiners considered WashingtonFirst Bank's community development loans, investments, and services. Examiners found that WashingtonFirst Bank demonstrated adequate responsiveness to the community development needs of the Washington MMSA, where the majority of its community development activities occurred, considering the bank's capacity and the need and availability of opportunities for community development in the AA. Examiners observed that WashingtonFirst Bank's community development lending was responsive to community credit needs because it supported community development organizations, promoted economic development, and provided affordable housing. Examiners also noted that bank management and employees provided financial advice and assistance to various community development organizations, as well as to LMI individuals and small businesses. Examiners further noted that WashingtonFirst Bank offered various cost-effective services to customers, including free checking, online banking, bill pay, telephone banking, unlimited check writing on consumer checking accounts, overdraft-protection lines of credit, and checking accounts for nonprofit organizations and small businesses.

WashingtonFirst Bank's Activities Since the WashingtonFirst Bank Evaluation

Sandy Spring represents that since the WashingtonFirst Bank Evaluation, WashingtonFirst Bank has continued to serve its communities through its home mortgage lending, community service activities, outreach efforts, and investments. Sandy Spring represents that WashingtonFirst Bank has continued to originate home mortgage loans to LMI borrowers and in LMI census tracts. Sandy Spring represents that WashingtonFirst Bank has demonstrated its commitment to flexible and innovative lending through its participation in various affordable housing programs. Further, Sandy Spring represents that numerous WashingtonFirst Bank officers and employees have continued to serve the bank's communities through volunteering and leadership roles at several nonprofit organizations, including supporting organizations that provide services targeted to LMI individuals or communities, serving on boards and committees of nonprofit organizations that offer

[39] The WashingtonFirst Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending and community development tests. For the Lending Test, examiners reviewed home mortgage loans reported pursuant to HMDA for 2012 and 2013, and small business loans reported under CRA data collection requirements for 2013. For the Community Development Test, examiners reviewed the bank's qualified community development lending, investments, and service activities from September 19, 2011, through August 18, 2014.

Examiners evaluated the bank's performance in the bank's two AAs, which included portions of the Washington-Arlington-Alexandria, District of Columbia-Virginia-Maryland-West Virginia, Multistate Metropolitan Statistical Area ("Washington MMSA"), and the Bethesda-Rockville-Fredrick, Maryland, MSA.

affordable housing opportunities to LMI residents, and providing financial literacy training for youth, veterans, small business owners, and older persons.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examinations of Sandy Spring Bank conducted by the Reserve Bank, which included a review of the bank's compliance management program and the bank's compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, the Reserve Bank evaluated Sandy Spring Bank's fair lending management program, including the bank's fair lending-related practices, policies, procedures, and internal controls.

The Board has considered the results of a recent consumer compliance review of WashingtonFirst Bank conducted by the Reserve Bank.[40] The Board also has considered the results of a compliance examination of WashingtonFirst Bank by the FDIC, which included a review of the bank's compliance management system and compliance with consumer protection laws, including fair lending laws and regulations, and of a fair lending examination of WashingtonFirst Bank, which included a review of lending products and distributions, and underwriting and pricing practices.

The Board has taken the results of these examinations into account in evaluating this proposal, including in considering whether Sandy Spring 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 effectively the credit needs of all the communities within the firm's AAs.

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. Sandy Spring represents that, following the proposed transaction, the combined organization would continue to offer a range of deposit and credit products and services that benefit the communities in which Sandy Spring Bank and WashingtonFirst Bank each presently conduct business, including credit products and services that help fulfill the needs of LMI demographics. Sandy Spring represents that customers of WashingtonFirst Bank would have access to enhanced products and services that are more expansive than those currently available to WashingtonFirst Bank customers, including several additional types of checking accounts, health savings accounts, additional IRA products, trust and fiduciary services, and a full range of personal and business insurance products. In addition, Sandy Spring asserts that customers of both institutions would benefit from a more expansive branch and ATM network. In addition, Sandy Spring represents that the proposed transaction would increase Sandy Spring Bank's lending capacity and lending limits, which would allow Sandy Spring Bank to make more and larger loans. Sandy Spring also asserts that the proposed transaction would facilitate further investments in the bank's technology, marketing, and personnel, which would enable Sandy Spring Bank to provide new services in a cost-effective way, reach more members of its communities, improve its risk-management, and develop and deliver more products and services.

[40] WashingtonFirst Bank was subject to the FDIC's jurisdiction until January 2017, when it became a state member bank. Prior to the Board's approval of WashingtonFirst Bank's application to become a state member bank, the Reserve Bank conducted a review of WashingtonFirst Bank's policies, procedures, practices, and systems.

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 Reserve Bank and FDIC, confidential supervisory information, information provided by Sandy Spring Bank, the 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 sections 3 and 4 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."[41]

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.[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 United States 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

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[41] Dodd-Frank Act §§ 604(d), (e) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1828(c)(5), 1842(c)(7), and 1843(j)(2)(A).

[42] Many of the metrics considered by the Board measure an institution's activities relative to the United States 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 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.

commercial banking activities.[45] 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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Acquisition of a Nonbanking Company

As noted, Sandy Spring has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire 1st Portfolio, which engages in financial and investment advisory activities that the Board has determined by regulation are so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the BHC Act.[46] In connection with a notice under section 4(c)(8) of the BHC 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."[47]

The Board has considered that the proposed transaction would permit Sandy Spring to expand its delivery of wealth advisory and retirement planning services and enable Sandy Spring to provide services in a more cost-effective and efficient manner. 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.

Establishment of Branches

Sandy Spring Bank has applied under section 9 of the FRA to establish branches at the current locations of WashingtonFirst Bank.[48] The Board has assessed the factors it is required to consider when reviewing an application under that section, including Sandy

[45] Sandy Spring and WashingtonFirst primarily offer a range of retail and commercial banking products and services. Sandy Spring has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

[46] 12 CFR 225.28(b)(6).

[47] 12 U.S.C. § 1843(j)(2)(A).

[48] *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. Under

Spring 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.[49] 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.[50] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Sandy Spring and Sandy Spring Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the 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 November 22, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard

Ann E. Misback
Secretary of the Board

section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. *See* 12 U.S.C.§§36(d) and 1831u(d).

[49] 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposed transaction, Sandy Spring Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

[50] A commenter requested that the Board hold public hearings on the proposal. The Bank Merger Act and section 9 of the FRA do not require a public meeting or a formal public hearing on an application. Section 3(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. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the *Federal Register* on July 11, 2017, and in the relevant newspaper of general circulation (*The Washington Post*) on June 26, July 3, and July 10, 2017. The comment period ended on August 1, 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

Branches to Be Established by Sandy Spring Bank

1. 4501 North Fairfax Drive, Arlington, Virginia 22203
2. 115 North Washington Street, Alexandria, Virginia 22314
3. 7023 Little River Turnpike, Suite 101, Annandale, Virginia 22003
4. 12735 Shoppes Lane, Fairfax, Virginia 22033
5. 9851 Georgetown Pike, Great Falls, Virginia 22066
6. 13081 Worldgate Drive, Herndon, Virginia 20170
7. 1356 Chain Bridge Road, McLean, Virginia 22101
8. 11636 Plaza America Drive, Reston, Virginia 20190
9. 2095 Chain Bridge Road, Vienna, Virginia 22182
10. 10777 Main Street, Fairfax, Virginia 22030
11. 46901 Cedar Lakes Plaza, Sterling, Virginia 20164
12. 9150 Manassas Drive, Manassas Park, Virginia 20111
13. 1025 Connecticut Avenue, N.W., 1st Floor, District of Columbia 20036
14. 1146 19th Street, N.W., District of Columbia 20036
15. 7708 Woodmont Avenue, Bethesda, Maryland 20814
16. 9812 Falls Road, Suite 125, Potomac, Maryland 20854
17. 14941 Shady Grove Road, Rockville, Maryland 20850
18. 6329 Greenbelt Road, College Park, Maryland 20740
19. 6089 Oxon Hill Road, Oxon Hill, Maryland 20745

National Bank Holdings Corporation
Greenwood Village, Colorado

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-34 (November 28, 2017)

National Bank Holdings Corporation ("NBH"), Greenwood Village, Colorado, 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 Peoples, Inc. ("Peoples"), Lawrence, Kansas, and thereby indirectly acquire Peoples Bank, Lawrence, Kansas, and Peoples National Bank ("PNB"), Colorado Springs, Colorado.

In addition, NBH's subsidiary state member bank, NBH Bank (together with NBH, "Applicants"), Greenwood Village, Colorado, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Peoples Bank and PNB, with NBH Bank as the surviving entity.[3] NBH Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main offices and branches of Peoples Bank and PNB.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 37589 (August 11, 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.

NBH, with consolidated assets of approximately $4.7 billion, is the 212th largest insured depository organization in the United States. NBH controls approximately $3.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] NBH controls NBH Bank, which operates in Colorado, Kansas, Missouri, and Texas. NBH is the 25th largest insured depository organization in Kansas, controlling deposits of approximately $574.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[7] NBH is the 15th largest insured depository organization in Colorado, controlling deposits of approximately $1.5 billion, which represent approximately 1.2 percent of the total deposits of insured depository institutions in that state.

Peoples, with consolidated assets of approximately $924.3 million, is the 796th largest insured depository organization in the United States.[8] Peoples controls approximately

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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. In addition, NBH Bank has applied under section 9 of the FRA to establish branches at certain locations of Peoples Bank that currently only provide limited services. The locations of all of the branches to be established 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, 2017, unless otherwise noted.

7 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.

8 The Winter Trust of 12/3/74 ("Winter Trust"), Lawrence, Kansas, is a registered bank holding company that controls Peoples. After consummation of the proposed transaction, the Winter Trust is expected to deregister as a bank holding company.

$724.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Peoples controls Peoples Bank, which operates in Kansas and New Mexico, and PNB, which operates in Colorado. Peoples is the 69th largest insured depository organization in Kansas, controlling deposits of approximately $220.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. Peoples is the 42nd largest insured depository organization in Colorado, controlling deposits of approximately $265.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, NBH would become the 192nd largest insured depository organization in the United States, with consolidated assets of approximately $5.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. NBH would control consolidated deposits of approximately $4.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Kansas, NBH would become the 14th largest insured depository organization, controlling deposits of approximately $794.5 million, which represent approximately 1.1 percent of the total deposits of insured depository institutions in that state. In Colorado, NBH would become the 14th largest insured depository organization, controlling deposits of approximately $1.8 billion, which represent approximately 1.4 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[9] Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.[10] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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.[11] In addition, under section 3(d) of the BHC Act, 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, if 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 operations.[12]

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[9] 12 U.S.C. § 1842(d)(1)(A).

[10] 12 U.S.C. § 1831u(a)(1).

[11] 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

[12] 12 U.S.C. § 1842(d)(2)(A) & (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, 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. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C.§1841(o)(4)–(7).

For purposes of the BHC Act, the home state of NBH is Missouri, Peoples Bank is located in Kansas and New Mexico, and PNB is located in Colorado.[13] For purposes of section 44 of the FDI Act, the home state of NBH Bank is Colorado, and the home states of Peoples Bank and PNB are Kansas and Colorado, respectively.[14] NBH and NBH Bank are well capitalized and well managed under applicable law, and NBH Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[15] Kansas has a five-year minimum age requirement and there are no minimum age requirements under the laws of Colorado or New Mexico that would apply to the proposal.[16] Peoples Bank and PNB have each been in existence for more than 5 years.

On consummation of the proposed transaction, NBH would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Each of Kansas, Colorado, and New Mexico imposes a limit on the total amount of in-state deposits that a single banking organization may control. Specifically, Kansas imposes a 15 percent deposit limit, Colorado imposes a 25 percent deposit limit, and New Mexico imposes a 40 percent deposit limit.[17] The combined organization would control approximately 1.1 percent of the total amount of deposits of insured depository institutions in Kansas, approximately 1.4 percent of the total amount of deposits of insured depository institutions in Colorado, and less than 1 percent of the total amount of deposits of insured depository institutions in New Mexico. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act, including NBH Bank'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 both statutes.

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.[18] 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.[19]

NBH and Peoples have subsidiary depository institutions that compete directly in the Colorado Springs, Colorado, banking market ("Colorado Springs market") and the Kansas City, Missouri, banking market ("Kansas City market").[20] The Board has considered the competitive effects of the proposal in these banking markets. In particular, the

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[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] For purposes of section 44 of the FDI Act, a state bank's home state is the state in which the bank is chartered, and a national bank's home state is the state in which the main office of the bank is located. 12 U.S.C. § 1831u(g)(4).

[15] 12 U.S.C. § 2901 *et seq*.

[16] *See* Kan. Stat. Ann. § 9-541.

[17] *See* Kan. Stat. Ann. § 9-520; Colo. Rev. Stat. § 11-104-202(4); N.M. Stat. Ann. § 58-1C-5(B).

[18] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[19] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[20] The Colorado Springs market includes the Colorado Springs, Colorado, Ranally Metropolitan Area ("RMA"), and the non-RMA portions of El Paso and Teller counties, both of Colorado. The Kansas City market is defined as Cass, Clay, Jackson, Lafayette, Platte, and Ray counties, all of Missouri; the towns of Trimble and Holt in Clinton County, Missouri; the towns of Chilhowee, Holden, and Kingsville in Johnson County,

Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits of insured depository institutions in the markets ("market deposits") that NBH would control;[21] the concentration levels of market deposits and the increases 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");[22] 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 Colorado Springs and Kansas City markets. On consummation of the proposal, the Colorado Springs market would remain moderately concentrated and 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 these markets would be small, and numerous competitors would remain in each banking market.[23]

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 Colorado Springs or Kansas City markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Missouri; the towns of Adrian, Amsterdam, and Butler in Bates County, Missouri; Franklin, Johnson, Leavenworth, Miami, and Wyandotte counties, all of Kansas; and Linn County, Kansas (excluding the towns of Blue Mound and Prescott).

[21] 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).

[22] 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.

[23] NBH operates the 36th largest depository institution in the Colorado Springs market, controlling approximately $18.1 million in deposits, which represent approximately 0.2 percent of market deposits. Peoples operates the 8th largest depository institution in the same market, controlling deposits of approximately $211.4 million, which represent approximately 2.8 percent of market deposits. On consummation of the proposed transaction, NBH would become the 8th largest depository organization in the market, controlling deposits of approximately $229.4 million, which represent approximately 3 percent of market deposits. The HHI for the Colorado Springs market would increase by 2 points to 1068, and 38 competitors would remain in the market.

NBH operates the 6th largest depository institution in the Kansas City market, controlling approximately $1.6 billion in deposits, which represent approximately 3.2 percent of market deposits. Peoples operates the 34th largest depository institution in the same market, controlling deposits of approximately $174.5 million, which represent approximately 0.4 percent of market deposits. On consummation of the proposed transaction, NBH would remain the 6th largest depository organization in the market, controlling deposits of approximately $1.7 billion, which represent approximately 3.5 percent of market deposits. The HHI for the Kansas City market would increase by 3 points to 847, and 115 competitors would remain in the market.

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.[24] 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, 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 involved in the proposal in light of their financial and managerial resources and the proposed business plan.

NBH and NBH Bank are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, with subsequent mergers of Peoples Bank and PNB with and into NBH Bank.[25] The asset quality, earnings, and liquidity of NBH Bank, Peoples Bank, and PNB are each consistent with approval, and NBH appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects 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 NBH, Peoples, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by NBH, 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.

NBH and its subsidiary depository institution are each considered to be well managed. NBH has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. NBH's directors and senior executive officers have substantial knowledge of and experience in the banking and financial sectors, and NBH's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered NBH's plans for implementing the proposal. NBH 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. NBH would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, NBH's management has the experience and resources to operate the combined

[24] 12 U.S.C. §§ 1842(c)(2), (5) & (6), and 1828(c)(5) & (11).

[25] To effect the transaction, each share of Peoples common stock would be converted into a right to receive cash and NBH common stock, based on an exchange ratio. NBH has the financial resources to effect the proposed transaction.

organization in a safe and sound manner, and NBH plans to integrate the existing management and personnel of Peoples in a manner that augments NBH's management.[26]

Based on all the facts of record, including NBH'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 NBH and Peoples 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.[27] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.[28] 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,[29] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[30]

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, and information provided by the applicants. 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 NBH Bank, Peoples Bank, and PNB; the compliance records of each bank; the supervisory views of the Federal Reserve Bank of Kansas City ("Reserve Bank"); confidential supervisory information; and information provided by NBH.

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 infor-

[26] Following consummation of the proposed transaction, certain officers and employees of Peoples Bank and PNB will join NBH Bank.

[27] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[28] 12 U.S.C. § 2901 *et seq*.

[29] 12 U.S.C. § 2901(b).

[30] 12 U.S.C. § 2903.

mation and views provided by the appropriate federal supervisors.[31] In this case, the Board considered the views of the 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.[32] 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"),[33] 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;[34] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of NBH Bank

NBH Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of December 5, 2016 ("NBH Bank Evaluation").[35] The bank received an "Outstanding" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and Service Test.[36] Examiners found that NBH

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

[32] 12 U.S.C. § 2906.

[33] 12 U.S.C. § 2801 *et seq*.

[34] Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

[35] The NBH Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA, business, and farm loans, as well as community development activities (loans, investments, and services), from January 1, 2011, through December 31, 2015.

[36] The NBH Bank Evaluation included full-scope evaluations in the Kansas City, Combined Statistical Area; Denver, Colorado Metropolitan Statistical Area ("MSA"); Rural Colorado AA; Northwest Rural Missouri AA; and the Dallas, Texas Metropolitan Division. Limited scope evaluations were performed in the Colorado Springs, Colorado MSA; Fort Collins, Colorado MSA; Greeley, Colorado MSA; Pueblo, Colorado MSA; Grand Junction, Colorado MSA; North Central Rural Missouri AA; Northeast Rural Missouri AA; and Austin, Texas MSA.

Bank's overall lending activity reflected good responsiveness to the credit needs of its AAs. Examiners found that the bank originated a substantial majority of its HMDA, business, and farm loans within its AAs and that the geographic distribution of the bank's HMDA, business, and farm loans was good. In addition, examiners noted that the bank's loan distribution reflected good penetration among borrowers of different income levels and businesses and farms of different sizes. Examiners noted that NBH Bank was a leader in making loans that revitalized and stabilized LMI geographies, as well as loans for economic development.

Examiners determined that NBH Bank demonstrated an adequate responsiveness to the community development needs of its AAs through investments and service activity. Examiners found that the bank's community development investments primarily consisted of mortgage-backed securities comprised of loans to LMI borrowers or secured by a residential mortgage within an LMI census tract. In addition, examiners found that the bank's products, services, and business hours did not vary in a way that inconvenienced customers in its AAs, particularly those in LMI geographies and individuals.

CRA Performance of Peoples Bank

Peoples Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of August 6, 2012 ("Peoples Bank Evaluation").[37] The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test.[38]

Examiners found that Peoples Bank's average net loan-to-deposit ratio, which is a measure of the overall level of lending, was more than reasonable given the bank's size and financial condition and the credit needs of the bank's AAs. Examiners also found that a majority of the bank's home purchase, home improvement, and business loans were originated within the bank's AAs and that the geographic and borrower distribution of loans reflected reasonable penetration throughout the bank's AAs.

Examiners noted that Peoples Bank's community development performance, which included loans, donations, and services, demonstrated adequate responsiveness to community development needs throughout its AAs. The bank was found to have performed service activities for various organizations, particularly those providing community services targeted to LMI individuals or families.

CRA Performance of PNB

PNB was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of June 6, 2011 ("PNB Evaluation").[39] Examiners found that PNB's loan-to-deposit ratio was excellent, given area competition and the credit needs of the community. Examiners also found that the majority of the bank's loans by number and dollar amount were originated within its AA

[37] The Peoples Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. Examiners reviewed HMDA loans from 2010 and 2011 and business loans from a six-month period that ended June 12, 2012. Examiners also reviewed community development activities (loans, investments, and services), from June 21, 2010, through August 6, 2012.

[38] The Peoples Bank Evaluation included full-scope evaluations in the Kansas City, Missouri-Kansas MSA, and the Albuquerque, New Mexico MSA. Limited scope evaluations were performed in the Lawrence, Kansas MSA and Non-Metropolitan, Taos County, New Mexico Non-MSA.

[39] The PNB Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed commercial real estate loans from January 2006 through May 2011, and HMDA loans from January 1, 2010, through March 31, 2011. The PNB Evaluation included a full-scope review of the bank's AA, the El Paso County, Colorado MSA.

and its overall lending to borrowers of different incomes and to small businesses was reasonable. Examiners determined that the bank's lending to small businesses was excellent and noted that the bank's distribution of loans to small businesses exceeded the demographic comparator.

Examiners found that the geographic distribution of PNB's residential real estate loans reflected reasonable dispersion throughout the geographies for different income levels. Examiners also found that the geographic distribution of PNB's business loans within the bank's AA was excellent.

Additional Convenience and Needs Considerations

The Board has entered into a Consent Order with Peoples Bank with respect to deceptive practices in violation of section 5 of the Federal Trade Commission Act,[40] which were centered in Peoples Bank's national mortgage business line. This business line, which is separate and apart from the Bank's community banking operations, is being terminated and is not being assumed by NBH as part of this proposal. Pursuant to the Consent Order, Peoples Bank has agreed to pay restitution to affected customers and to set aside at least $2.8 million for this purpose. Because NBH is not a party to the Consent Order, this order is conditioned on NBH's commitment to cause NBH Bank to comply with Peoples Bank's restitution and related Consent Order obligations.

The Board also considered other potential effects of the proposal on the convenience and needs of the communities to be served. NBH represents that it does not have any plans to discontinue any product or service currently offered by Peoples Bank or PNB. NBH represents that, following the proposed transaction, its customers would gain access to products and services not currently offered by NBH Bank, including wealth and investment services through a third-party broker-dealer relationship and health savings accounts and payroll services through another third-party relationship. In addition, NBH represents that the proposed transaction would provide expanded product capabilities to customers of Peoples Bank and PNB, including access to NBH Bank's credit card offerings, a merchant-funded debit card cash back program, and various online banking features, such as wire transfers, person-to-person payments, and personal financial management tools. In addition, NBH represents that customers of NBH and Peoples would benefit from a larger branch and ATM 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 consumer protection laws, confidential supervisory information, information provided by NBH, 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

[40] 15 U.S.C. § 45.

consider a proposal's "risk to the stability of the United States banking or financial system."[41]

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.[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 United States 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 consumer and commercial banking activities.[45] 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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

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[41] Dodd-Frank Act §§ 604(d) & (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).

[42] Many of the metrics considered by the Board measure an institution's activities relative to the United States 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 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.

[45] NBH offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Peoples also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, NBH 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.

Establishment of Branches

NBH Bank has applied under section 9 of the FRA to establish branches at the current locations of Peoples Bank and PNB.[46]The Board has assessed the factors it is required to consider when reviewing an application under that section.[47] Specifically, the Board has considered NBH 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 BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants 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 applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective November 28, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

[46] *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. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also 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) & (c). In addition, under section 44 of the FDI Act, a bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, NBH Bank's branches would be permissible under applicable state law. *See* Kan. Stat. Ann. § 9-1111(b); Colo. Rev. Stat. §§ 11-105-602 and 603; N.M. Stat. Ann. § 58-5-2.

[47] 12 U.S.C. § 322; 12 CFR 208.6.

Appendix

Branches to Be Established by NBH Bank

1. 745 New Hampshire Street, Lawrence, Kansas 66044
2. 4831 West 6th Street, Lawrence, Kansas 66049
3. 1506 South Main Street, Ottawa, Kansas 66067
4. 434 South Main Street, Ottawa, Kansas 66067
5. 7579 West 151st Street, Overland Park, Kansas 66223
6. 3045 Iowa Street, Lawrence, Kansas 66046
7. 212 South Broadway Street, Louisburg, Kansas 66053
8. 13180 Metcalf Avenue, Overland Park, Kansas 66213
9. 5 Supermarket Road, Questa, New Mexico 87556
10. 121 East Main Street, Red River, New Mexico 87558
11. 710 Paseo Del Pueblo Sur, Suite A, Taos, New Mexico 87571
12. 219 Paseo Del Pueblo Norte, Taos, New Mexico 87571
13. 2155 Louisiana Boulevard Northeast, Suite 1000, Albuquerque, New Mexico, 87110
14. 1356 Paseo Del Pueblo Sur, Taos, New Mexico 87571
15. 19 North Tejon, Suite 100, Colorado Springs, Colorado 80903
16. 5175 North Academy Boulevard, Colorado Springs, Colorado 80918
17. 13725 Struthers Road, Suite 200, Colorado Springs, Colorado 80921
18. 400 Harrison Avenue, Leadville, Colorado 80461
19. 1899 Woodmoor Drive, Monument, Colorado 80132
20. 651 Scott Avenue, Woodland Park, Colorado 80863

Robertson Holding Company, L.P.
Harrogate, Tennessee

Unified Shares, LLC
Harrogate, Tennessee

Commercial Bancgroup, Inc.
Harrogate, Tennessee

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, the Establishment of Branches, and Determination on Financial Holding Company Elections
FRB Order No. 2017–36 (December 15, 2017)

Commercial Bancgroup, Inc., and its parent companies, Robertson Holding Company, L.P., and Unified Shares, LLC, all of Harrogate, Tennessee (collectively, "Commercial"), all 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] for Commercial Bancgroup, Inc. to merge with Citizens Bancorp, Inc. ("Citizens"), and thereby indirectly acquire Citizens' subsidiary bank, Citizens Bank, both of New Tazewell, Tennessee.

In addition, Commercial's subsidiary state member bank, Commercial Bank, Harrogate, Tennessee, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Citizens Bank, with Commercial Bank as the surviving entity.[3] Commercial 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 Citizens Bank.[4] Robertson Holding Company, L.P., and Unified Shares, LLC, have filed with the Board elections to become financial holding companies 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 (82 *Federal Register* 44183 (September 21, 2017)).[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, 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").

Commercial is the 784th largest insured depository organization in the United States. Commercial controls approximately $760.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] Commercial controls Commercial Bank, which operates in Tennessee and Kentucky. Commercial is the 42nd largest insured depository organization in

[1] 12 U.S.C. § 1841 *et seq*.
[2] 12 U.S.C. § 1842.
[3] 12 U.S.C. § 1828(c).
[4] 12 U.S.C. § 321. These branch locations are listed in the Appendix.
[5] 12 U.S.C. §§ 1843(k) and (*l*); 12 CFR 225.82.
[6] 12 CFR 262.3(b).
[7] National deposit, market share, and ranking data are as of June 30,2017, unless otherwise noted.

Tennessee, controlling approximately $536.2 million in deposits, which represent approximately 0.4 percent of the total deposits of insured depository institutions in that state.[8]

Citizens is the 3001st largest insured depository organization in the United States. Citizens controls approximately $179.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Citizens controls Citizens Bank, which operates in Tennessee.[9] Citizens is the 115th largest insured depository organization in Tennessee, controlling approximately $146.9 million in deposits, which represent approximately 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Commercial would become the 635th largest insured depository organization in the United States, with consolidated assets of approximately $1.1 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Commercial would control consolidated deposits of approximately $939.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Tennessee, Commercial would become the 31st largest insured depository organization, controlling deposits of approximately $683.1 million, which represent approximately 0.5 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.[10] 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.[11]

Commercial and Citizens have subsidiary depository institutions that compete directly in the Middlesboro Area, KY-TN-VA banking market ("Middlesboro market").[12] 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 of insured depository institutions in the market ("market deposits") that Commercial would control;[13] 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");[14] and other characteristics of the Middlesboro market.

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[8] State deposit, market share, and ranking data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[9] The proposal does not raise interstate issues under section 3(d) of the BHC Act because Tennessee is the home state of both Commercial and Citizens Bank, and Citizens Bank operates only in Tennessee. *See* 12 U.S.C. § 1842(d).

[10] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[11] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[12] The Middlesboro market is defined as Bell County, Kentucky, and Claiborne County, Tennessee; plus the towns of Rose Hill and Ewing in Lee County, Virginia.

[13] Local deposit and market share data are as of June 30, 2017.

[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

The competitive effects of the proposal in the Middlesboro market warrant a detailed review because the proposal would result in a concentration level that would exceed the thresholds in the DOJ Bank Merger Guidelines and would result in the market deposit share of Commercial exceeding 35 percent when using initial competitive screening data. Commercial is the largest competitor in the Middlesboro market, controlling approximately $281.6 million in deposits, which represent approximately 22.7 percent of market deposits. Citizens is the fifth largest depository organization in the Middlesboro market, controlling approximately $110.9 million in deposits, which represent approximately 12.6 percent of market deposits. On consummation of the proposal, Commercial would remain the largest depository organization in the Middlesboro market, controlling approximately $392.5 million in market deposits, which would represent approximately 35.3 percent of market deposits. The HHI in this market would increase by 571 points, from 1626 to 2197.

The Board has considered whether 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 Middlesboro market.[15] Several factors indicate that the increase in concentration in the Middlesboro market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market.

The Middlesboro market is a relatively small, rural banking market and would continue to be served by nine depository institutions after consummation of the proposal. These include, apart from Commercial, one depository institution with more than a 20 percent share of market deposits, two depository institutions each with more than a 14 percent share of market deposits, and one depository institution with more than a five percent share of market deposits. In addition, the Board has considered the competitive influence of two credit unions among the nine depository institutions remaining in the Middlesboro market. These credit unions have broad membership criteria, offer a wide range of consumer banking products and operate street-level branches.[16] Separated by state lines, each of these credit unions serves only a portion of the Middlesboro market. For that reason, the Board does not find that circumstances support including the deposits of these credit unions in its calculations to estimate market influence. Nevertheless, the presence of these viable credit unions, along with the other depository institutions in the Middlesboro market, suggests that Commercial would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Commercial in the Middlesboro market.[17] The presence of the nine depository institu-

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 (August19,2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[15] 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).

[16] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp*., FRB Order No. 2016-10 (June 28, 2016); *Mitsubishi UFJ Financial Group, Inc*., FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc*. (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc*., 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc*., 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

[17] An additional assessment of the transaction, based on competitors' shares of the total number of branches in the market, also supports the view that the structural effects of the transaction would not substantially lessen competition. Branches are one way banks attract customers and are able to provide services to customers throughout the market. *See, e.g.*, Katherine Ho and Joy Ishi, "Location and Competition in Retail Banking," *International Journal of Industrial Organization*, vol. 29, no. 5, pp. 537-546 (2011); Astrid Dick, "Demand Esti-

tions, including Commercial, together indicates that the structural effects of the transaction would not substantially lessen competition.

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 Middlesboro 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 market, the number of remaining competitors, 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 Middlesboro 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.[18] 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. 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.

Commercial and Commercial Bank are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger with a subsequent merger of the subsidiary depository institutions.[19] The asset quality, earnings, and liquidity of both Commercial Bank and Citizens Bank are consistent with approval, and Commercial appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects under the proposal are considered consistent with approval.

mation and Consumer Welfare in the Banking Industry," *Journal of Banking and Finance*, vol. 32, no. 8, pp. 1661-1676 (2008); and Robert M. Adams, Kenneth P. Brevoort, and Elizabeth K. Kiser, "Who Competes with Whom? The Case of Depository Institutions," *Journal of Industrial Economics*, vol. 55, no. 1, pp. 141-167 (2007). The increase in pro forma branch HHI, defined as the sum of the squared branch share for each institution in the market (where the branch share is defined as an institution's number of branches in the market divided by the total number of branches in the market), in the Middlesboro market would be 255 points to a level of 1786.

[18] 12 U.S.C. §§ 1842(c)(2), (5), & (6), and 1828(c)(5) & (11).

[19] As part of the proposed transaction, each share of Citizens' common stock would be converted into a right to receive cash based on a formula related to Citizens' total equity on the last day of the month preceding closing. Commercial has the financial resources to effect the proposed transaction.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Commercial, Citizens, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Commercial; 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.

Commercial, Citizens, and their subsidiary depository institutions are each considered to be well managed. Commercial has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of Commercial have substantial knowledge of and experience in the banking and financial services sectors, and Commercial's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Commercial's plans for implementing the proposal. Commercial 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. Commercial would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Commercial's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all of the facts of record, including Commercial'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 Commercial and Citizens 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.[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 these communities, 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 bank expansionary proposals.[23]

[20] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).
[21] 12 U.S.C. § 2901 *et seq*.
[22] 12 U.S.C. § 2901(b).
[23] 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 the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicants. 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 Commercial Bank and Citizens Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") and the FDIC; confidential supervisory information; and information provided by Commercial.

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.[24] In this case, the Board considered the supervisory views of the 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.[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 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 data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[26] automated loan reports, and other reports generated by the institution 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 institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas ("AAs"), 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 any written complaints about its performance.[27] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts of their community development loans and qualified investments, the extent to which they

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

[25] 12 U.S.C. § 2906.

[26] 12 U.S.C. § 2801 *et seq*.

[27] *See* 12 CFR 228.26(b).

provide community development services, and their responsiveness to community development lending, investment, and service needs.[28]

CRA Performance of Commercial Bank

Commercial Bank was assigned an overall "Satisfactory" rating by the Reserve Bank at its most recent CRA performance evaluation, as of September 21, 2015 ("Commercial Bank Evaluation").[29] The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test."[30] Greater weight was given to performance in Tennessee because of the higher percentage of bank deposits, branches, and loans in that state.

Examiners concluded that Commercial Bank was responding to the credit needs of its AAs. In particular, examiners found that the loan-to-deposit ratio was reasonable given the bank's size, financial condition, and AA credit needs. Examiners noted that the geographic distribution of loans reflected reasonable dispersion throughout the AAs and that the distribution of loans reflected reasonable penetration among individuals of different income levels and businesses of different sizes.

Examiners noted that Commercial Bank's community development performance, which included loans, investments, and services, demonstrated adequate responsiveness to community development needs throughout the bank's AAs. Examiners also noted that bank representatives provided community service hours to benefit LMI families and small businesses throughout the bank's AAs.

CRA Performance of Citizens Bank

Citizens Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 9, 2015 ("Citizens Bank Evaluation").[31] Examiners focused on the bank's loan-to-deposit ratio and lending record within the bank's AAs. Examiners found that Citizens Bank's loan-to-deposit ratio reflected reasonable responsiveness to the credit needs of the AAs, given the institution's size, financial condition and AAs. Examiners also found that the majority of the bank's home mortgage and small business lending was originated within its AAs, and its overall lending to borrowers of different incomes was reasonable. Examiners determined that the bank's small business lending reflected excellent performance.

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[28] *See* 12 CFR 228.26(c).

[29] The Commercial Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed HMDA-reportable loans and a sample of commercial loans originated from January1,2013, through December31,2014. The evaluation period for community development lending, investments, and services was from April17,2012, to September 20,2015.

[30] The Commercial Bank Evaluation included a full scope evaluation of the bank's AA consisting of Knox and Union counties within the Knoxville, Tennessee Metropolitan Statistical Area ("MSA"), as well as its AA consisting of Bell-Harlan and Knox counties in Kentucky, which are not part of an MSA. A limited scope evaluation was performed of the bank's AA consisting of Claiborne County, Tennessee, which is not part of any MSA, and of the bank's AA consisting of Sullivan County within the Kingsport-Bristol-Bristol, Tennessee-Virginia MSA.

[31] The Citizens Bank Evaluation was conducted using the Small Bank Examination Procedures. Examiners reviewed a sample of small business loans originated from January 1, 2012, to December 31, 2014, and also reviewed all HMDA-reportable loans for 2013 and 2014. The Citizens Bank Evaluation included a full scope evaluation of the bank's AA located within Claiborne County, Tennessee, which is not part of any MSA. A limited scope evaluation was performed of the portion of the bank's AA located within the Knoxville, Tennessee MSA and of the bank's AA consisting of Hamblen County, which is part of the Morristown, Tennessee MSA.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Commercial Bank 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. The Board has also considered the results of the most recent consumer compliance examination of Citizens Bank conducted by the FDIC, which included a review of the bank's consumer compliance function.

The Board has taken this information, as well as the CRA performance records of Commercial Bank and Citizens Bank, into account in evaluating the proposed transaction, including in considering whether Commercial has the experience and resources to ensure that Commercial Bank helps to meet the credit needs of the communities within its AAs.

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. Commercial represents that the combined organization, with its greater size and capabilities, would have an increased lending limit and thereby would increase the availability of credit to customers and potential customers of both banks, including small- to mid-sized businesses. In addition, Commercial represents that customers of Citizens Bank would benefit from Commercial Bank's expansive branch network, and customers of Commercial Bank would benefit from additional banking offices in Claiborne and Hamblen counties, Tennessee, as well as a loan production office in Sullivan County, Tennessee. Commercial also represents that customers in communities served by Citizens Bank will benefit from the availability of additional products and services currently offered by Commercial Bank. Finally, Commercial represents that the increased size and scale of the combined organization may permit it to develop and expand product and service offerings to its customers.

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 Reserve Bank and the FDIC, confidential supervisory information, information provided by Commercial, 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."[32]

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

[32] Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

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.[33] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[34]

The Board'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.[35]

In this case, the Board has considered information relevant to risks to the stability of the United States 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 and commercial banking activities.[36] The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States 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

Commercial Bank has applied under section 9 of the FRA to establish branches at the current locations of Citizens Bank.[37] The Board has assessed the factors it is required to

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[33] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[35] *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.

[36] Commercial offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Citizens also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, Commercial 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.

[37] *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. A national bank may retain any branch following a merger that under state law may be established as a new branch of the

consider when reviewing an application under that section.[38] Specifically, the Board has considered Commercial 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.[39] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Elections

As noted, Robertson Holding Company, L.P., and Unified Shares, LLC, have elected to become financial holding companies in connection with the proposal. Robertson Holding Company, L.P., and Unified Shares, LLC, have certified that, upon consummation of the proposal, they and the depository institutions they would control would be well capitalized and well managed, and Robertson Holding Company, L.P., and Unified Shares, LLC, have provided all the information required under the Board's Regulation Y.[40] Based on all the facts of record, the Board determines that the elections by Robertson Holding Company L.P., and Unified Shares, LLC, will become effective upon consummation of the proposal if, on that date, they are well capitalized and well managed and all depository institutions they control are well capitalized, well managed, and have CRA ratings of at least "Satisfactory."

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Commercial and Commercial 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 applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective December 15, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§36(b)(2) and (c). Upon consummation, Commercial Bank's branches would be permissible under applicable state law. *See* Tenn. Code Ann. § 45-2-614.

[38] 12 U.S.C. § 322; 12 CFR 208.6.

[39] Upon consummation of the proposed transaction, Commercial Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

[40] *See* Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(*l*)(1).

Appendix

Branches to Be Established by Commercial Bank

1. 130 South Broad Street, New Tazewell, Tennessee 37825
2. 7100 Cumberland Gap Parkway, Harrogate, Tennessee 37752
3. 155 Terrace Lane, Morristown, Tennessee 37813

Orders Issued Under Federal Reserve Act

Frost Bank
San Antonio, Texas

Order Approving the Establishment of a Branch
FRB Order No. 2017–33 (November 22, 2017)

Frost Bank, a state member bank subsidiary of Cullen/Frost Bankers Incorporated, both of San Antonio, Texas, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[1] and the Board's Regulation H[2] to establish a branch located at 640 Taylor Street, Fort Worth, Texas.

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

Cullen/Frost Bankers Incorporated, with total assets of $31.0 billion, is the 48th largest depository organization in the United States, controlling approximately $25.6 billion in deposits, which represent less than 1.0 percent of the total amount of deposits of insured depository institutions in the United States.[4] Frost Bank operates through 148 branches located in Texas, and the bank's main office is in San Antonio, Texas.

Under section 208.6 of the Board's Regulation H,[5] which implements section 9 of the FRA, the factors that the Board must consider in acting on a branch application include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA");[6] and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.[7] The Board has considered the application in light of these factors and the public comments received on the proposal.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Frost Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Frost Bank, and the comments received on the proposal. Frost Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Frost Bank are consistent with approval, and Frost 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 Frost Bank's

1 12 U.S.C. § 321.
2 12 CFR part 208.
3 12 CFR 262.3(b).
4 Total assets are as of September 30, 2017. National asset ranking and deposit data are as of June 30, 2017.
5 12 CFR 208.6(b).
6 12 U.S.C. § 2901 *et seq.*
7 12 CFR 208.21(a).

proposed investment in the branch and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.[8]

In considering Frost 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 Frost Bank and the bank's record of compliance with applicable banking laws, including consumer protection and anti-money-laundering laws. Frost Bank is considered to be well managed. Frost 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 to be consistent with approval.

Based on this review and all the facts of record, the Board concludes that Frost Bank's management, financial history and condition, capital adequacy, and future earnings prospects, as well as the effectiveness of Frost Bank in combatting money-laundering activities, are consistent with approval of the proposal.

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.[9] In this evaluation, the Board places particular emphasis on the record of the relevant depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[10] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating a bank branching proposal.[11]

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

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[8] 12 CFR 208.21(a).
[9] 12 CFR 208.6(b)(3).
[10] 12 U.S.C. § 2901(b).
[11] 12 U.S.C. § 2903.

Public Comments on the Proposal

A commenter objected to the proposal, alleging that Frost Bank has engaged in redlining in Dallas and Houston, Texas.[12] Specifically, the commenter alleged that Frost Bank disfavors certain African American neighborhoods in Houston and Dallas and has limited its lending, marketing activities, community development activities, and branching in those areas.

Business of the Applicant and Response to Comments

Through its network of branches, Frost Bank offers a broad range of loan and deposit products and services to consumers and businesses, including commercial and industrial, residential, agricultural, and consumer loans; personal checking and savings accounts; international banking, correspondent banking, and trust services; and treasury management services. In response to the comment, Frost Bank denies the commenter's allegations and represents that since 2015, it has opened nine branches that directly contribute to serving the needs of majority-minority communities, including three in Dallas and three in Houston. In addition, Frost Bank represents that it has developed and implemented a comprehensive marketing and outreach program to serve the needs of historically underserved neighborhoods, including majority-minority neighborhoods and individuals.

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 and views provided by the appropriate federal supervisors.[13] In this case, the Board considered the information collected by and the findings of examiners from the Federal Reserve Bank of Dallas ("Reserve Bank"), who conducted an on-site CRA performance evaluation of Frost 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.[14] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation 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"),[15] in

[12] Redlining is the practice of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which a credit seeker resides or will reside or in which a property to be mortgaged is located. *See* Interagency Fair Lending Examination Procedures (August 2009), available at https//www.ffiec.gov/pdf/fairlend.pdf.

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

[14] 12 U.S.C. § 2906.

[15] 12 U.S.C. § 2801 *et seq.*

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 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.

CRA Performance of Frost Bank

Frost Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of July 13, 2015 ("Frost Bank Evaluation").[17] The bank received an "Outstanding" rating for the Investment Test and "High Satisfactory" ratings for the Lending Test and the Service Test.[18]

Examiners found that Frost Bank's overall lending activity was responsive to the credit needs in all of its AAs. According to examiners, the bank made a substantial majority of its loans inside its AAs. Examiners noted that, overall, the distribution of the bank's home mortgage borrowers of different income levels was adequate and the bank's distribution of small business lending reflected good penetration among businesses of different revenue sizes. Examiners found that the bank's overall geographic distribution of loans reflected excellent penetration. Examiners noted that the bank made a relatively high level of community development loans for a variety of purposes, including multifamily housing, but the majority were for affordable housing and community services to individuals or LMI areas.

Examiners found Frost Bank's lending performance in the Houston AA to be good. Examiners found that the geographic distribution of the bank's loans in this AA reflected excellent penetration, and the bank's borrowers reflected adequate penetration among individuals of different income levels and businesses of different revenue sizes. Examiners found the bank's community development lending to be excellent, noting that the bank was a leader in making community development loans. In the Dallas AA, another area of

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[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 $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).

[17] The Frost Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business and small farm lending activities reported by the bank from January 1, 2012, through December 31, 2014. For the Midland and Odessa, Texas, Metropolitan Statistical Areas ("MSAs"), the lending performance was based upon loan data for the period January 1, 2014, through December 31, 2014. The evaluation period for community development lending, investments, and services was January 1, 2012, through December 31, 2014. For the Midland and Odessa MSAs, the review period for community development activity was from January 1, 2014, through December 31, 2014.

[18] The Frost Bank Evaluation included a full-scope review of the bank's AAs within the following MSAs: Austin-Round Rock-San Marcos, Texas, MSA; Fort Worth-Arlington, Texas, Metropolitan Division; Houston-Sugar Land-Bayton, Texas, MSA ("Houston AA"); McAllen-Edinburg-Mission, Texas, MSA; San Antonio-New Braunfels, Texas, MSA. A limited-scope review was conducted in the bank's AAs within the Brownsville-Harlington, Texas, MSA; Corpus Christi, Texas, MSA; Dallas-Plano-Irving, Texas, Metropolitan Division ("Dallas AA"); Midland, Texas, MSA; Odessa, Texas, MSA; and Willacy County, Texas.

concern for the commenter, examiners found the bank's lending performance to be below its overall lending performance, noting the bank's lower levels of community development lending.

Examiners found that the bank's investments demonstrated excellent responsiveness to the most pressing credit and community development needs throughout its AAs. Examiners found that the bank had an excellent level of qualified community development investments and grants, particularly those types not routinely provided by private investors. In addition, examiners noted that the bank made extensive use of innovative and/or complex investments to support community development initiatives. In the Houston AA, examiners found that the bank exhibited excellent responsiveness to credit and community development needs though its investment activities, which included investments for affordable housing. The bank's investment performance in the Dallas AA was found to be consistent with the bank's overall investment performance.

Examiners found that Frost Bank provided a relatively high level of community development services throughout its AAs. Frost Bank's retail delivery systems were found to be reasonably accessible to geographies and individuals of different income levels located in its AAs. Examiners further noted that Frost Bank's opening and closing of branches generally did not adversely affect the accessibility of banking services, particularly to LMI geographies and/or individuals. Examiners found that the banking services did not vary in a way that inconvenienced its AAs, particularly LMI geographies and individuals.

In the Houston AA, examiners found that Frost Bank's performance under the Service Test was adequate. Examiners compared the distribution of the bank's delivery systems to households and businesses within the area, and found the distribution impacted accessibility to portions of the bank's geographies and individuals of different income levels. Examiners found, however, that the bank's retail and community development services reflected adequate responsiveness to the needs of the AA. Moreover, examiners found that the bank's record of opening or closing branches in the Houston AA had generally not affected the accessibility of its delivery systems. In the Dallas AA, examiners concluded that Frost Bank's service performance was consistent with its overall service performance.

Frost Bank's Efforts Since the 2015 CRA Evaluation

Frost Bank represents that since the Frost Bank Evaluation, it has continued to help meet the credit needs of its AAs, including the needs of LMI communities and individuals. Frost Bank represents that it has made community development loans that promote affordable housing and support economic development and revitalization, as well as loans to organizations providing community services to LMI individuals and families. In addition, the bank asserts that it has continued to purchase mortgage-backed securities secured by mortgage loans made to LMI borrowers, invested in school bonds that fund economically disadvantaged school districts throughout Texas, and made contributions to benefit the community directly in each of the bank's AAs, including Dallas and Houston. The bank represents that it has continued to make available a low-cost checking account and low-cost unsecured and secured home improvement loans for LMI individuals. Additionally, Frost Bank asserts that it has continued to provide financial education for youths, adults, seniors, and small businesses and has conducted educational events for LMI homeowners on home improvement, home-improvement loan options, and the importance of good credit.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examinations of Frost Bank conducted by the Reserve Bank, which included a review of the

compliance management program and compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated Frost Bank's fair lending management program, including the bank's fair-lending-related practices, policies, procedures, and internal controls. 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 represents that an existing bank branch will be closed concurrently with the opening of the proposed branch and that the distance between the two branches was just slightly over the threshold requiring the bank to treat this as a branch opening/closure rather than a relocation. The bank asserts that the proposed branch would be easier to access than the current branch, provide customers access to all of the bank's financial services in a single location, and provide a higher level of security for the bank's employees and customers.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA record of Frost Bank, the bank's record of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Frost 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.[19] The Board's approval is specifically conditioned on Frost Bank's compliance with all the commitments made to the Board in connection with the proposal, as well as all conditions imposed in this order. 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 branch must be established within one year of the date of this order, unless such period is extended for good cause by the Board or the Reserve Bank, acting under authority delegated by the Board.

By order of the Board of Governors, effective November 22, 2017.

[19] The Board construes the comments 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 a relevant newspaper of general circulation on July 13, 2017. The comment period ended on July 28, 2017. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written 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.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

National Bank Holdings Corporation
Greenwood Village, Colorado

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-34 (November 28, 2017)

National Bank Holdings Corporation ("NBH"), Greenwood Village, Colorado, 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 Peoples, Inc. ("Peoples"), Lawrence, Kansas, and thereby indirectly acquire Peoples Bank, Lawrence, Kansas, and Peoples National Bank ("PNB"), Colorado Springs, Colorado.

In addition, NBH's subsidiary state member bank, NBH Bank (together with NBH, "Applicants"), Greenwood Village, Colorado, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Peoples Bank and PNB, with NBH Bank as the surviving entity.[3] NBH Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main offices and branches of Peoples Bank and PNB.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 37589 (August 11, 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.

NBH, with consolidated assets of approximately $4.7 billion, is the 212th largest insured depository organization in the United States. NBH controls approximately $3.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] NBH controls NBH Bank, which operates in Colorado, Kansas, Missouri, and Texas. NBH is the 25th largest insured depository organization in Kansas, controlling deposits of approximately $574.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[7] NBH is the 15th largest insured depository organization in Colorado, controlling deposits of approximately $1.5 billion, which represent approximately 1.2 percent of the total deposits of insured depository institutions in that state.

Peoples, with consolidated assets of approximately $924.3 million, is the 796th largest insured depository organization in the United States.[8] Peoples controls approximately

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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. In addition, NBH Bank has applied under section 9 of the FRA to establish branches at certain locations of Peoples Bank that currently only provide limited services. The locations of all of the branches to be established 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, 2017, unless otherwise noted.

7 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.

8 The Winter Trust of 12/3/74 ("Winter Trust"), Lawrence, Kansas, is a registered bank holding company that controls Peoples. After consummation of the proposed transaction, the Winter Trust is expected to deregister as a bank holding company.

$724.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Peoples controls Peoples Bank, which operates in Kansas and New Mexico, and PNB, which operates in Colorado. Peoples is the 69th largest insured depository organization in Kansas, controlling deposits of approximately $220.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. Peoples is the 42nd largest insured depository organization in Colorado, controlling deposits of approximately $265.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, NBH would become the 192nd largest insured depository organization in the United States, with consolidated assets of approximately $5.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. NBH would control consolidated deposits of approximately $4.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Kansas, NBH would become the 14th largest insured depository organization, controlling deposits of approximately $794.5 million, which represent approximately 1.1 percent of the total deposits of insured depository institutions in that state. In Colorado, NBH would become the 14th largest insured depository organization, controlling deposits of approximately $1.8 billion, which represent approximately 1.4 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[9] Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.[10] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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.[11] In addition, under section 3(d) of the BHC Act, 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, if 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 operations.[12]

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[9] 12 U.S.C. § 1842(d)(1)(A).

[10] 12 U.S.C. § 1831u(a)(1).

[11] 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

[12] 12 U.S.C. § 1842(d)(2)(A) & (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, 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. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C.§1841(o)(4)–(7).

For purposes of the BHC Act, the home state of NBH is Missouri, Peoples Bank is located in Kansas and New Mexico, and PNB is located in Colorado.[13] For purposes of section 44 of the FDI Act, the home state of NBH Bank is Colorado, and the home states of Peoples Bank and PNB are Kansas and Colorado, respectively.[14] NBH and NBH Bank are well capitalized and well managed under applicable law, and NBH Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[15] Kansas has a five-year minimum age requirement and there are no minimum age requirements under the laws of Colorado or New Mexico that would apply to the proposal.[16] Peoples Bank and PNB have each been in existence for more than 5 years.

On consummation of the proposed transaction, NBH would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Each of Kansas, Colorado, and New Mexico imposes a limit on the total amount of in-state deposits that a single banking organization may control. Specifically, Kansas imposes a 15 percent deposit limit, Colorado imposes a 25 percent deposit limit, and New Mexico imposes a 40 percent deposit limit.[17] The combined organization would control approximately 1.1 percent of the total amount of deposits of insured depository institutions in Kansas, approximately 1.4 percent of the total amount of deposits of insured depository institutions in Colorado, and less than 1 percent of the total amount of deposits of insured depository institutions in New Mexico. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act, including NBH Bank'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 both statutes.

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.[18] 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.[19]

NBH and Peoples have subsidiary depository institutions that compete directly in the Colorado Springs, Colorado, banking market ("Colorado Springs market") and the Kansas City, Missouri, banking market ("Kansas City market").[20] The Board has considered the competitive effects of the proposal in these banking markets. In particular, the

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[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] For purposes of section 44 of the FDI Act, a state bank's home state is the state in which the bank is chartered, and a national bank's home state is the state in which the main office of the bank is located. 12 U.S.C. § 1831u(g)(4).

[15] 12 U.S.C. § 2901 *et seq*.

[16] *See* Kan. Stat. Ann. § 9-541.

[17] *See* Kan. Stat. Ann. § 9-520; Colo. Rev. Stat. § 11-104-202(4); N.M. Stat. Ann. § 58-1C-5(B).

[18] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[19] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[20] The Colorado Springs market includes the Colorado Springs, Colorado, Ranally Metropolitan Area ("RMA"), and the non-RMA portions of El Paso and Teller counties, both of Colorado. The Kansas City market is defined as Cass, Clay, Jackson, Lafayette, Platte, and Ray counties, all of Missouri; the towns of Trimble and Holt in Clinton County, Missouri; the towns of Chilhowee, Holden, and Kingsville in Johnson County,

Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits of insured depository institutions in the markets ("market deposits") that NBH would control;[21] the concentration levels of market deposits and the increases 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");[22] 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 Colorado Springs and Kansas City markets. On consummation of the proposal, the Colorado Springs market would remain moderately concentrated and 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 these markets would be small, and numerous competitors would remain in each banking market.[23]

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 Colorado Springs or Kansas City markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Missouri; the towns of Adrian, Amsterdam, and Butler in Bates County, Missouri; Franklin, Johnson, Leavenworth, Miami, and Wyandotte counties, all of Kansas; and Linn County, Kansas (excluding the towns of Blue Mound and Prescott).

[21] 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).

[22] 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.

[23] NBH operates the 36th largest depository institution in the Colorado Springs market, controlling approximately $18.1 million in deposits, which represent approximately 0.2 percent of market deposits. Peoples operates the 8th largest depository institution in the same market, controlling deposits of approximately $211.4 million, which represent approximately 2.8 percent of market deposits. On consummation of the proposed transaction, NBH would become the 8th largest depository organization in the market, controlling deposits of approximately $229.4 million, which represent approximately 3 percent of market deposits. The HHI for the Colorado Springs market would increase by 2 points to 1068, and 38 competitors would remain in the market.

NBH operates the 6th largest depository institution in the Kansas City market, controlling approximately $1.6 billion in deposits, which represent approximately 3.2 percent of market deposits. Peoples operates the 34th largest depository institution in the same market, controlling deposits of approximately $174.5 million, which represent approximately 0.4 percent of market deposits. On consummation of the proposed transaction, NBH would remain the 6th largest depository organization in the market, controlling deposits of approximately $1.7 billion, which represent approximately 3.5 percent of market deposits. The HHI for the Kansas City market would increase by 3 points to 847, and 115 competitors would remain in the market.

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.[24] 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, 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 involved in the proposal in light of their financial and managerial resources and the proposed business plan.

NBH and NBH Bank are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, with subsequent mergers of Peoples Bank and PNB with and into NBH Bank.[25] The asset quality, earnings, and liquidity of NBH Bank, Peoples Bank, and PNB are each consistent with approval, and NBH appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects 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 NBH, Peoples, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by NBH, 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.

NBH and its subsidiary depository institution are each considered to be well managed. NBH has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. NBH's directors and senior executive officers have substantial knowledge of and experience in the banking and financial sectors, and NBH's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered NBH's plans for implementing the proposal. NBH 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. NBH would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, NBH's management has the experience and resources to operate the combined

[24] 12 U.S.C. §§ 1842(c)(2), (5) & (6), and 1828(c)(5) & (11).

[25] To effect the transaction, each share of Peoples common stock would be converted into a right to receive cash and NBH common stock, based on an exchange ratio. NBH has the financial resources to effect the proposed transaction.

organization in a safe and sound manner, and NBH plans to integrate the existing management and personnel of Peoples in a manner that augments NBH's management.[26]

Based on all the facts of record, including NBH'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 NBH and Peoples 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.[27] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.[28] 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,[29] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[30]

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, and information provided by the applicants. 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 NBH Bank, Peoples Bank, and PNB; the compliance records of each bank; the supervisory views of the Federal Reserve Bank of Kansas City ("Reserve Bank"); confidential supervisory information; and information provided by NBH.

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 infor-

[26] Following consummation of the proposed transaction, certain officers and employees of Peoples Bank and PNB will join NBH Bank.

[27] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[28] 12 U.S.C. § 2901 *et seq*.

[29] 12 U.S.C. § 2901(b).

[30] 12 U.S.C. § 2903.

mation and views provided by the appropriate federal supervisors.[31] In this case, the Board considered the views of the 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.[32] 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"),[33] 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;[34] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of NBH Bank

NBH Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of December 5, 2016 ("NBH Bank Evaluation").[35] The bank received an "Outstanding" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and Service Test.[36] Examiners found that NBH

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

[32] 12 U.S.C. § 2906.

[33] 12 U.S.C. § 2801 *et seq*.

[34] Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

[35] The NBH Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA, business, and farm loans, as well as community development activities (loans, investments, and services), from January 1, 2011, through December 31, 2015.

[36] The NBH Bank Evaluation included full-scope evaluations in the Kansas City, Combined Statistical Area; Denver, Colorado Metropolitan Statistical Area ("MSA"); Rural Colorado AA; Northwest Rural Missouri AA; and the Dallas, Texas Metropolitan Division. Limited scope evaluations were performed in the Colorado Springs, Colorado MSA; Fort Collins, Colorado MSA; Greeley, Colorado MSA; Pueblo, Colorado MSA; Grand Junction, Colorado MSA; North Central Rural Missouri AA; Northeast Rural Missouri AA; and Austin, Texas MSA.

Bank's overall lending activity reflected good responsiveness to the credit needs of its AAs. Examiners found that the bank originated a substantial majority of its HMDA, business, and farm loans within its AAs and that the geographic distribution of the bank's HMDA, business, and farm loans was good. In addition, examiners noted that the bank's loan distribution reflected good penetration among borrowers of different income levels and businesses and farms of different sizes. Examiners noted that NBH Bank was a leader in making loans that revitalized and stabilized LMI geographies, as well as loans for economic development.

Examiners determined that NBH Bank demonstrated an adequate responsiveness to the community development needs of its AAs through investments and service activity. Examiners found that the bank's community development investments primarily consisted of mortgage-backed securities comprised of loans to LMI borrowers or secured by a residential mortgage within an LMI census tract. In addition, examiners found that the bank's products, services, and business hours did not vary in a way that inconvenienced customers in its AAs, particularly those in LMI geographies and individuals.

CRA Performance of Peoples Bank

Peoples Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of August 6, 2012 ("Peoples Bank Evaluation").[37] The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test.[38]

Examiners found that Peoples Bank's average net loan-to-deposit ratio, which is a measure of the overall level of lending, was more than reasonable given the bank's size and financial condition and the credit needs of the bank's AAs. Examiners also found that a majority of the bank's home purchase, home improvement, and business loans were originated within the bank's AAs and that the geographic and borrower distribution of loans reflected reasonable penetration throughout the bank's AAs.

Examiners noted that Peoples Bank's community development performance, which included loans, donations, and services, demonstrated adequate responsiveness to community development needs throughout its AAs. The bank was found to have performed service activities for various organizations, particularly those providing community services targeted to LMI individuals or families.

CRA Performance of PNB

PNB was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of June 6, 2011 ("PNB Evaluation").[39] Examiners found that PNB's loan-to-deposit ratio was excellent, given area competition and the credit needs of the community. Examiners also found that the majority of the bank's loans by number and dollar amount were originated within its AA

[37] The Peoples Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. Examiners reviewed HMDA loans from 2010 and 2011 and business loans from a six-month period that ended June 12, 2012. Examiners also reviewed community development activities (loans, investments, and services), from June 21, 2010, through August 6, 2012.

[38] The Peoples Bank Evaluation included full-scope evaluations in the Kansas City, Missouri-Kansas MSA, and the Albuquerque, New Mexico MSA. Limited scope evaluations were performed in the Lawrence, Kansas MSA and Non-Metropolitan, Taos County, New Mexico Non-MSA.

[39] The PNB Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed commercial real estate loans from January 2006 through May 2011, and HMDA loans from January 1, 2010, through March 31, 2011. The PNB Evaluation included a full-scope review of the bank's AA, the El Paso County, Colorado MSA.

and its overall lending to borrowers of different incomes and to small businesses was reasonable. Examiners determined that the bank's lending to small businesses was excellent and noted that the bank's distribution of loans to small businesses exceeded the demographic comparator.

Examiners found that the geographic distribution of PNB's residential real estate loans reflected reasonable dispersion throughout the geographies for different income levels. Examiners also found that the geographic distribution of PNB's business loans within the bank's AA was excellent.

Additional Convenience and Needs Considerations

The Board has entered into a Consent Order with Peoples Bank with respect to deceptive practices in violation of section 5 of the Federal Trade Commission Act,[40] which were centered in Peoples Bank's national mortgage business line. This business line, which is separate and apart from the Bank's community banking operations, is being terminated and is not being assumed by NBH as part of this proposal. Pursuant to the Consent Order, Peoples Bank has agreed to pay restitution to affected customers and to set aside at least $2.8 million for this purpose. Because NBH is not a party to the Consent Order, this order is conditioned on NBH's commitment to cause NBH Bank to comply with Peoples Bank's restitution and related Consent Order obligations.

The Board also considered other potential effects of the proposal on the convenience and needs of the communities to be served. NBH represents that it does not have any plans to discontinue any product or service currently offered by Peoples Bank or PNB. NBH represents that, following the proposed transaction, its customers would gain access to products and services not currently offered by NBH Bank, including wealth and investment services through a third-party broker-dealer relationship and health savings accounts and payroll services through another third-party relationship. In addition, NBH represents that the proposed transaction would provide expanded product capabilities to customers of Peoples Bank and PNB, including access to NBH Bank's credit card offerings, a merchant-funded debit card cash back program, and various online banking features, such as wire transfers, person-to-person payments, and personal financial management tools. In addition, NBH represents that customers of NBH and Peoples would benefit from a larger branch and ATM 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 consumer protection laws, confidential supervisory information, information provided by NBH, 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

[40] 15 U.S.C. § 45.

consider a proposal's "risk to the stability of the United States banking or financial system."[41]

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.[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 United States 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 consumer and commercial banking activities.[45] 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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

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[41] Dodd-Frank Act §§ 604(d) & (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).

[42] Many of the metrics considered by the Board measure an institution's activities relative to the United States 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 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.

[45] NBH offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Peoples also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, NBH 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.

Establishment of Branches

NBH Bank has applied under section 9 of the FRA to establish branches at the current locations of Peoples Bank and PNB.[46]The Board has assessed the factors it is required to consider when reviewing an application under that section.[47] Specifically, the Board has considered NBH 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 BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants 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 applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective November 28, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

[46] *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. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also 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) & (c). In addition, under section 44 of the FDI Act, a bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, NBH Bank's branches would be permissible under applicable state law. *See* Kan. Stat. Ann. § 9-1111(b); Colo. Rev. Stat. §§ 11-105-602 and 603; N.M. Stat. Ann. § 58-5-2.

[47] 12 U.S.C. § 322; 12 CFR 208.6.

Appendix

Branches to Be Established by NBH Bank

1. 745 New Hampshire Street, Lawrence, Kansas 66044
2. 4831 West 6th Street, Lawrence, Kansas 66049
3. 1506 South Main Street, Ottawa, Kansas 66067
4. 434 South Main Street, Ottawa, Kansas 66067
5. 7579 West 151st Street, Overland Park, Kansas 66223
6. 3045 Iowa Street, Lawrence, Kansas 66046
7. 212 South Broadway Street, Louisburg, Kansas 66053
8. 13180 Metcalf Avenue, Overland Park, Kansas 66213
9. 5 Supermarket Road, Questa, New Mexico 87556
10. 121 East Main Street, Red River, New Mexico 87558
11. 710 Paseo Del Pueblo Sur, Suite A, Taos, New Mexico 87571
12. 219 Paseo Del Pueblo Norte, Taos, New Mexico 87571
13. 2155 Louisiana Boulevard Northeast, Suite 1000, Albuquerque, New Mexico, 87110
14. 1356 Paseo Del Pueblo Sur, Taos, New Mexico 87571
15. 19 North Tejon, Suite 100, Colorado Springs, Colorado 80903
16. 5175 North Academy Boulevard, Colorado Springs, Colorado 80918
17. 13725 Struthers Road, Suite 200, Colorado Springs, Colorado 80921
18. 400 Harrison Avenue, Leadville, Colorado 80461
19. 1899 Woodmoor Drive, Monument, Colorado 80132
20. 651 Scott Avenue, Woodland Park, Colorado 80863

Robertson Holding Company, L.P.
Harrogate, Tennessee

Unified Shares, LLC
Harrogate, Tennessee

Commercial Bancgroup, Inc.
Harrogate, Tennessee

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, the Establishment of Branches, and Determination on Financial Holding Company Elections
FRB Order No. 2017–36 (December 15, 2017)

Commercial Bancgroup, Inc., and its parent companies, Robertson Holding Company, L.P., and Unified Shares, LLC, all of Harrogate, Tennessee (collectively, "Commercial"), all 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] for Commercial Bancgroup, Inc. to merge with Citizens Bancorp, Inc. ("Citizens"), and thereby indirectly acquire Citizens' subsidiary bank, Citizens Bank, both of New Tazewell, Tennessee.

In addition, Commercial's subsidiary state member bank, Commercial Bank, Harrogate, Tennessee, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Citizens Bank, with Commercial Bank as the surviving entity.[3] Commercial 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 Citizens Bank.[4] Robertson Holding Company, L.P., and Unified Shares, LLC, have filed with the Board elections to become financial holding companies 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 (82 *Federal Register* 44183 (September 21, 2017)).[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, 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").

Commercial is the 784th largest insured depository organization in the United States. Commercial controls approximately $760.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] Commercial controls Commercial Bank, which operates in Tennessee and Kentucky. Commercial is the 42nd largest insured depository organization in

[1] 12 U.S.C. § 1841 *et seq*.
[2] 12 U.S.C. § 1842.
[3] 12 U.S.C. § 1828(c).
[4] 12 U.S.C. § 321. These branch locations are listed in the Appendix.
[5] 12 U.S.C. §§ 1843(k) and (*l*); 12 CFR 225.82.
[6] 12 CFR 262.3(b).
[7] National deposit, market share, and ranking data are as of June 30,2017, unless otherwise noted.

Tennessee, controlling approximately $536.2 million in deposits, which represent approximately 0.4 percent of the total deposits of insured depository institutions in that state.[8]

Citizens is the 3001st largest insured depository organization in the United States. Citizens controls approximately $179.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Citizens controls Citizens Bank, which operates in Tennessee.[9] Citizens is the 115th largest insured depository organization in Tennessee, controlling approximately $146.9 million in deposits, which represent approximately 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Commercial would become the 635th largest insured depository organization in the United States, with consolidated assets of approximately $1.1 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Commercial would control consolidated deposits of approximately $939.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Tennessee, Commercial would become the 31st largest insured depository organization, controlling deposits of approximately $683.1 million, which represent approximately 0.5 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.[10] 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.[11]

Commercial and Citizens have subsidiary depository institutions that compete directly in the Middlesboro Area, KY-TN-VA banking market ("Middlesboro market").[12] 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 of insured depository institutions in the market ("market deposits") that Commercial would control;[13] 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");[14] and other characteristics of the Middlesboro market.

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[8] State deposit, market share, and ranking data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[9] The proposal does not raise interstate issues under section 3(d) of the BHC Act because Tennessee is the home state of both Commercial and Citizens Bank, and Citizens Bank operates only in Tennessee. *See* 12 U.S.C. § 1842(d).

[10] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[11] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[12] The Middlesboro market is defined as Bell County, Kentucky, and Claiborne County, Tennessee; plus the towns of Rose Hill and Ewing in Lee County, Virginia.

[13] Local deposit and market share data are as of June 30, 2017.

[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

The competitive effects of the proposal in the Middlesboro market warrant a detailed review because the proposal would result in a concentration level that would exceed the thresholds in the DOJ Bank Merger Guidelines and would result in the market deposit share of Commercial exceeding 35 percent when using initial competitive screening data. Commercial is the largest competitor in the Middlesboro market, controlling approximately $281.6 million in deposits, which represent approximately 22.7 percent of market deposits. Citizens is the fifth largest depository organization in the Middlesboro market, controlling approximately $110.9 million in deposits, which represent approximately 12.6 percent of market deposits. On consummation of the proposal, Commercial would remain the largest depository organization in the Middlesboro market, controlling approximately $392.5 million in market deposits, which would represent approximately 35.3 percent of market deposits. The HHI in this market would increase by 571 points, from 1626 to 2197.

The Board has considered whether 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 Middlesboro market.[15] Several factors indicate that the increase in concentration in the Middlesboro market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market.

The Middlesboro market is a relatively small, rural banking market and would continue to be served by nine depository institutions after consummation of the proposal. These include, apart from Commercial, one depository institution with more than a 20 percent share of market deposits, two depository institutions each with more than a 14 percent share of market deposits, and one depository institution with more than a five percent share of market deposits. In addition, the Board has considered the competitive influence of two credit unions among the nine depository institutions remaining in the Middlesboro market. These credit unions have broad membership criteria, offer a wide range of consumer banking products and operate street-level branches.[16] Separated by state lines, each of these credit unions serves only a portion of the Middlesboro market. For that reason, the Board does not find that circumstances support including the deposits of these credit unions in its calculations to estimate market influence. Nevertheless, the presence of these viable credit unions, along with the other depository institutions in the Middlesboro market, suggests that Commercial would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Commercial in the Middlesboro market.[17] The presence of the nine depository institu-

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 (August19,2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[15] 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).

[16] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp*., FRB Order No. 2016-10 (June 28, 2016); *Mitsubishi UFJ Financial Group, Inc*., FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc*. (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc*., 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc*., 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

[17] An additional assessment of the transaction, based on competitors' shares of the total number of branches in the market, also supports the view that the structural effects of the transaction would not substantially lessen competition. Branches are one way banks attract customers and are able to provide services to customers throughout the market. *See, e.g.*, Katherine Ho and Joy Ishi, "Location and Competition in Retail Banking," *International Journal of Industrial Organization*, vol. 29, no. 5, pp. 537-546 (2011); Astrid Dick, "Demand Esti-

tions, including Commercial, together indicates that the structural effects of the transaction would not substantially lessen competition.

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 Middlesboro 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 market, the number of remaining competitors, 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 Middlesboro 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.[18] 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. 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.

Commercial and Commercial Bank are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger with a subsequent merger of the subsidiary depository institutions.[19] The asset quality, earnings, and liquidity of both Commercial Bank and Citizens Bank are consistent with approval, and Commercial appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects under the proposal are considered consistent with approval.

mation and Consumer Welfare in the Banking Industry," *Journal of Banking and Finance*, vol. 32, no. 8, pp. 1661-1676 (2008); and Robert M. Adams, Kenneth P. Brevoort, and Elizabeth K. Kiser, "Who Competes with Whom? The Case of Depository Institutions," *Journal of Industrial Economics*, vol. 55, no. 1, pp. 141-167 (2007). The increase in pro forma branch HHI, defined as the sum of the squared branch share for each institution in the market (where the branch share is defined as an institution's number of branches in the market divided by the total number of branches in the market), in the Middlesboro market would be 255 points to a level of 1786.

[18] 12 U.S.C. §§ 1842(c)(2), (5), & (6), and 1828(c)(5) & (11).

[19] As part of the proposed transaction, each share of Citizens' common stock would be converted into a right to receive cash based on a formula related to Citizens' total equity on the last day of the month preceding closing. Commercial has the financial resources to effect the proposed transaction.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Commercial, Citizens, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Commercial; 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.

Commercial, Citizens, and their subsidiary depository institutions are each considered to be well managed. Commercial has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of Commercial have substantial knowledge of and experience in the banking and financial services sectors, and Commercial's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Commercial's plans for implementing the proposal. Commercial 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. Commercial would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Commercial's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all of the facts of record, including Commercial'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 Commercial and Citizens 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.[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 these communities, 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 bank expansionary proposals.[23]

[20] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).
[21] 12 U.S.C. § 2901 *et seq*.
[22] 12 U.S.C. § 2901(b).
[23] 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 the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicants. 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 Commercial Bank and Citizens Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") and the FDIC; confidential supervisory information; and information provided by Commercial.

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.[24] In this case, the Board considered the supervisory views of the 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.[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 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 data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[26] automated loan reports, and other reports generated by the institution 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 institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas ("AAs"), 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 any written complaints about its performance.[27] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts of their community development loans and qualified investments, the extent to which they

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

[25] 12 U.S.C. § 2906.

[26] 12 U.S.C. § 2801 *et seq*.

[27] *See* 12 CFR 228.26(b).

provide community development services, and their responsiveness to community development lending, investment, and service needs.[28]

CRA Performance of Commercial Bank

Commercial Bank was assigned an overall "Satisfactory" rating by the Reserve Bank at its most recent CRA performance evaluation, as of September 21, 2015 ("Commercial Bank Evaluation").[29] The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test."[30] Greater weight was given to performance in Tennessee because of the higher percentage of bank deposits, branches, and loans in that state.

Examiners concluded that Commercial Bank was responding to the credit needs of its AAs. In particular, examiners found that the loan-to-deposit ratio was reasonable given the bank's size, financial condition, and AA credit needs. Examiners noted that the geographic distribution of loans reflected reasonable dispersion throughout the AAs and that the distribution of loans reflected reasonable penetration among individuals of different income levels and businesses of different sizes.

Examiners noted that Commercial Bank's community development performance, which included loans, investments, and services, demonstrated adequate responsiveness to community development needs throughout the bank's AAs. Examiners also noted that bank representatives provided community service hours to benefit LMI families and small businesses throughout the bank's AAs.

CRA Performance of Citizens Bank

Citizens Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 9, 2015 ("Citizens Bank Evaluation").[31] Examiners focused on the bank's loan-to-deposit ratio and lending record within the bank's AAs. Examiners found that Citizens Bank's loan-to-deposit ratio reflected reasonable responsiveness to the credit needs of the AAs, given the institution's size, financial condition and AAs. Examiners also found that the majority of the bank's home mortgage and small business lending was originated within its AAs, and its overall lending to borrowers of different incomes was reasonable. Examiners determined that the bank's small business lending reflected excellent performance.

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[28] *See* 12 CFR 228.26(c).

[29] The Commercial Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed HMDA-reportable loans and a sample of commercial loans originated from January1,2013, through December31,2014. The evaluation period for community development lending, investments, and services was from April17,2012, to September 20,2015.

[30] The Commercial Bank Evaluation included a full scope evaluation of the bank's AA consisting of Knox and Union counties within the Knoxville, Tennessee Metropolitan Statistical Area ("MSA"), as well as its AA consisting of Bell-Harlan and Knox counties in Kentucky, which are not part of an MSA. A limited scope evaluation was performed of the bank's AA consisting of Claiborne County, Tennessee, which is not part of any MSA, and of the bank's AA consisting of Sullivan County within the Kingsport-Bristol-Bristol, Tennessee-Virginia MSA.

[31] The Citizens Bank Evaluation was conducted using the Small Bank Examination Procedures. Examiners reviewed a sample of small business loans originated from January 1, 2012, to December 31, 2014, and also reviewed all HMDA-reportable loans for 2013 and 2014. The Citizens Bank Evaluation included a full scope evaluation of the bank's AA located within Claiborne County, Tennessee, which is not part of any MSA. A limited scope evaluation was performed of the portion of the bank's AA located within the Knoxville, Tennessee MSA and of the bank's AA consisting of Hamblen County, which is part of the Morristown, Tennessee MSA.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Commercial Bank 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. The Board has also considered the results of the most recent consumer compliance examination of Citizens Bank conducted by the FDIC, which included a review of the bank's consumer compliance function.

The Board has taken this information, as well as the CRA performance records of Commercial Bank and Citizens Bank, into account in evaluating the proposed transaction, including in considering whether Commercial has the experience and resources to ensure that Commercial Bank helps to meet the credit needs of the communities within its AAs.

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. Commercial represents that the combined organization, with its greater size and capabilities, would have an increased lending limit and thereby would increase the availability of credit to customers and potential customers of both banks, including small- to mid-sized businesses. In addition, Commercial represents that customers of Citizens Bank would benefit from Commercial Bank's expansive branch network, and customers of Commercial Bank would benefit from additional banking offices in Claiborne and Hamblen counties, Tennessee, as well as a loan production office in Sullivan County, Tennessee. Commercial also represents that customers in communities served by Citizens Bank will benefit from the availability of additional products and services currently offered by Commercial Bank. Finally, Commercial represents that the increased size and scale of the combined organization may permit it to develop and expand product and service offerings to its customers.

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 Reserve Bank and the FDIC, confidential supervisory information, information provided by Commercial, 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."[32]

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

[32] Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

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.[33] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[34]

The Board'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.[35]

In this case, the Board has considered information relevant to risks to the stability of the United States 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 and commercial banking activities.[36] The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States 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

Commercial Bank has applied under section 9 of the FRA to establish branches at the current locations of Citizens Bank.[37] The Board has assessed the factors it is required to

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[33] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[35] *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.

[36] Commercial offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Citizens also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, Commercial 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.

[37] *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. A national bank may retain any branch following a merger that under state law may be established as a new branch of the

consider when reviewing an application under that section.[38] Specifically, the Board has considered Commercial 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.[39] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Elections

As noted, Robertson Holding Company, L.P., and Unified Shares, LLC, have elected to become financial holding companies in connection with the proposal. Robertson Holding Company, L.P., and Unified Shares, LLC, have certified that, upon consummation of the proposal, they and the depository institutions they would control would be well capitalized and well managed, and Robertson Holding Company, L.P., and Unified Shares, LLC, have provided all the information required under the Board's Regulation Y.[40] Based on all the facts of record, the Board determines that the elections by Robertson Holding Company L.P., and Unified Shares, LLC, will become effective upon consummation of the proposal if, on that date, they are well capitalized and well managed and all depository institutions they control are well capitalized, well managed, and have CRA ratings of at least "Satisfactory."

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Commercial and Commercial 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 applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective December 15, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§36(b)(2) and (c). Upon consummation, Commercial Bank's branches would be permissible under applicable state law. *See* Tenn. Code Ann. § 45-2-614.

[38] 12 U.S.C. § 322; 12 CFR 208.6.

[39] Upon consummation of the proposed transaction, Commercial Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

[40] *See* Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(*l*)(1).

Appendix

Branches to Be Established by Commercial Bank

1. 130 South Broad Street, New Tazewell, Tennessee 37825
2. 7100 Cumberland Gap Parkway, Harrogate, Tennessee 37752
3. 155 Terrace Lane, Morristown, Tennessee 37813

Order Issued Under International Banking Act

ING Bank N.V.
Amsterdam, The Netherlands

Order Approving the Establishment of a Representative Office
FRB Order No. 2017–27 (October 20, 2017)

ING Bank N.V. ("ING Bank"), Amsterdam, The Netherlands, a foreign bank within the meaning of the International Banking Act of 1978 ("IBA"), has applied under section 10(a) of the IBA[1] to establish a representative office in Dallas, Texas. The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Dallas, Texas (*The Dallas Morning News*, June 25, 2017). The time for submitting comments has expired, and the Board has considered all comments received.

ING Bank is a wholly owned subsidiary of ING Groep N.V. ("ING Group"), Amsterdam, The Netherlands. ING Group, with total assets of $983.5 billion, is one of the world's largest financial services providers, offering commercial and investment banking, asset management, and related products and services. ING Group shares are widely held, with BlackRock, Inc., New York, New York, being the only shareholder that holds five percent or more of its voting shares.[2]

ING Bank, with total assets of approximately $983.5 billion, is the largest bank in the Netherlands by asset size.[3] ING Bank engages in retail, wholesale, and international banking and operates in Europe, North and South America, Asia, and Australia. In the United States, ING Bank operates a representative office in New York, New York (the "New York Representative Office"), and operates subsidiaries that engage in securities brokerage and dealing, swaps dealing, and wholesale financial lending and advisory services.

The proposed representative office would act as a liaison with U.S. clients and prospective clients of ING Bank. The proposed representative office also would engage in other representational activities, including marketing and conducting research.[4]

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

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1 12 U.S.C.§3107(a).

2 Stichting Continuiteit ING, Amsterdam, The Netherlands ("Stichting"), a foundation organized to ensure ING Group's continuity in the event of a hostile takeover attempt, holds call options exercisable for as much as one-third of ING Group's issued share capital. Stichting engages in no activities other than holding the ING Group call options and is not regulated as a financial institution by De Nederlandsche Bank or the European Central Bank.

3 Asset and ranking data are as of June 30, 2017.

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

outside 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.[5] The Board also considers additional standards set forth in the IBA and Regulation K.[6]

The Board previously determined, in connection with ING Bank's application to establish the New York Representative Office, that ING Bank was subject to comprehensive supervision on a consolidated basis by De Nederlandsche Bank ("DNB").[7] As of November 4, 2014, ING Bank is subject to the direct prudential supervision of the European Central Bank ("ECB") within the context of the Single Supervisory Mechanism ("SSM") because the total value of its assets exceeds €30 billion and it is one of the three largest banks in a Member State of the European Union. The SSM is a system of financial supervision composed of the ECB and the national competent authorities of the participating Member States in which specific tasks are allocated between the ECB and each national competent authority. Under the SSM, the ECB has direct prudential supervisory responsibility for ING Bank, while the DNB, as the relevant national competent authority for ING Bank, retains supervisory authority over all other areas, including consumer protection and the prevention of money laundering and terrorist financing.

The methodologies and standards that underpin the day-to-day supervision of large European Union banking organizations by the ECB under the SSM regulatory framework are aimed at achieving a consistent supervisory approach across the European Union. The Board has previously found that three other European banking organizations supervised by the SSM and the relevant national competent authority are subject to comprehensive consolidated supervision.[8] The supervisory processes of the DNB and the system of supervision applied to all large banks within the European Union have not changed materially since they were last considered by the Board.

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

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[5] 12 U.S.C.§3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings 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] *See* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include the following: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

[7] *ING Bank, N.V.*, 85 *Federal Reserve Bulletin* 448 (1999).

[8] *See* Board letter to Rita Milazzo dated August 1, 2017 (comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.); Board letter to Andrea Tokheim dated July 24, 2017 (comprehensive consolidated supervision for Bank of Ireland Group plc); and *Unione di Banche Italiane, S.p.A.*, FRB Order 2016-01 (January 19, 2016).

The Board also has considered the following additional standards set forth in the IBA and Regulation K: (1) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (2) the financial and managerial resources of the bank;

(3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.[9]

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

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

ING Bank has committed to make available to the Board such information on the operations of ING Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, ING Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the ECB and the DNB may share information on ING Bank'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 ING Bank has provided adequate assurances of access to any necessary information that the Board may request. In addition, the ECB has no objection to the establishment of the proposed representative office.

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

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[9] *See* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

On the basis of all the facts of record and subject to commitments made by ING Bank, ING Bank's application to establish the proposed representative office 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.[10] Should any restrictions on access to information on the operations or activities of ING Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by ING Bank or its affiliates with applicable federal statutes, the Board may require termination of any of ING Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by ING Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.[11] For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective October 20, 2017.

Ann E. Misback
Secretary of the Board

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

[11] The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of Texas to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Texas or its agent, the Texas Department of Banking, to license the proposed office of ING in accordance with any terms or conditions that they may impose.

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Legal Developments: First Quarter, 2018

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Howard Bancorp, Inc.
Ellicott City, Maryland

Order Approving the Acquisition of a Bank
FRB Order No. 2018-05 (February 12, 2018)

Howard Bancorp, Inc. ("Howard"), Ellicott City, Maryland, 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 First Mariner Bank ("FM Bank"), Baltimore, Maryland. FM Bank would be merged into Howard's subsidiary bank, Howard Bank, Ellicott City, Maryland.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 48081 (October 16, 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.

Howard, with consolidated assets of approximately $1.1 billion, is the 655th largest insured depository organization in the United States. Howard controls approximately $870.1 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] Howard controls Howard Bank, which operates only in Maryland.[6] Howard is the 18th largest insured depository organization in Maryland, controlling deposits of approximately $810.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[7]

FM Bank, with assets of approximately $975.2 million, operates only in Maryland. FM Bank is the 19th largest insured depository organization in Maryland, controlling deposits

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of FM Bank into Howard Bank is subject to approval by the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on January 31, 2018.

4 12 CFR 262.3(b).

5 National asset and deposit data are as of June 30, 2017, unless otherwise noted.

6 The proposal does not raise interstate issues under section 3(d) of the BHC Act because Maryland is the home state of Howard, and FM Bank is located only in Maryland. *See* 12 U.S.C. §1842(d).

7 State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

of approximately $770.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Howard would become the 384th largest depository organization in the United States, with consolidated assets of approximately $2.1 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Howard would control consolidated deposits of approximately $1.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Maryland, Howard would become the 12th largest depository organization, controlling deposits of approximately $1.6 billion, which represent 1.2 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]

Howard Bank and FM Bank compete directly in the Annapolis, Maryland, banking market ("Annapolis market") and the Baltimore, Maryland, banking market ("Baltimore 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 ("market deposits") that Howard 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 Annapolis and Baltimore markets.

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8 12 U.S.C. § 1842(c)(1).

9 12 U.S.C. § 1842(c)(1)(B).

10 The Annapolis market is defined as Anne Arundel County (excluding District 7) and Queen Anne's County, both of Maryland. The Baltimore market is defined as Baltimore City and Baltimore, Carroll, Harford, and Howard counties (excluding the Clarksville and Savage districts), all of Maryland.

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.

On consummation of the proposal, the Annapolis and Baltimore markets would each remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in these markets would be small, and numerous competitors would remain in each banking market.[13]

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 Annapolis or Baltimore 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.[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 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.

Howard and FM Bank are both well capitalized, and the combined organization would remain so on consummation of the proposed transaction. The proposed transaction is structured primarily as an exchange of shares, with a subsequent merger of depository

[13] Howard operates the 25th largest depository institution in the Annapolis market, controlling approximately $26.3 million in deposits, which represent 0.24 percent of market deposits. FM Bank is the 17th largest depository institution in the same market, controlling deposits of approximately $91.2 million, which represent approximately 0.82 percent of market deposits. On consummation of the proposed transaction, Howard would become the 15th largest depository organization in the market, controlling deposits of approximately $117.5 million, which represent approximately 1.05 percent of market deposits. The HHI for the Annapolis market would increase by 1 point to 1110, and 30 banking organizations would remain in the market.

Howard operates the 8th largest depository institution in the Baltimore market, controlling approximately $657.3 million in deposits, which represent 1.25 percent of market deposits. FM Bank is the 7th largest depository institution in the same market, controlling deposits of approximately $678.8 million, which represent approximately 1.29 percent of market deposits. On consummation of the proposed transaction, Howard would become the 7th largest depository organization in the market, controlling deposits of approximately $1.34 billion, which represent approximately 2.54 percent of market deposits. The HHI for the Baltimore market would increase by 3 points to 1789, and 43 banking organizations would remain in the market.

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

institutions.[15] The asset quality, earnings, and liquidity of Howard Bank and FM Bank are consistent with approval, and Howard appears to have adequate resources to absorb the related 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 Howard, Howard Bank, and FM Bank, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by Howard; 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 commenter.

Howard, Howard Bank, and FM Bank are each considered to be well managed. The directors and senior executive officers of Howard have knowledge of and experience in the banking and financial services sectors, and Howard's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Howard's plans for implementing the proposal. Howard 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. Howard would implement its risk-management policies, procedures, and controls at the combined organization and may augment these policies, procedures, and controls based on the needs of the combined organization. Howard's risk-management policies, procedures, and controls are considered acceptable from a supervisory perspective. In addition, Howard's management has the experience and resources to operate the combined organization in a safe and sound manner, and Howard plans to integrate FM Bank's existing management and personnel in a manner that augments Howard's management.[16]

Based on all the facts of record, including Howard'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 Howard and FM Bank 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, 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 these communities, as well as other potential effects of the proposal on the

[15] To effect the transaction, each share of FM Bank common and Series A preferred stock would be converted into a right to receive Howard common stock, based on an exchange ratio. Certain warrants and options granted by FM Bank would be cancelled and converted into the right to receive a cash amount. Howard has the financial resources to effect the proposed transaction.

[16] Following consummation of the proposed transaction, Howard's board of directors will consist of fourteen directors, including eight of the thirteen members now on Howard's board and six members chosen by FM Bank from FM Bank's current board.

[17] 12 U.S.C. § 1842(c)(2).

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").[18] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[19] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[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 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 Howard Bank and FM Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Howard, and the public comment received on the proposal.

Public Comment on the Proposal

In this case, a commenter objected to the proposal on the basis of the fair lending and CRA performances of Howard Bank and FM Bank. Specifically, the commenter alleged that the banks have a poor record of lending and investing in African American and other minority communities in Baltimore and Maryland. The commenter requested that approval of the proposal be conditioned on Howard (i) meeting with members of the African American community in Baltimore to determine how Howard can better meet the community's capital needs and (ii) adopting a forward-looking CRA plan that includes commitments to increase lending to minorities in Baltimore, invest in African American communities in Baltimore, and increase the number of branches in African American communities in Baltimore.[21]

Businesses of the Involved Institutions and Response to the Public Comment

Howard Bank provides a broad range of financial products and services to consumers and businesses, with an emphasis on serving local markets and small- and medium-sized businesses. Through its network of branches in Maryland, Howard Bank offers a variety of

[18] 12 U.S.C. § 2901 *et seq*.

[19] 12 U.S.C. § 2901(b).

[20] 12 U.S.C. § 2903.

[21] 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); *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.

products and services, including checking, savings, money market, and certificate of deposit accounts; commercial, residential, and consumer loans; business checking and savings accounts; and credit card and merchant card services.

FM Bank offers a range of retail and commercial banking products and services through its branches in Maryland. Its products and services include checking, savings, money market, and certificate of deposit accounts; a variety of business accounts; merchant card services; and treasury management.

Howard disputes the commenter's allegations and asserts that approval of the proposed transaction is warranted based on the banks' CRA performance evaluations, Howard Bank's recent lending activities in Baltimore, and Howard Bank's involvement in other collective efforts to address financial conditions in Baltimore. Howard asserts that Howard Bank and FM Bank have consistently met the requirements of the CRA and that Howard Bank is committed to continuing to meet the goals of the CRA after consummation of the transaction. Howard notes that as part of Howard Bank's and FM Bank's CRA performance evaluations, FDIC examiners found that the banks' activities to meet the credit needs of LMI communities were satisfactory.

Howard represents that Howard Bank is currently engaged in several CRA-related activities that have been recognized in its most recent CRA performance evaluation and participates in meetings with government officials, other financial institutions, and community groups to discuss credit and investment needs in Baltimore. Howard also represents that Howard Bank has been an active home mortgage and small business lender in Baltimore 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 response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.[22] In this case, the Board considered the supervisory views of the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[23] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's 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

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

[23] 12 U.S.C. § 2906.

Act,[24] 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 CRA 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;[25] (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.[26] Large institutions are also subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[27] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts 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.[28]

CRA Performance of Howard Bank

Howard Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of November 2, 2015 ("Howard Bank Evaluation").[29] The bank received "Satisfactory" ratings for the Lending Test and the Community Development Test.[30]

Examiners found that the bank made a majority of its home mortgage loans and small business loans in its three AAs. Examiners determined that the bank's borrower profile revealed reasonable penetration among borrowers of different income levels and businesses of different sizes. Examiners further found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout its AAs. Examiners noted that the bank's loan-to-deposit ratio was more than reasonable given its size, financial condition, and its AAs' credit needs. Examiners found that Howard Bank's overall performance under the Community Development Test demonstrated adequate responsiveness to the community

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[24] 12 U.S.C. § 2801 *et seq*.

[25] 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).

[26] *See* 12 CFR 228.22(b).

[27] *See* 12 CFR 228.21 *et seq.*

[28] *See* 12 CFR 228.26(c).

[29] The Howard Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending test and the community development test. The Howard Bank Evaluation reviewed residential mortgage loans from January 1, 2013, through September 30, 2015; small business loans from January 1, 2013, through November 2, 2015; and community development activities from April 19,2012, to November 2,2015.

[30] The Howard Bank Evaluation reviewed the bank's activities in the Baltimore-Columbia-Towson, Maryland, Metropolitan Statistical Area ("MSA"); the Philadelphia-Camden-Wilmington, Pennsylvania-New Jersey-Delaware-Maryland, MSA; and the Lancaster, Pennsylvania, MSA. At the time of the Howard Bank Evaluation, Howard Bank maintained a branch in Pennsylvania, which it has since closed.

development needs of its AAs, considering the capacity and availability of opportunities for community development in the AAs.

In the Baltimore-Columbia-Towson, Maryland MSA (the "Baltimore MSA"), which includes the area of concern to the commenter, examiners found that the geographic distribution of Howard Bank's loans reflected a reasonable distribution throughout the AA. Examiners found that, during 2014 and 2015, Howard Bank substantially increased its home mortgage lending volume in the Baltimore MSA and substantially increased the percentage of its home mortgage loans in LMI census tracts in the Baltimore MSA, which reflected a positive trend. Examiners also determined that Howard Bank's small business lending in the Baltimore MSA reflected reasonable geographic distribution throughout the AA. Examiners found that the distribution of Howard Bank's borrowers within the Baltimore MSA reflected reasonable penetration among individuals of different income levels and businesses of different sizes. Examiners determined that Howard Bank demonstrated adequate responsiveness to the community development needs of its AA in the Baltimore MSA through community development loans, qualified investments, and community development services.

Howard Bank's Efforts since the Howard Bank Evaluation

Howard represents that, since the Howard Bank Evaluation, Howard Bank has continued, and in some cases expanded, its mortgage and small business lending, community development investments, and services in Baltimore in ways that confirm the bank's commitment to the goals of the CRA. Specifically, Howard represents that Howard Bank has made a substantial number and amount of mortgage and small business loans in Baltimore City, including loans to minority and LMI borrowers. Howard further represents that Howard Bank has used innovative and flexible loan programs to address the needs of LMI borrowers in its community. In addition, Howard represents that Howard Bank has participated in state and local programs that are designed to enhance mortgage lending to LMI borrowers. Howard also represents that Howard Bank has been active in community development lending and has made significant investments in LMI communities in the Baltimore area.

CRA Performance of FM Bank

FM Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of June 27, 2015 ("FM Bank Evaluation").[31] The bank received a "Low Satisfactory" rating for the Lending Test, a "High Satisfactory" rating for the Investment Test, and an "Outstanding" rating for the Service Test.[32]

Examiners concluded that FM Bank's lending activity reflected good responsiveness to the credit needs of its AA. Although examiners noted that the bank's level of home mortgage lending to low-income borrowers was not commensurate with the percentage of low-income families in its AA, examiners concluded that the bank's borrower profile reflected good penetration among borrowers of different income levels (including LMI

[31] Although FM Bank is classified as an Intermediate Small Bank, the FM Bank Evaluation was conducted using Large Bank Examination Procedures at the request of FM Bank's management. Examiners reviewed home mortgage and small business loans from January 1,2013, through March 31,2015. The evaluation period for community development loans, investments, and services was from November 2,2012, through July 27,2015.

[32] The FM Bank Evaluation included a full-scope evaluation of one AA that includes the Baltimore-Columbia-Towson, Maryland, MSA; the Washington-Arlington-Alexandria, District of Columbia-Virginia-Maryland-West Virginia, MSA; and the California-Lexington Park, Maryland, MSA. The bank's entire AA is within the Washington-Baltimore-Arlington, District of Columbia-Maryland-Virginia-West Virginia-Pennsylvania, Combined Statistical Area.

borrowers). Examiners noted that the bank's home mortgage lending performance in LMI geographies fell just below the aggregate's performance in LMI geographies in its AA. However, examiners found that market share data and FM Bank's lending performance in LMI geographies, when compared to the bank's peers, supported the conclusion that the geographic distribution of the bank's home mortgage lending was adequate. With respect to business lending, examiners found that the bank's lending to businesses of different sizes reflected good penetration and that the bank's performance with respect to small business lending in LMI geographies was excellent. Examiners also determined that the bank made an adequate level of community development loans, including in Baltimore County and Baltimore City, Maryland, both areas of concern to the commenter. Examiners found that the bank made extensive use of innovative and flexible loan products in order to serve the credit needs of the AA and highlighted the bank's use of innovative and flexible loan programs in Baltimore County and Baltimore City, Maryland.

Examiners found that the bank made and maintained a significant level of qualified community development investments and donations. The bank's qualified investments were found to exhibit good responsiveness to credit and community economic development needs, most of which support development of affordable housing.

Examiners concluded that FM Bank's retail delivery systems were accessible to essentially all portions of its AA, including LMI geographies, and that services did not vary in a way that inconvenienced portions of its AA. Moreover, examiners found the bank to be a leader in providing community development services throughout its AA.

FM Bank's Efforts since the FM Bank Evaluation

Howard represents that since the FM Bank Evaluation, FM Bank has continued, and in some cases expanded, its mortgage and small business lending, community development investments, and services in Baltimore, including with respect to minority and LMI borrowers and geographies. Howard further represents that FM Bank has used innovative and flexible programs to enhance its lending to LMI borrowers. Howard represents that FM Bank has been active in community development lending and has made significant investments in LMI communities in the Baltimore area.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding Howard Bank's and FM Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed the bank merger underlying this proposal and, in so doing, considered the comment received by the Board. The Board has considered the results of the FDIC's most recent consumer compliance examinations of Howard Bank and FM Bank, which included evaluations of the banks' compliance management systems and the banks' compliance with consumer protection laws, including fair lending laws and regulations. Examiners also conducted transaction testing and fair lending reviews for both banks.

The Board has taken the consultations with the FDIC and the information discussed above into account in evaluating the proposal, including in considering whether Howard 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 the communities within its AAs.

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. Howard represents that, following consummation of the proposal, existing customers of Howard Bank and FM Bank would benefit from an expanded branch and ATM network and a broader range of financial products and services. Howard represents that existing customers of FM Bank also would benefit from issuance of a new debit card that is more fraud preventative than the current FM Bank debit card and by gaining access to mobile banking for business services and to Small Business Administration loan products.

Howard represents that Howard Bank would not discontinue any material products or services currently provided by FM Bank. Further, Howard represents that Howard Bank intends to continue all of FM Bank's CRA-related activities, although some activities would be integrated into Howard Bank's existing program. In addition, Howard represents that Howard Bank intends to continue to participate in a leadership role in FM Bank's current community initiatives in the metropolitan Baltimore area.

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, confidential supervisory information, information provided by Howard, 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."[33]

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.[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

[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 United States 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.[35]

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.[36]

In this case, the Board has considered information relevant to risks to the stability of the United States 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 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 United States 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 Howard with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective February 12, 2018.

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

[36] *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.

[37] Howard and FM Bank offer a range of retail and commercial banking products and services. Howard has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard

Margaret McCloskey Shanks
Deputy Secretary of the Board

First Financial Bancorp
Cincinnati, Ohio

First Financial Bank
Cincinnati, Ohio

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches, and Determination on a Financial Holding Company Election
FRB Order No. 2018-07 (February 22, 2018)

First Financial Bancorp ("First Financial"), Cincinnati, Ohio, 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 MainSource Financial Group, Inc. ("MainSource"), and thereby indirectly acquire MainSource Bank, both of Greensburg, Indiana.

In addition, First Financial's subsidiary state member bank, First Financial Bank, Cincinnati, Ohio, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with MainSource Bank, with First Financial Bank as the surviving entity.[3] First Financial 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 MainSource Bank.[4]

In connection with this proposal, First Financial 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 (82 *Federal Register* 195 (October 11, 2017)).[6] The time for submitting comments has expired, and no comments were received. The Board has considered the proposal 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 of First Financial Bank and MainSource Bank was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

First Financial, with consolidated assets of approximately $8.8 billion, is the 149th largest insured depository organization in the United States. First Financial 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.[7] First Financial controls First Financial Bank, which operates in Indiana, Kentucky, and Ohio. First Financial is the 14th largest insured depository organization in Indiana, controlling deposits of approximately $2.8 billion, which represent 2.2 percent of the total deposits of insured depository institutions in that state. First Financial is the 71st largest insured depository organization in Kentucky, controlling deposits of approximately $187.7 million,

1 12 U.S.C. § 1841 *et seq.*
2 12 U.S.C. § 1842.
3 12 U.S.C. § 1828(c).
4 12 U.S.C. § 321. These locations are listed in Appendix A.
5 12 U.S.C. § 1843(k) and (*l*); 12 CFR 225.82.
6 12 CFR 262.3(b).
7 Nationwide asset and deposit data are as of September 30, 2017, unless otherwise noted.

which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8] First Financial is the 11th largest insured depository organization in Ohio, controlling deposits of approximately $3.6 billion, which represent 1.1 percent of the total deposits of insured depository institutions in that state.

MainSource, with consolidated assets of approximately $4.6 billion, is the 218th largest insured depository organization in the United States. MainSource controls approximately $3.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MainSource controls MainSource Bank, which operates in Illinois, Indiana, Kentucky, and Ohio. MainSource is the 233rd largest insured depository organization in Illinois, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 17th largest insured depository organization in Indiana, controlling deposits of approximately $2.3 billion, which represent 1.8 percent of the total deposits of insured depository institutions in that state. MainSource is the 31st largest insured depository organization in Kentucky, controlling deposits of approximately $486.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 41st largest insured depository organization in Ohio, controlling deposits of approximately $613.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, First Financial would have consolidated assets of approximately $13.8 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States.[9] First Financial would control total deposits of approximately $10.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, First Financial would become the 233rd largest insured depository organization, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Indiana, First Financial would become the 6th largest insured depository organization, controlling deposits of approximately $5.1 billion, which represent 4.1 percent of the total deposits of insured depository institutions in that state. In Kentucky, First Financial would become the 24th largest insured depository organization, controlling deposits of approximately $674.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Ohio, First Financial would remain the 11th largest insured depository organization, controlling deposits of approximately $4.2 billion, which represent approximately 1.2 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.[10] Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited

[8] State deposit data are as of June 30, 2017, unless otherwise noted.

[9] Excluding purchase accounting adjustments, First Financial would become the 109th largest insured depository institution in the United States, with consolidated assets of approximately $13.4 billion.

[10] 12 U.S.C. § 1842(d)(1)(A).

under state law.[11] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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.[12] In addition, under section 3(d) of the BHC Act, 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, if 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.[13]

For purposes of the BHC Act, the home state of First Financial is Ohio, and MainSource Bank is located in Illinois, Indiana, Kentucky, and Ohio.[14] For purposes of section 44 of the FDI Act, the home state of First Financial Bank is Ohio, and the home state of MainSource Bank is Indiana. First Financial and First Financial Bank are well capitalized and well managed under applicable law, and First Financial Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[15] Neither Indiana nor Kentucky has statutory minimum age requirements,[16] and MainSource Bank has been in existence for more than five years.

On consummation of the proposed transaction, First Financial would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Kentucky imposes a 15 percent limit on the total amount of in-state deposits that a single banking organization may control.[17] Ohio imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[18] The combined organization would control approximately 4.1 percent of the total amount of deposits of insured depository institutions in Indiana, approximately 0.9 percent of the total amount of deposits of insured depository institutions in Kentucky, and approximately 1.2 percent of the total amount of deposits of insured depository institutions in Ohio, the only states in which First Financial and MainSource have overlapping banking operations. The Board has considered all other requirements of section 3(d) of the BHC Act and section 44 of the FDI Act, including First Financial Bank'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 both statutes.

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[11] 12 U.S.C. § 1831u(a)(1).

[12] 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

[13] 12 U.S.C. § 1842(d)(2)(A) and (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, 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. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See*12U.S.C.§1841(o)(4)–(7).

[14] *See* 12 U.S.C. §§ 1831u(g)(4) and 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.

[15] 12 U.S.C. § 2901 *et seq.*

[16] *See* Ind. Code § 28-2-17; Ky. Rev. Stat. Ann. 286.3-900. Illinois has a statutory minimum age requirement, but it only applies to the acquisition of a bank that is organized under the laws of that state. *See* 205 Ill. Comp. Stat. 5/21.2. This age requirement is not applicable to the proposed transaction because MainSource Bank is organized under the laws of Indiana.

[17] Ky. Rev. Stat. Ann. § 286.3-900(2), -920(4). Indiana does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

[18] Ohio Rev. Code Ann. § 1115.05.

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.[19] 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 communities to be served.[20]

First Financial and MainSource have subsidiary depository institutions that compete directly in eight banking markets in Indiana and Ohio.[21] The Board has considered the competitive effects of the proposal in each of 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 ("market deposits") that First Financial would control;[22] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the U.S. Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[23] other characteristics of the markets; and, as discussed below, commitments made by First Financial to divest three branches in the Columbus market and one branch in the Greensburg market.

Banking Markets Within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in five of the eight banking markets in which First Financial Bank and MainSource Bank compete directly.[24] On consummation of the proposal, one of these markets would remain highly concentrated, and the four other markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in the highly concentrated banking market and the moderately concentrated banking markets would be small and consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in all five banking markets.

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[19] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[20] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[21] The Columbus banking market ("Columbus market"), Fayette County banking market ("Fayette County market"), and Greensburg banking market ("Greensburg market"), all in Indiana, are defined below. The other five banking markets are defined in Appendix B.

[22] Local deposit and market share data are as of June 30, 2017, and, unless otherwise indicated, 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).

[23] 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.

[24] The competitive effects of the proposal in these five markets are described in Appendix B.

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Columbus, Fayette County, and Greensburg markets warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Columbus Market

Using initial screening data, First Financial is the largest depository organization in the Columbus market, controlling approximately $652.7 million in deposits, which represent approximately 27.0 percent of market deposits.[25] MainSource is the fourth largest depository organization in the Columbus market, controlling approximately $247.8 million in deposits, which represent approximately 10.2 percent of market deposits. On consummation, First Financial would remain the largest depository organization in the Columbus market, controlling approximately $900.5 million in market deposits, which would represent approximately 37.2 percent of market deposits. The HHI in this market would increase by 552 points, from 1465 to 2017.

To mitigate the potentially adverse competitive effects of the proposal in the Columbus market, First Financial has committed to divest three of MainSource Bank's nine branches in that market, which account for approximately $112.9 million in deposits, to a competitively suitable, in-market purchaser.[26] After the divestiture, First Financial would remain the largest depository organization in the market, controlling approximately $787.6 million in deposits, which would represent approximately 32.5 percent of market deposits.

In addition to the divestiture, the Board also has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Columbus market.[27] Several factors indicate that the increase in concentration in the Columbus market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of one credit union in the Columbus market that offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the market.[28] The Board finds that these circumstances warrant including the deposits of this credit union at a 50 percent weight in its calculations to estimate market influence. This

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[25] The Columbus market is defined as Bartholomew, Jennings, Jackson, and Brown counties, all in Indiana.

[26] As a condition of consummation of the proposal, First Financial has committed that it will execute, before consummating the proposal, an agreement to sell the three branches to one or more purchasers determined by the Board to be competitively suitable. First Financial also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, First Financial has committed that, if the proposed divestiture is not completed within the 180-day period, First Financial will transfer the unsold branches to an independent trustee, who will be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. *See*, *e.g.*, *BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

[27] The number and strength of the 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).

[28] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *Central Bancompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *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,*

weighting takes into account the limited lending done by the credit union to small businesses relative to commercial banks' lending levels.

Taking into account the divestiture of the three MainSource Bank branches to an in-market competitor, and adjusting to reflect competition from the credit union, after consummation First Financial's market share would increase to 29.6 percent, and the market concentration level as measured by the HHI would increase by 231 points, from a level of 1295 to 1526. The market concentration, as well as the resulting market share, would be within the DOJ Bank Merger Guidelines. Including the credit union, 14 other depository organizations would continue to serve the Columbus market, including two with market shares greater than 12 percent each.

Fayette County Market

Using initial screening data, First Financial is the second largest depository organization in the Fayette County market, controlling approximately $54.7 million in deposits, which represent approximately 19.7 percent of market deposits.[29] MainSource is the sixth largest depository organization in the Fayette County market, controlling approximately $21.0 million in deposits, which represent approximately 7.6 percent of market deposits. On consummation, First Financial would become the largest depository organization in the Fayette County market, controlling approximately $75.7 million in deposits, which would represent approximately 27.2 percent of market deposits. The HHI in this market would increase by 297 points, from 1704 to 2001.

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 Fayette County market. Several factors indicate that the increase in concentration in the Fayette County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of two credit unions in the Fayette County market that meet the Board's standard conditions for inclusion in its structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, adjusting to reflect competition from these two credit unions, the market concentration level in the Fayette County market, as measured by the HHI, would increase by 267 points from a level of 1547 to 1814, and First Financial's market share would increase from 19.7 percent to 25.8 percent. After consummation, the Fayette County market would continue to be served by seven other depository organizations, including the two credit unions noted above, including three which would each control more than 16 percent of market deposits.

Greensburg Market

Using initial screening data, First Financial is the fifth largest depository organization in the Greensburg market, controlling approximately $31.9 million in deposits, which represent approximately 5.8 percent of market deposits.[30] MainSource is the largest depository organization in the Greensburg market, controlling approximately $343.0 million in deposits, which represent approximately 62.6 percent of market deposits. On consumma-

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).

[29] The Fayette County market is defined as Fayette County, Indiana.

[30] The Greensburg market is defined as Decatur County, Indiana.

tion, First Financial would become the largest depository organization in the Greensburg market, controlling approximately $374.9 million in market deposits, which would represent approximately 68.5 percent of market deposits. The HHI in this market would increase by 729 points, from 4300 to 5029.

To mitigate the potentially adverse competitive effects of the proposal in the Greensburg market, First Financial has committed to divest one of MainSource Bank's two branches in the Greensburg market to a competitively suitable, out-of-market purchaser. The branch to be divested is slightly smaller than the only branch currently operated by First Financial in the Greensburg market.[31] After this divestiture, First Financial would become the largest depository organization in the market, controlling approximately $345.1 million in deposits, which would represent approximately 63 percent of market deposits. If the branch is sold to an out-of-market competitor, the structure of the Greensburg market would be approximately the same both before and after consummation of the proposal.[32]

In addition to the divestiture, the Board also has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Greensburg market. Several factors indicate that the increase in concentration as measured by the above HHI, as well as First Financial's resulting market share, overstate the potential competitive effects of the proposal in the Greensburg market.

The Board has considered the competitive influence of one credit union in the Greensburg market that meets the Board's standard conditions for inclusion in the structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, taking into account the divestiture of the MainSource Bank branch to an out-of-market competitor, and adjusting to reflect competition from the credit union, the market concentration level in the Greensburg market as measured by the HHI would increase by 40 points, from a level of 3967 to 4007, and First Financial's share of market deposits resulting from the transaction would be 60.4 percent. Including the credit union and a new competitor entering the market through the divestiture, after consummation the Greensburg market would be served by five other depository organizations, including two with market shares greater than 10 percent each. The presence of these market competitors suggests that First Financial would have limited ability unilaterally to offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on First Financial in the Greensburg market.

Notwithstanding these circumstances, the Board views the competitive effects in this market as presenting a close case.

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, with the proposed divestitures of branches in the Columbus and Greensburg markets, would not likely have a significantly adverse effect on competition in the Columbus, Fayette County, and Greensburg markets or in any other relevant banking market. In addition, the appropriate banking

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[31] First Financial Bank's only branch in the Greensburg market has $31.9 million in deposits, representing 5.6 percent of total market deposits. MainSource Bank has two branches with deposits in Greensburg, with $312.8 million and $29.8 million, respectively. First Financial proposes to divest the smaller of these branches, representing 5.2 percent of market deposits.

[32] The Board has previously approved two applications in which the post-divestiture HHI and the percentage of market deposits exceeded the post-divestiture effects in this case. *See Umpqua Holdings Corp.*, 100 *Federal Reserve Bulletin* 42 (2014); *Southern National Corp.*, 83 *Federal Reserve Bulletin* 597 (1997).

agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on the facts of record, including First Financial's commitment to divest a total of four branches in the Columbus and Greensburg markets, 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 of the eight banking markets in which First Financial Bank and MainSource Bank compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Consideration

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.[33] 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.

First Financial and MainSource 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 share exchange, with a subsequent merger of the subsidiary depository institutions.[34] The asset quality, earnings, and liquidity of both First Financial Bank and MainSource Bank are consistent with approval, and First Financial appears to have adequate resources to absorb the related 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 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 Financial, MainSource, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Financial; 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.

[33] 12 U.S.C. §§ 1842(c)(2), (5), and (6) and 1828(c)(5).

[34] As part of the proposed transaction, each share of MainSource common stock would be converted into the right to receive 1.3875 shares of First Financial common stock.

First Financial, MainSource, and their subsidiary depository institutions are each considered to be well managed. First Financial has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. First Financial's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and First Financial's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered First Financial's plans for implementing the proposal. First Financial 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. First Financial 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 Financial's management has the experience and resources to operate the combined organization in a safe and sound manner, and First Financial plans to integrate MainSource's existing management and personnel in a manner that augments First Financial's and First Financial Bank's management.[35]

Based on all of the facts of record, including First Financial'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 First Financial and MainSource 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.[36] 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.[37] 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,[38] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[39]

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

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[35] Following consummation of the proposed transaction, six MainSource directors will join First Financial's board of directors.

[36] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[37] 12 U.S.C. § 2901 *et seq*.

[38] 12 U.S.C. § 2901(b).

[39] 12 U.S.C. § 2903.

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 of the facts of record, including reports of examination of the CRA performance of First Financial Bank and MainSource Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Cleveland ("Reserve Bank") and other federal regulatory agencies; confidential supervisory information; and information provided by First Financial.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.[40] In this case, the Board considered the supervisory views of the Reserve Bank and the Office of the Comptroller of the Currency ("OCC") with respect to First Financial Bank and the Federal Deposit Insurance Corporation ("FDIC") with respect to MainSource Bank.[41]

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.[42] 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"),[43] 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;[44] (4) the institution's community development lending, including the

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

[41] Until its conversion on December 30, 2016, to a state member bank supervised by the Board, First Financial Bank was a national bank supervised by the OCC.

[42] 12 U.S.C. § 2906.

[43] 12 U.S.C. § 2801 *et seq*.

[44] 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).

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. Large institutions are also subject to an investment test that evaluates the number and amounts of qualified investments that benefit their assessment areas and 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.[45]

CRA Performance of First Financial Bank

First Financial Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of November 4, 2013 ("First Financial Bank Evaluation").[46] The bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and the Service Test.[47]

Examiners found that First Financial Bank originated a majority of its loans inside its AAs and that the bank's overall lending activity was good. Examiners also noted that the bank's geographic distribution of home mortgage loans and small loans to businesses was good. In addition, examiners found the bank's distribution of home mortgage loans by income level of the borrower to be good and the bank's distribution of loans to businesses with different revenue sizes to be adequate.

Examiners determined that First Financial Bank's level of qualified community development investments was adequate and responsive to community needs. Examiners found that the bank's service delivery systems were accessible to geographies and individuals of different income levels within the bank's AAs. Examiners also noted that, in the state of Indiana, the bank's branches were reasonably accessible. Overall, examiners found that the community development services provided by the bank were adequate and that the bank provided a good level of services in Ohio.

CRA Performance of MainSource Bank

MainSource Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 29, 2014 ("MainSource Bank Evaluation").[48] The bank received "Low Satisfactory" ratings for each of the Lending Test, the Investment Test, and the Service Test.[49]

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[45] *See* 12 CFR 228.21 *et seq*.

[46] The First Financial Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated from January 1, 2010, through December 31,2011. The evaluation period for community development loans, investments, and services was from June 1,2010, through December 31, 2011.

[47] The First Financial Bank Evaluation included full-scope evaluations of the Cincinnati-Middleton Ohio-Kentucky-Indiana Multistate Metropolitan Statistical Area ("MSA"); Columbus, Indiana MSA; and the Ohio Non-MSA AA. Limited scope evaluations were performed of the Bloomington, Indiana MSA; Indianapolis, Indiana MSA; Gary, Indiana MSA; Lafayette, Indiana MSA; Indiana Non-MSA AA; Lima, Ohio MSA; and the Dayton, Ohio MSA.

[48] The MainSource Bank Evaluation was conducted using Large Bank CRA Evaluation Procedures. Examiners reviewed HMDA, small business, and small farm loans originated from January 1, 2012, through December 31, 2013. The evaluation period for community development loans, investments, and services was from October 20, 2011, through September 29, 2014.

[49] The MainSource Bank Evaluation included full-scope evaluations of the Louisville-Jefferson County, Kentucky-Indiana Multistate MSA; Cincinnati-Middletown, Ohio-Indiana-Kentucky Multistate MSA; State of Indiana Non-MSA AA; Kankakee-Bradley, Illinois MSA; Dayton, Ohio MSA; and the Kentucky Non-MSA AA. Limited-scope evaluations were performed of the Anderson, Indiana MSA; Bloomington, Indiana MSA; Columbus, Indiana MSA; Gary Metropolitan Division, Indiana AA; Indianapolis-Carmel, Indiana MSA; Danville, Illinois MSA; and the State of Illinois Non-MSA AA.

Examiners found that MainSource Bank's lending levels reflected good responsiveness to credit needs within its AAs and that a substantial majority of the bank's loans were made within its AAs. Examiners further found that the geographic distribution of MainSource Bank's loans reflected adequate penetration throughout its AAs. Examiners noted that the bank's distribution of borrowers reflected adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners found that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners stated that MainSource Bank made a relatively high level of community development loans and originated qualifying community development loans in all of the bank's AAs. Further, the bank was found to use innovative and/or flexible lending practices in order to serve AA credit needs.

Examiners found that MainSource Bank made an adequate level of qualified community development investments and grants, particularly those that were not routinely provided by private investors, although rarely in a leadership position. Examiners further noted that the bank exhibited adequate responsiveness to credit and community economic development needs, but that the bank rarely used innovative or complex investments to support community development initiatives.

Examiners found that the bank's delivery systems were reasonably accessible to essentially all portions of the bank's AAs. Examiners also found that MainSource Bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals, and that branch services and business hours did not vary in a way that inconvenienced certain portions of the AAs, particularly LMI geographies and individuals. Examiners further noted that the bank provided an adequate level of community development services.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the Reserve Bank regarding its views of First Financial Bank's consumer compliance risk-management systems. The Board considered the most recent consumer compliance examination and fair lending review of First Financial Bank by the OCC. The Board also considered the most recent consumer compliance examination of MainSource Bank conducted by the FDIC.

The Board has taken this information, as well as the CRA performance records of First Financial Bank and MainSource Bank into account in evaluating the proposed transaction, including in considering whether First Financial has the experience and resources to effectively implement policies and programs that would assist the combined organization in helping to meet the credit needs of all of the communities within the firm's AAs.

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 Financial represents that it would provide a full range of deposit, savings, and other financial products and services to consumers and small- and medium-sized businesses in Ohio, Indiana, and Kentucky. First Financial states that it would continue offering all of the significant products and services currently offered by First Financial Bank and MainSource Bank after consummation of the proposal. Further, First Financial represents that, following the proposed transaction, the combined organization would be able to increase its lending limits and better meet the credit and banking needs of the small- and medium-sized businesses in its expanded service area.

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 Financial, 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 "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."[50]

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.[51] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[52]

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.[53]

In this case, the Board has considered information relevant to risks to the stability of the United States 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

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[50] Dodd-Frank Act § 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-02(2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

[51] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[53] *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.

activities.[54] 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 United States 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 Financial Bank has applied under section 9 of the FRA to establish and operate branches at the current main office and branches of MainSource Bank.[55] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered First Financial 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.[56] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Election

As noted, First Financial has elected to become a financial holding company in connection with the proposal. First Financial has certified that, upon consummation of the proposal, First Financial and First Financial Bank would be well capitalized and well managed, and First Financial has provided all of the information required under the Board's Regulation Y.[57] Based on all the facts of record, the Board determines that First Financial's election will become effective upon consummation of the proposal if, on that date, First Financial is well capitalized and well managed and all depository institutions it controls are well capitalized and 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 proposal should be, and hereby is, approved. In reaching its conclusion, the Board has considered all

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[54] First Financial Bank and MainSource Bank offer a broad range of retail and commercial banking products and services. First Financial has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

[55] *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. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also 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), (c). In addition, under section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, First Financial Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/21.4; Ind. Code § 28-2-13-19; Ky. Rev. Stat. Ann. 286.3-920; Ohio Rev. Code Ann. §1117.01.

[56] 12 U.S.C.§ 322; 12 CFR 208.6. Upon consummation of the proposal, First Financial Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

[57] *See* Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(*l*)(1).

the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and other applicable statutes. The Board's approval is specifically conditioned on compliance by First Financial with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. 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 February 22, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Appendix A

Branches to be Established by First Financial Bank

Illinois Branches
1. 101 North Hilgert Drive, Grant Park, Illinois 60940
2. 323 East Main Street, Hoopeston, Illinois 60942
3. 2000 West Court Street, Kankakee, Illinois 60901
4. 216 South Fourth Street, Watseka, Illinois 60970

Indiana Branches
1. 202 North Harrison Street, Alexandria, Indiana 46001
2. 1802 Allison Lane, Jeffersonville, Indiana 47130
3. 104 East Link's Way, Aurora, Indiana 47001
4. 136 East Harriman, Bargersville, Indiana 46106
5. 1053 State Road 229 North, Batesville, Indiana 47006
6. 3205 East Third Street, Bloomington, Indiana 47401
7. 24004 Stateline Road, Lawrenceburg, Indiana 47025
8. 9014 State Road 101, Brookville, Indiana 47012
9. 1051 West Spring Street, Brownstown, Indiana 47220
10. 221 East Main Street, Crawfordsville, Indiana 47933
11. 8740 South Emerson Avenue, Indianapolis, Indiana 46237
12. 597 Banta Street, Franklin, Indiana 46131
13. 6671 Highway 150, Floyds Knobs, Indiana 47119
14. 7700 State Road 64, Georgetown, Indiana 47122
15. 3610 Grant Line Road, New Albany, Indiana 47150
16. 122 West Washington Street, Greensburg, Indiana 47240
17. 102 West Main Street, Hagerstown, Indiana 47346
18. 136 Thornton Road, Hanover, Indiana 47243
19. 555 East Third Street, Hobart, Indiana 46342
20. 8475 North State Road 9, Hope, Indiana 47246
21. 3535 East 96th Street, Indianapolis, Indiana 46240
22. 120 East Main Street, Knightstown, Indiana 46148
23. 2253 State Road 54 East, Linton, Indiana 47441
24. 201 South Main Street, Lynn, Indiana 47355

25. 1315 Clifty Drive, Madison, Indiana 47250
26. 417 Jefferson Street, Madison, Indiana 47250
27. 201 North Broadway, Greensburg, Indiana 47240
28. 11 South Meridian, Ste 101, Indianapolis, Indiana 46204
29. 100 East Spring Street, New Albany, Indiana 47150
30. 600 South Memorial Drive, New Castle, Indiana 47362
31. 501 Clifty Drive, Madison, Indiana 47250
32. 521 North State Street, North Vernon, Indiana 47265
33. 112 North Meridian Street, Portland, Indiana 47371
34. 3433 East Main Street, Richmond, Indiana 47374
35. 230 Main Street, Rising Sun, Indiana 47040
36. 202 North Main Street, Rushville, Indiana 46173
37. 1130 East Tipton Street, Seymour, Indiana 47274
38. 28287 State Route 1, West Harrison, Indiana 47060
39. 3880 West Presidential Way, Edinburgh, Indiana 46124
40. 1012 South Adams Street, Versailles, Indiana 47042
41. 102 West Main Street, Vevay, Indiana 47043
42. 1263 North Indiana 135, Greenwood, Indiana 46142
43. 120 North Monroe Street, Williamsport, Indiana 47993

Kentucky Branches

1. 1905 Blankenbaker Parkway, Louisville, Kentucky 40299
2. 9819 Brownsboro Road, Louisville, Kentucky 40241
3. 6512 Bardstown Road, Louisville, Kentucky 40291
4. 2862 Frankfort Avenue, Louisville, Kentucky 40206
5. 201 Limestone Drive, Frankfort, Kentucky 40601
6. 104 South Chiles Street, Harrodsburg, Kentucky 40330
7. 1012 Bypass North, Lawrenceburg, Kentucky 40342
8. 293 North Hubbards Lane, Louisville, Kentucky 40207
9. 293 North Hubbards Lane, Louisville, Kentucky 40207
10. 13704 Shelbyville Road, Louisville, Kentucky 40245
11. 1734 Midland Trail, Shelbyville, Kentucky 40065
12. 2735 Bardstown Road, Louisville, Kentucky 40205
13. 9306 Taylorsville Road, Louisville, Kentucky 40299
14. 211 West Oak Street, Louisville, Kentucky 40203
15. 295 North Hubbards Lane, Louisville, Kentucky 40207

Ohio Branches

1. 7637 Beechmont Avenue, Cincinnati, Ohio 45255
2. 3723 Glenmore Avenue, Cincinnati, Ohio 45211
3. Summit Woods 1, 100 East Business Way, Suite 150, Cincinnati, Ohio 45241
4. 585 Anderson Ferry Road, Cincinnati, Ohio 45238
5. 6300 Harrison Avenue, Cincinnati, Ohio 45247
6. 10425 Harrison Avenue, Harrison, Ohio 45030
7. 3442 Edwards Road, Cincinnati, Ohio 45208
8. 5550 Cheviot Road, Cincinnati, Ohio 45239
9. 2000 Madison Road, Cincinnati, Ohio 45208
10. 7615 Reading Road, Cincinnati, Ohio 45237
11. 11186 Reading Road, Cincinnati, Ohio 45241
12. 635 South Market Street, Troy, Ohio 45373
13. 1580 West Main Street, Troy, Ohio 45373
14. 101 East Elm Street, Union City, Ohio 45390
15. 5791 Glenway Avenue, Cincinnati, Ohio 45238

Appendix B

First Financial/MainSource 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
Bloomington, Indiana – includes Greene, Monroe, and Lawrence counties.						
First Financial Pre-Consummation	3	$317.3M	10.04			
MainSource	9	$137.0M	4.33			
First Financial Post-Consummation	3	$454.3M	14.37	1499	87	15
Gary/Hammond, Indiana – includes Lake, Porter, La Porte, Newton, Jasper counties; and Center, Jackson, California (minus the city of Bass Lake), Wayne, and Railroad townships in Starke County.						
First Financial Pre-Consummation	9	$702.5M	4.81			
MainSource	16	$134.2M	0.92			
First Financial Post-Consummation	8	$836.7M	5.73	1003	8	29
Indianapolis, Indiana – includes Boone, Hamilton, Hancock, Hendricks, Henry, Johnson, Madison, Marion, Morgan, Owen, Putnam, Rush, Shelby, and Tipton counties.						
First Financial Pre-Consummation	14	$620.0M	1.32			
MainSource	18	$452.7M	0.91			
First Financial Post-Consummation	12	$1.05B	2.23	1125	2	48
Cincinnati, Ohio – includes Brown, Butler, Clermont, Hamilton, and Warren counties, Ohio; Dearborn County, Indiana; Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton counties, Kentucky; and the New Liberty and Owenton census county divisions in Owen County, Kentucky.						
First Financial Pre-Consummation	6	$2.24B	2.03			
MainSource	11	$568.5M	0.52			
First Financial Post-Consummation	4	$2.80B	2.54	3426	2	63
Dayton, Ohio – includes Montgomery, Miami, Greene, and Preble counties.						
First Financial Pre-Consummation	7	$370.3M	3.13			
MainSource	11	$144.3M	1.22			
First Financial Post-Consummation	7	$514.7M	4.35	1534	8	28

Data and rankings are as of June 30, 2017. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Order Issued Under Section 4 of the Bank Holding Company Act

Associated Banc-Corp
Green Bay, Wisconsin

Order Approving the Acquisition of a Savings and Loan Holding Company and Acquisition of a Savings Association
FRB Order No. 2018-03 (January 23, 2018)

Associated Banc-Corp ("Associated"), Green Bay, Wisconsin, a bank holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y[2] to acquire Bank Mutual Corporation ("Bank Mutual Corp"), Milwaukee, Wisconsin, a savings and loan holding company, and thereby indirectly acquire its subsidiary, Bank Mutual, Brown Deer, Wisconsin, a federal savings association. Following the proposed acquisition, Bank Mutual would be merged into Associated's subsidiary bank, Associated Bank, N.A. ("Associated Bank"), Green Bay, Wisconsin.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *FederalRegister* 43237 (September 14, 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.

Associated, with consolidated assets of approximately $30.1 billion, is the 62nd largest insured depository organization in the United States. Associated controls approximately $22.3 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] Associated controls Associated Bank, which operates in Wisconsin, Illinois, and Minnesota. Associated is the 3rd largest insured depository organization in Wisconsin, controlling deposits of approximately $15.0 billion, which represent 9.7 percent of the total deposits of insured depository institutions in that state.[6] Associated is the 8th largest insured depository organization in Minnesota, controlling deposits of approximately $1.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Bank Mutual Corp, with consolidated assets of approximately $2.7 billion, is the 321st largest insured depository organization in the United States. Bank Mutual Corp controls approximately $2.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Bank Mutual Corp controls Bank Mutual, which operates in Wisconsin and Minnesota. Bank Mutual Corp is the 9th largest insured depository organization in Wisconsin, controlling deposits of approximately $1.9 billion, which represent 1.2 percent of the total deposits of insured depository institutions in that state. Bank Mutual Corp is the 305th largest insured depository organization in Minnesota, controlling deposits of approximately

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1843(c)(8) and (j); 12 CFR 225.24.

3 The merger of Bank Mutual into Associated 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 depository institution merger on January 4, 2018.

4 12 CFR 262.3(b).

5 National asset data, market share, and ranking data are as of September 30, 2017, unless otherwise noted.

6 State deposit data are as of June 30, 2017. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

$22.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Associated would become the 59th largest insured depository organization in the United States, with consolidated assets of approximately $32.8 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Associated would control consolidated deposits of approximately $24.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Wisconsin, Associated would remain the 3rd largest insured depository organization, controlling deposits of approximately $17.0 billion, which represent approximately 11 percent of the total deposits of insured depository institutions in that state. In Minnesota, Associated would remain the 8th largest insured depository organization, controlling deposits of approximately $1.6 billion, which represent less than 1 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.[7] 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. Associated has committed that all the activities of Bank Mutual Corp and its subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Bank Mutual Corp "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 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.[9] In acting on a notice to acquire a savings association, 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(j)(2) of the BHC Act, the Board evaluates the competitive effects of a proposal in light of all of the facts of the

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[7] 12 CFR 225.28(b)(4)(ii).

[8] 12 U.S.C. § 1843(j)(2)(A).

[9] *See* 12 CFR 225.26. *Seee.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 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).

[10] 12 U.S.C. § 2901 *etseq*; 12 CFR 225.13(b)(3). The proposal does not raise interstate issues under section 4(i)(8) of the BHC Act because Wisconsin is the home state of both Associated and Bank Mutual. *See* 12 U.S.C. §§ 1841(o)(4), 1843(i)(8).

record.[11] Associated and Bank Mutual Corp have subsidiary depository institutions that compete directly in 16 banking markets located in Wisconsin and Minnesota.[12] 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 each market; the relative share of total deposits in insured depository institutions in the markets ("market deposits") that Associated would control;[13] the concentration levels of market deposits and the increases in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[14] and other characteristics of the markets.

Banking Markets Within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Appleton, Beloit-Janesville, Chicago, Eau Claire, Fond du Lac, Madison, Milwaukee, Marinette, Minneapolis/Saint Paul, Red Wing, Rice Lake, Saint Croix Falls, Sheboygan, and Sturgeon Bay markets.[15] On consummation of the proposal, the changes in the HHI in the Chicago, Eau Claire, and Madison markets would be small (22 points or less), and the markets would remain unconcentrated. On consummation of the proposal, the changes in the HHI in the Appleton, Beloit-Janesville, Fond du Lac, Red Wing, Rice Lake, Saint Croix Falls, and Sheboygan markets would be below the threshold in the DOJ Bank Merger Guidelines; each of the markets would remain moderately concentrated, and numerous competitors would remain in each market. The Sturgeon Bay market would remain highly concentrated, but the increase in the HHI would be below the threshold in the DOJ Bank Merger Guidelines.[16] Furthermore, five competitors would remain in the Sturgeon Bay market, including a market

[11] 12 U.S.C. § 1843(j)(2).

[12] All of these banking markets are defined in the Appendix, except for the Shawano, Wisconsin banking market ("Shawano market") and the Green Bay, Wisconsin banking market ("Green Bay market"), which are defined in the discussion below.

[13] Local deposit and market share data are as of June 30, 2017, 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). For purposes of competitive analysis, after 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. *See*, *e.g.*, *Sterling Bancorp*, FRB Order 2017-21 (August 30, 2017).

[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] The competitive effects of the proposal in these markets are described in the Appendix.

[16] When analyzing banking markets that warrant special scrutiny, the Board has regularly weighted at 100percent the deposits of thrifts that serve as a significant source of commercial loans and provide a broad range of consumer, mortgage, and other banking products. *See*, *e.g.*, *First Horizon Nat'l Corp.*, FRB Order No. 2017-29 (October 30, 2017). Bank Mutual has a commercial and industrial loan portfolio similar to those of commercial banks in general. Weighting the deposits of Bank Mutual at 100 percent in the Sturgeon Bay market would result in an increase in the HHI of 221 points to 4796. However, the Sturgeon Bay market includes one credit union that 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 market. Taking into account the competitive influence of this credit union, the HHI would increase by 194 points to 4249, which is within the thresholds in the DOJ Bank Merger Guidelines.

leader with a market share over 60 percent. The Marinette, Minneapolis/Saint Paul, and Milwaukee markets would also remain highly concentrated; however, the changes in the HHI in these markets would be small (22 points or less), and numerous competitors would remain in each market.

Banking Markets Warranting Special Scrutiny

The structural effects of the proposal in the Shawano market and the Green Bay market warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.[17]

Green Bay, Wisconsin Banking Market.

Using initial screening data, Associated is the largest depository organization in the Green Bay market, controlling approximately $2.5 billion in deposits, which represent approximately 33.5 percent of market deposits. Bank Mutual Corp is the 12th largest depository organization in the Green Bay market and is treated as controlling approximately $142.9 million in deposits (i.e., actual deposits weighted at 50 percent), which represent approximately 1.9 percent of market deposits. On consummation, Associated would remain the largest depository organization in the Green Bay market, controlling approximately $2.8 billion in market deposits, which would represent approximately 36.6 percent of market deposits. The HHI in this market would increase by 194 points to 1846.

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 Green Bay market.[18] Factors indicate that the increase in concentration in the Green Bay market, as measured by the above market share, overstates the potential competitive effects of the proposal in the market. In particular, five credit unions exert a competitive influence in the Green Bay market. These 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 market.[19] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in its calculations to estimate market influence. This weighting takes into account the limited commercial lending done by credit unions relative to commercial banks' lending levels.

After consummation, adjusting to reflect competition from credit unions in the market, the market concentration level in the Green Bay market as measured by the HHI would increase by 169, from a level of 1435 to 1604, and the market share of Associated resulting from the transaction would increase from 31 percent to 33.9 percent. Twenty-six other competitors would remain in the market (including the five credit unions), including one

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[17] The Shawano market is defined as Menominee County, Wisconsin, plus Shawano County, Wisconsin (except Angelica, Maple Grove, Aniwa, Birnamwood, Wittenberg, and Germania townships).

[18] The number and strength of the 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).

[19] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, e.g., *Central Bancompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *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).

competitor with over 14 percent of market deposits and one competitor with over 11 percent of market deposits. The presence of these viable competitors suggests that Associated would have limited ability to unilaterally offer less attractive terms to consumers and these competitors would be able to exert competitive pressure on Associated in the Green Bay market.

Shawano, Wisconsin Banking Market

Using initial screening data, Associated is the largest depository organization in the Shawano market, controlling approximately $123.7 million in deposits, which represent approximately 30.7 percent of market deposits. Bank Mutual Corp is the ninth largest depository organization in the Shawano market and is treated as controlling approximately $13.7 million in deposits (i.e., actual deposits weighted at 50 percent), which represent approximately 3.4 percent of market deposits. On consummation, Associated would remain the largest depository organization in the Shawano market, controlling approximately $151.2 million in market deposits, which would represent approximately 36.2 percent of market deposits. The HHI in this market would increase by 305 points to 2124.

Factors indicate that the increase in concentration in the Shawano market, as measured by the above market share, overstates the potential competitive effects of the proposal in the market. In particular, two credit unions exert a competitive influence in the Shawano market. Both 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 market. Taking into account the limited lending done by credit unions relative to commercial banks, the Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in its calculations to estimate market influence. Taking into account this adjustment, the market concentration level in the Shawano market as measured by the HHI would increase by 188, from a level of 1437 to 1625, and the market share of Associated resulting from the transaction would increase from 24 percent to 28.5 percent. Nine other depository institutions would remain in the market (including the two credit unions), including two competitors that each would have over 17 percent of market deposits. The presence of these viable competitors suggests that Associated would have limited ability to unilaterally offer less attractive terms to consumers and these competitors would be able to exert competitive pressure on Associated in the Shawano market.

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 Green Bay and Shawano 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 Green Bay market, the Shawano market, or in any other relevant banking market.[20] Accordingly, the Board determines that competitive considerations are consistent with approval.

[20] The Board received public comments that expressed general concerns about the competitive aspects of the proposal and the growth in the size of banks in the United States. The Board considered these comments as part of its review of the potential competitive effects of the proposal.

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.[21] 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 public and supervisory 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, 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.

Associated and Associated Bank are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a holding company merger, with a subsequent merger of the subsidiary depository institutions.[22] The asset quality, earnings, and liquidity of Associated Bank and Bank Mutual are consistent with approval, and Associated 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 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 Associated, Bank Mutual Corp, and their subsidiary depository institutions, including assessments of their management, risk-management programs, and operations. In addition, the Board has considered information provided by Associated, 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.

Associated, Bank Mutual Corp, and their subsidiary depository institutions are each considered to be well managed. Associated has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Associated's directors and senior executive officers have knowledge of and experience in the banking and financial sectors, and Associated's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Associated's plans for implementing the proposal. Associated 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. Associated would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Associated's management has the experience and resources to operate the

[21] 12 CFR 225.26(b).

[22] To effect the transaction, each share of Bank Mutual Corp common stock and outstanding options to acquire Bank Mutual Corp common stock would be converted into the right to receive Associated common stock, based on an exchange ratio.

combined organization in a safe and sound manner, and Associated plans to integrate the existing management and personnel of Bank Mutual Corp in a manner that augments Associated's management.[23]

Based on all the facts of record, including Associated's supervisory record, managerial and operational resources, and plans for operating the combined organization 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 Associated and Bank Mutual Corp 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.[24] 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 these communities, 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 the institutions' safe and sound operation,[25] 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.[26]

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 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 Associated Bank and Bank Mutual, the fair lending and compliance records of each bank, the supervisory views of the OCC and the Consumer Financial Protection Bureau ("CFPB"), confidential supervisory information, information provided by Associated, and the public comments received on the proposal.

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[23] Following consummation of the proposed transaction, the current chairman of the boards of directors of Bank Mutual Corp and Bank Mutual will be nominated to join the boards of directors of Associated and Associated Bank.

[24] 12 U.S.C. § 1843(j)(2).

[25] 12 U.S.C. § 2901(b).

[26] 12 U.S.C. § 2903.

Public Comments on the Proposal

The Board received comments from four organizations, together representing approximately 400 public commenters, who objected to the proposal based on alleged weaknesses in the CRA and fair lending records of Associated Bank. Commenters expressed general concern that the proposed transaction could affect the communities that Associated and Bank Mutual Corp serve, particularly in Wisconsin, where Associated Bank and Bank Mutual are headquartered and have a significant banking presence. Some commenters alleged that Associated Bank had low levels of lending to African American and Hispanic borrowers, majority-minority areas, and LMI individuals and census tracts, as reflected in data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").[27] Some commenters also criticized Associated Bank's small business lending activity and the amount of its community development loans and investments in LMI communities. The majority of these commenters based their allegations on Associated Bank's CRA performance during the 2013 through 2015 review period; one commenter criticized Associated Bank's mortgage lending to African Americans based on 2016 HMDA data.[28]

Some commenters noted recent improvement in certain CRA-related activities of Associated Bank and Bank Mutual, such as the depository institutions offering flexible loan products, supporting community organizations, and making investments in affordable housing. However, each of those commenters criticized other aspects of Associated Bank's CRA and fair lending record.[29] For example, commenters criticized Associated Bank's Community Commitment Plan for the 2016 through 2018 period. In particular, commenters argued that the mortgage, small business, and community development lending benchmarks in the plan are lower than the bank's actual CRA performance during the 2013 through 2015 evaluation period. These and other commenters requested that the Board condition its approval of the proposal on Associated Bank entering into an updated CRA plan that includes formal input from community organizations and CRA-related benchmarks designed to meet the needs of LMI individuals and communities, minority individuals, and majority-minority areas.[30] In addition, some commenters requested that as part of its review of the proposal, the Board not take into consideration CRA-related actions by Associated Bank that relate to the agreement that the bank entered into with the United States Department of Housing and Urban Development ("HUD") in 2015.[31]

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[27] 12 U.S.C. § 2801 *et seq*.

[28] Specific geographic areas of concern for commenters included parts or all of Associated Bank's assessment areas ("AAs") in the Chicago-Naperville-Arlington Heights Metropolitan Division ("MD") ("Chicago AA"); Cook County, Illinois; the Milwaukee, Wisconsin Metropolitan Statistical Area ("MSA"); the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin Multistate MSA ("MMSA"); Hennepin County, Minnesota; Ramsey County, Minnesota; Racine County, Wisconsin; Kenosha County, Wisconsin; and Lake County, Illinois.

[29] The commenters also made suggestions regarding specific products and services that Associated Bank should offer and recommended other changes to Associated Bank's current product and service offerings. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes the costs charged for them. *See*, *e.g.*, *First Horizon National Corporation* FRB Order No. 2017-29 at 18 fn. 39 (October 30, 2017); *PacWest Bancorp*, FRB Order No. 2015-26 at 10 fn. 24 (2015).

[30] 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.*, *Sterling Bancorp*, FRB Order No. 2017-21 at 10 fn. 24 (August 30, 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 of a proposal, 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.

[31] Commenters noted that, in May 2015, Associated Bank entered into a conciliation agreement ("Agreement") with HUD to resolve a complaint by HUD alleging that Associated Bank discriminated on the basis of race and national origin by disproportionately denying the loan applications of African American and Hispanic applicants during the period of 2008 through 2010. The complaint also alleged that Associated Bank under-

In addition, some commenters expressed concern that Associated Bank's plans to close or consolidate branches in connection with the proposed transaction may adversely affect communities where the branches are located. Furthermore, some commenters expressed concern regarding the percentage of branches that Associated Bank has in LMI or majority-minority census tracts in the bank's Chicago AA and Racine County, Wisconsin AA.

Businesses of the Involved Institutions and Response to the Comments

Associated provides a diverse range of financial services, primarily through its principal subsidiary, Associated Bank, which operates through a branch network in Wisconsin, Illinois, and Minnesota. Products and services offered by Associated include consumer and commercial banking services, mortgage banking services, commercial real estate lending, credit card lending, community development investments, fiduciary trust services, and asset management services.

Bank Mutual Corp is the holding company of Bank Mutual, which is a federal savings association that operates through a branch network in Wisconsin and Minnesota. Bank Mutual provides community banking products and services such as residential mortgages; commercial real estate loans; construction and development commercial and industrial and consumer loans; and investment, wealth management, and insurance products and services.

In response to the comments, Associated asserts that approval of the proposal is justified based on Associated Bank's most recent CRA performance evaluation. Associated notes that it offers a variety of mortgage loan programs designed to increase affordable housing opportunities for LMI individuals and communities. For example, Associated represents that Associated Bank offers proprietary mortgage loan products, which are designed to assist LMI borrowers and first-time homebuyers through features such as higher loan-to-value ratios, down payment assistance, and affordable secondary financing. In addition, Associated represents that the bank participates in a variety of federal, state, and local mortgage assistance programs and has recently established community advisory councils in Chicago, Milwaukee, and Minneapolis that provide the bank with an additional platform to help identify and address community development needs in its AAs.

Associated notes that Associated Bank publicized a three-year Community Commitment Plan in 2016, which is specifically designed to expand the bank's CRA-related lending to LMI and minority individuals in Wisconsin, Illinois, and Minnesota. Associated asserts that Associated Bank has substantially exceeded or met each of its goals under the plan for 2016 and expects to meet or exceed all goals outlined for 2017 and 2018.

Associated denies the commenters' allegations that Associated Bank has fair lending shortcomings. Associated represents that it is firmly committed to making its credit products and services available to customers on a fair and equitable basis and in strict compliance with fair lending laws and regulations. Associated represents that Associated Bank maintains a fair lending program with policies and procedures that help ensure compliance with applicable CRA and fair lending requirements. Associated represents that this program includes testing and monitoring of the bank's loans for HMDA accuracy and completeness; periodic analysis of marketing, redlining, and steering risks; and periodic reviews by

served neighborhoods with significant African American or Hispanic populations. Associated denies that Associated Bank engaged in the prohibited discrimination alleged in the HUD complaint. Associated represents that the bank agreed to enter into the Agreement and implement new initiatives that would increase its lending to minority borrowers and communities. Associated asserts that Associated Bank has met or exceeded the Agreement's annual requirements in a timely manner and is ahead of schedule in achieving various overall requirements under the Agreement.

the bank's fair lending team to determine whether there are program, operational, or compliance gaps in its fair lending program. In addition, Associated represents that the bank conducts periodic fair lending compliance risk assessments and escalates potential issues to its senior management and directors.

Associated asserts that Associated Bank's CRA performance, as measured through HMDA data from 2016 through mid-year 2017, has improved since the bank's last CRA performance evaluation, which analyzed HMDA data from 2013 through 2015. For example, Associated asserts that Associated Bank has increased the percentage of its total HMDA loans and home purchase loans that it originated in LMI census tracts across each of the geographies discussed by the commenters. Similarly, Associated asserts that, from 2016 through mid-2017, Associated Bank increased the percentage of total HMDA loans that it originated in majority-minority census tracts and to African American and Hispanic borrowers.

Associated asserts that Associated Bank has taken steps to increase its lending to LMI and minority borrowers, including through advertising and outreach programs, community development investments, and the bank's multicultural-affordable-lending team. Associated also notes that Associated Bank has taken steps to improve its small business lending, particularly to businesses with revenues of $1 million or less, businesses in LMI census tracts, and minority- and women-owned businesses. These initiatives include enhancing the bank's credit underwriting process, modifying the bank's Small Business Administration loan policies, investing in technology, and pursuing formalized partnerships with community development financial institutions.

Associated disputes the assertion by some commenters that Associated Bank's community development lending and investment activity does not compare favorably to certain institutions with a similar profile. Specifically, Associated argues that the data referenced by the commenters are inaccurate and that, when Associated Bank's entire portfolio of community development loans and investments is accounted for, the bank's performance is comparable to the referenced institutions.

Associated represents that Associated Bank considered a variety of factors in identifying branches for closure, including the proximity of other branch locations, the respective conditions and available services at the consolidating or closing branches and the recipient branches, the effect of branch closures on customers and the relevant communities, and the financial performance and future prospects of the consolidating or closing branches. Associated represents that the proposed branch closures would be completed in accordance with the applicable regulatory requirements associated with closing branches.[32] With respect to Associated Bank's branching strategy, Associated represents that the bank has recently taken steps to increase its presence in LMI geographies. For example, Associated notes that since 2014, Associated Bank has opened a branch in a majority-minority census tract of Racine, Wisconsin, and two branches and two loan production offices in LMI and majority-minority communities in Chicago, Illinois.

[32] The Board notes that section 42 of the Federal Deposit Insurance Act (12U.S.C.§1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Fed. Reg.* 34844 (June 29, 1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board 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, public comments received on the proposal, and the response to comments by the applicant.[33] In this case, the Board considered the supervisory views of the OCC and the CFPB.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[34] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the 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 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;[35] (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 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.[36] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

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

[34] 12 U.S.C. § 2906.

[35] 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).

[36] Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

CRA Performance of Associated Bank

Associated Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of July 27, 2015 ("Associated Bank Evaluation").[37] The bank received "Low Satisfactory" ratings for the Lending Test and the Service Test and a "High Satisfactory" rating for the Investment Test.[38] Examiners noted that the bank's performance in Wisconsin received the greatest emphasis because it represented the bank's most significant market.

Examiners found that Associated Bank's overall lending activity was good. In Wisconsin, examiners found that the bank's level of lending was excellent, particularly for home mortgage loans. Examiners found that the distribution of the bank's loans among borrowers of different income levels was good, and the distribution of the bank's loans among different geographies was adequate. Examiners determined that the bank made an adequate level of community development loans in Wisconsin. In the Milwaukee MSA, an area of particular concern to commenters, examiners found that Associated Bank's overall lending activity was excellent. In Illinois, examiners found that the bank had an adequate level of lending for home mortgage loans and for small business loans. Examiners found that the distribution of the bank's loans among borrowers of different income levels was good, and the distribution of the bank's loans among different geographies was adequate. In Minnesota, examiners found that the bank had a good level of lending for home mortgage loans and small business loans and that the distribution of the bank's loans among borrowers of different income levels was good. Examiners also found that the bank's distribution of loans among different geographies was adequate in Minnesota.

Examiners found that Associated Bank had an overall good amount of investments in its AAs. Examiners noted that the bank's investments supported, among other things, affordable housing needs in its AAs, community development services, and economic development. In Wisconsin and Minnesota, examiners found that the bank had an adequate level of qualified investments that were responsive to community needs. In the Milwaukee MSA, examiners found that Associated Bank demonstrated adequate responsiveness to the community development needs of the community and made occasional use of innovative and complex instruments. In Illinois, examiners found that the bank's performance under the Investment Test was "Outstanding" based on an excellent level of investments in the Rockford, Illinois MSA and an adequate level of investments in the St. Louis, Illinois MSA.

Examiners found that Associated Bank's branches were reasonably accessible to essentially all portions of the bank's AAs. In addition, examiners determined that the bank had an adequate distribution of retail services in the majority of its AAs and that the bank's level of community development services in its AAs was good. In Wisconsin, examiners found that the bank's branches were accessible to essentially all LMI individuals and geographies. In addition, examiners noted that the bank had a good level of community development services that were found to be responsive to community needs. Examiners noted that Asso-

[37] The Associated Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for HMDA and small business loans was January 1, 2011, through December 31, 2013. The evaluation period for community development loans and services was January 1, 2011, through July 27, 2015. The evaluation period for investments was July 1, 2011, through July 27, 2015.

[38] The Associated Bank Evaluation included full-scope evaluations in all or parts of the Chicago-Naperville-Arlington Heights MD; the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin MMSA; the Rockford, Illinois MSA; the St. Louis, Illinois MSA; the Rochester, Minnesota MSA; the Milwaukee-Waukesha-West Allis, Wisconsin MSA ("Milwaukee MSA"); the Green Bay, Wisconsin MSA; the Wisconsin Non-MSA AA (Ashland, Clark, Crawford, Dodge, Door, Forest, Green (2011-2013), Iron, Jefferson, Lincoln, Manitowoc, Marinette, Oneida, Portage, Price, Richland, Sauk, Sawyer, Shawano, Taylor, Vernon, Vilas, Walworth, Waupaca, and Wood counties); and the Madison, Wisconsin MSA. Limited-scope evaluations were performed of the bank's other AAs.

ciated Bank's employees participated in a variety of organizations that benefited LMI individuals, promoted economic development, and provided affordable housing. In the Milwaukee MSA, examiners found that Associated Bank's branches were accessible to individuals of different income levels and that the bank demonstrated an excellent level of service activities and excellent responsiveness to the affordable housing needs of the community. In Illinois, examiners found that the bank's branch distribution was accessible to essentially all portions of the bank's AAs and that the bank had a good level of community development services. In Minnesota, examiners concluded that the bank's branch distribution was accessible to limited portions of the Rochester, Minnesota MSA, the bank's full-scope AA in the state.

Associated Bank's Activities Since the Associated Bank Evaluation

Associated represents that, since the Associated Bank Evaluation, Associated Bank has strengthened its CRA performance across its AAs. In particular, Associated asserts that the bank has focused considerable efforts on improving its lending in LMI geographies across its AAs. Associated represents that, since the Associated Bank Evaluation, the bank has increased its lending to LMI individuals in key markets for the bank, such as the Milwaukee MSA, the Chicago AA, and the Minneapolis AA. In addition, Associated notes that the bank's Community Commitment Plan for 2016 through 2018 includes loans and grants to LMI and minority individuals and communities and an increased commitment to marketing the bank's products and services to LMI and minority individuals through outreach efforts, financial education programs, and partnerships with community groups. Associated represents that, as part of those efforts, the bank formed advisory councils in Chicago, Milwaukee, and Minneapolis through which it partners with a variety of community organizations. In addition, Associated notes that the bank has opened five new offices in LMI communities since its most recent CRA evaluation as part of its efforts to expand its presence in LMI geographies.

As part of its efforts to enhance its CRA program, Associated represents that Associated Bank has significantly increased its total qualified investments since the Associated Bank Evaluation. According to Associated, the bank's investments and grants support a variety of activities, including minority micro-enterprises and small businesses, job skills training, employment services, work-study programs for LMI students, and financial education. Associated asserts that the bank has continued to support its communities through an active volunteer program and has doubled the hours it has spent providing qualified community development services, compared to the hours reported in the Associated Bank Evaluation. Associated represents that the bank's service activities include participating on boards and committees of nonprofit organizations and providing financial literacy training.

CRA Performance of Bank Mutual

Bank Mutual was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of January 28, 2013 ("Bank Mutual Evaluation").[39] The bank received "High Satisfactory" ratings for the Lending Test and the Service Test and a "Low Satisfactory" rating for the Investment Test.[40]

[39] The Bank Mutual Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for HMDA loans, small business loans, investments, and services was January 1, 2008, through December 31, 2012. The evaluation period for community development loans was May 22, 2008, through January 28, 2013.

[40] The Bank Mutual Evaluation included full-scope evaluations in all or parts of the Appleton, Wisconsin MSA; the Eau Claire, Wisconsin MSA; the Green Bay, Wisconsin MSA; the Madison, Wisconsin MSA; the Milwaukee-Waukesha-West Allis, Wisconsin MSA; the Racine, Wisconsin MSA; the Wisconsin

Examiners concluded that Bank Mutual's lending levels reflected good responsiveness to the credit needs of its overall AAs. Examiners found that a high percentage of the bank's HMDA and small business loans was made within its AAs. Examiners concluded that the distribution of the bank's loans among borrowers of different income levels was good and that the bank's distribution of small business loans to small businesses was excellent. Examiners noted that the bank's overall distribution of HMDA and small business loans reflected adequate geographic distribution throughout the bank's AAs. Examiners found that the bank had numerous innovative or flexible loan products or services that helped to serve the credit needs of its AAs. Examiners noted that many of those products were especially beneficial to LMI borrowers.

Examiners concluded that Bank Mutual had an adequate level of qualified community development investments, grants, and donations. Examiners noted that the bank made numerous qualifying grants and donations during the review period, including to organizations that provide services to LMI individuals and families. Examiners found that the bank's delivery systems were accessible to essentially all portions of its overall AAs. Examiners found that the bank did not have branches or ATMs in low-income areas, but noted that the bank's percentage of branches and ATMs located in moderate-income AAs was commensurate with the demographics of its AAs as a whole.

Bank Mutual's Activities Since the Bank Mutual Evaluation

Associated represents that, since the Bank Mutual Evaluation, Bank Mutual has maintained strong CRA performance across its AAs, as reflected in the number and amount of the bank's HMDA, small business, and community development loans and qualified grants and donations made since 2013. Associated represents that Bank Mutual has utilized lending programs designed to assist LMI homebuyers and communities and has focused its community development lending, investments, and grant activity on supporting nonprofit organizations that support housing for LMI individuals. Associated also represents that Bank Mutual's community development service activities have included providing financial-related technical assistance to nonprofit community organizations and conducting homeownership counseling and first-time homebuyer education seminars.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the OCC regarding the CRA, consumer compliance, and fair lending records of Associated Bank and Bank Mutual. The OCC reviewed the depository institution merger underlying this proposal, as well as the comments received by the Board. The Board has also considered the results of the most recent consumer compliance examinations of both Associated Bank and Bank Mutual conducted by the OCC, which included reviews of the depository institutions' compliance management systems and the depository institutions' compliance with certain fair lending laws and regulations. Examiners also conducted fair lending risk assessments of both institutions. In addition, the Board consulted with the CFPB regarding Associated Bank's consumer compliance record.

The Board has taken the consultations with the OCC and the CFPB and the information discussed above into account in evaluating the proposed transaction, including in considering whether Associated has the experience and resources to ensure that the organization

nonmetropolitan AA (consisting of all of Barron, Dodge, Door, Dunn, Green Lake, Marinette, Polk, Sawyer, Shawano, Washburn, and Waupaca counties, and a portion of Manitowoc County); and the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin MMSA. Limited-scope evaluations were performed of the bank's other AAs.

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 considered other potential effects of the proposal on the convenience and needs of the communities to be served. Associated represents that, after consummation of the proposed transaction, it would consolidate certain duplicative products of the combined organization. Associated represents that it believes the products and services that would remain would be comparable to those currently offered by Associated Bank and Bank Mutual and would continue to meet the needs of the customers and AAs of Associated Bank and Bank Mutual.

Associated represents that Associated Bank would benefit from Bank Mutual's relationships with various community organizations, which would result in new outreach opportunities to increase the use of Associated Bank's products and services. In addition, Associated represents that the proposal would provide expanded product capabilities to customers of Bank Mutual, including access to Associated Bank's debit card transaction-based rewards program, modernized health savings account solutions, Small Business Administration loans, private banking services, a variety of new business lending products, and Associated Bank's higher lending limits and enhanced business capabilities. In addition, Associated represents that customers of Associated Bank and Bank Mutual would benefit from a larger branch and ATM network.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory views of the OCC and the CFPB, confidential supervisory information, information provided by Associated, 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") 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."[41]

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

[41] Dodd-Frank Act § 604(e), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. § 1843(j)(2)(A).

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 United States 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 consumer and commercial banking activities.[45] 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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Additional Public Benefits of the Proposal

As noted, in connection with a notice under section 4(c)(8) of the BHC Act, section 4(j)(2) of the BHC Act requires the Board to consider whether performance of the activity by a bank holding company can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.[46] As discussed above, the Board has considered that the proposed transaction would provide greater services, product offerings, and geographic scope to customers of Associated Bank and Bank Mutual. In addition, the acquisition 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

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[42] Many of the metrics considered by the Board measure an institution's activities relative to the United States 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 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.

[45] Associated and Bank Mutual Corp offer a range of retail and commercial banking products and services. Associated has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

[46] 12 U.S.C. § 1843(j)(2)(A).

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 of the proposal 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 determines that the notice should be, and hereby is, approved.[47] 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 Associated with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and with the commitments made to the Board in connection with the notice. 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 January 23, 2018.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Associated/Bank Mutual Corp 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
Appleton, Wisconsin ("Appleton") – Defined as Outagamie County, Wisconsin (except Oneida township); Winchester, Clayton, Neenah, and Menasha townships in Winnebago County, Wisconsin; and Harrison, Woodville, Brillion, Rantoul, Chilton, Stockbridge, Brothertown and Charlestown townships in Calumet County, Wisconsin.						
Associated Pre-Consummation	3	$600.2M	12.8			
Bank Mutual Corp	25	$7.9M	0.1			
Associated Post-Consummation	3	$616.2M	13.2	1069	5	28

(continued on next page)

[47] A commenter requested that the Board hold a public hearing or meeting on the proposal. The Board's regulations provide for a hearing or notice 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 225.28(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 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.

Appendix—*continued*

Associated/Bank Mutual Corp 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
Beloit-Janesville, Wisconsin ("Beloit-Janesville") – Defined as Rock County, Wisconsin; plus Sumner township in Jefferson County, Wisconsin; and Albion township in Dane County, Wisconsin.						
Associated Pre-Consummation	1	$579.2M	21.5			
Bank Mutual Corp	16	$16.3M	0.6			
Associated Post-Consummation	1	$611.9M	22.6	1318	37	18
Chicago, Illinois ("Chicago") – Defined as Cook, DuPage, Lake, Will, Kane, McHenry, Kendall, DeKalb, Grundy, and Kankakee counties of Illinois; plus Milks Grove, Chebanse, Papineau, Beaverville, Ashkum, Martinton, and Beaver townships of Iroquois County, Illinois; plus Roger, Mona, Pella, and Brenton townships in Ford County, Illinois; and Pleasant Prairie, Bristol, Salem, and Randall townships in Kenosha County, Wisconsin.						
Associated Pre-Consummation	15	$4.1B	1.1			
Bank Mutual Corp	169	$4.7M	Less than0.1			
Associated Post-Consummation	15	$4.1B	1.1	925	0	178
Eau Claire, Wisconsin ("Eau Claire") – Defined as Chippewa, Eau Claire, and Dunn counties of Wisconsin; Pepin County, Wisconsin (minus the towns of Stockholm and Pepin); the towns of Mondovi, Naples, Gilmanton, Dover, and Montana in Buffalo County, Wisconsin; the towns of Albion, Unity, Sumner, Chimney Rock, Hale, Burnside, Lincoln, and Pigeon in Trempealeau County, Wisconsin; and the towns of Garfield, Cleveland, Northfield, Garden Valley, and Alma in Jackson County, Wisconsin.						
Associated Pre-Consummation	10	$134.0M	3.5			
Bank Mutual Corp	15	$96.5M	2.5			
Associated Post-Consummation	3	$327.1M	8.4	649	22	29
Fond du Lac, Wisconsin ("Fond du Lac") – Defined as Fond du Lac County, Wisconsin (except Ashford, Auburn, and Calumet townships); and Lomira, Leroy, Chester, Burnett, Oak Grove, Trenton, Beaver Dam, Fox Lake, and Westford townships in Dodge County, Wisconsin.						
Associated Pre-Consummation	11	$89.9M	3.5			
Bank Mutual Corp	15	$26.3M	1			
Associated Post-Consummation	7	$142.7M	5.5	1390	-11	17
Madison, Wisconsin ("Madison") – Defined as Iowa, Sauk, Green, and Columbia counties of Wisconsin; Dane County, Wisconsin (except Albion township); Wayne township in Lafayette County, Wisconsin; plus Calamus, Elba, Portland, and Lowell townships in Dodge County, Wisconsin; and Waterloo, Lake Mills, and Oakland townships in Jefferson County, Wisconsin.						
Associated Pre-Consummation	2	$2.6B	13			
Bank Mutual Corp	45	$40.3M	0.2			
Associated Post-Consummation	2	$2.7B	13.4	668	8	56
Marinette, Wisconsin ("Marinette") – Defined as Marinette County, Wisconsin (minus Niagara town); and Menominee County, Minnesota (minus Meyer, Spalding, and Harris townships).						
Associated Pre-Consummation	6	$48.8M	4.8			
Bank Mutual Corp	7	$42.4M	4.2			
Associated Post-Consummation	3	$133.6M	12.8	1827	-22	12
Milwaukee, Wisconsin ("Milwaukee") – Defined as Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties of Wisconsin; East Troy township in Walworth County, Wisconsin; Somers, Paris, Brighton, and Wheatland townships in Kenosha County, Wisconsin; Jefferson County, Wisconsin (except Waterloo, Lake Mills, Oakland, and Sumner townships); Ashford and Auburn townships in Fond du Lac County, Wisconsin; and the eastern half of Dodge County, Wisconsin (Theresa, Herman, Williamstown, Hubbard, Rubicon, Ashippun, Hustisford, Lebanon, Clyman, Emmet, and Shields townships).						
Associated Pre-Consummation	4	$5.5B	7.5			
Bank Mutual Corp	19	$413.7M	0.5			
Associated Post-Consummation	4	$6.3B	8.7	2130	-6	57
Minneapolis/St. Paul, Minnesota ("Minneapolis/St. Paul") – Defined as Anoka, Hennepin, Ramsey, Washington, Carver, Scott, and Dakota counties of Minnesota; Lent, Chisago Lake, Shafer, Wyoming, and Franconia townships in Chisago County, Minnesota; Blue Hill, Baldwin, Orrock, Livonia, and Big Lake townships and the city of Elk River in Sherburne County, Minnesota; Monticello, Buffalo, Rockford, and Franklin townships and the cities of Otsego, Albertville, Hanover, and Saint Michael in Wright County, Minnesota; Derrynane, Lanesburgh, and Montgomery townships and Montgomery city in Le Sueur County, Minnesota; and Hudson township in Saint Croix County, Wisconsin.						
Associated Pre-Consummation	8	$1.4B	0.8			
Bank Mutual Corp	108	$23.8M	Less than0.1			
Associated Post-Consummation	7	$1.5B	0.8	3170	-1	128
Red Wing, Minnesota ("Red Wing") – Defined as Goodhue County, Minnesota (minus Warsaw, Holden, Wanamingo, Minneola, Zumbrota, Kenyon, Cherry Grove, Roscoe, and Pine Island townships); Mount Pleasant and Lake townships in Wabasha County, Minnesota; Stockholm and Pepin townships in Pepin County, Wisconsin; and Pierce County, Wisconsin (minus the towns of Clifton, River Falls, Martell, Gilman, and Spring Lake).						

(continued on next page)

Appendix—*continued*

Associated/Bank Mutual Corp 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
Associated Pre-Consummation	4	$124.1M	12.2			
Bank Mutual Corp	9	$31.0M	3			
Associated Post-Consummation	2	$186.2M	17.9	1217	103	15
Rice Lake, Wisconsin ("Rice Lake") – Defined as Washburn and Barron counties of Wisconsin; and the towns of Lenroot, Hayward, Bass Lake, Sand Lake, and Edgewater in Sawyer County, Wisconsin.						
Associated Pre-Consummation	14	$25.9M	1.7			
Bank Mutual Corp	13	$30.4M	2			
Associated Post-Consummation	9	$86.7M	5.6	1082	-18	14
Saint Croix Falls, Wisconsin ("Saint Croix Falls") – Defined as Burnett and Polk counties of Wisconsin; Saint Croix County, Wisconsin (minus the town of Hudson); and the towns of Clifton, River Falls, Martell, Gilman, and Spring Lake in Pierce County, Wisconsin.						
Associated Pre-Consummation	13	$29.2M	1.8			
Bank Mutual Corp	18	$6.1M	0.4			
Associated Post-Consummation	12	$41.5M	2.6	1015	-5	17
Sheboygan, Wisconsin ("Sheboygan") – Defined as Sheboygan County, Wisconsin; Calumet township in Fond du Lac County, Wisconsin; Schleswig township in Manitowoc County, Wisconsin; and New Holstein township in Calumet County, Wisconsin.						
Associated Pre-Consummation	8	$120.3M	5.5			
Bank Mutual Corp	13	$34.7M	1.6			
Associated Post-Consummation	5	$189.8M	8.6	1150	6	14
Sturgeon Bay, Wisconsin ("Sturgeon Bay") – Defined as Door County, Wisconsin.						
Associated Pre-Consummation	2	$144.7M	22.3			
Bank Mutual Corp	5	$16.8M	2.6			
Associated Post-Consummation	2	$178.3M	26.9	4796	0	4

Data and rankings are as of June 30, 2017. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Orders Issued Under Bank Merger Act

Huron Community Bank
East Tawas, Michigan

Order Approving the Acquisition of Assets and Assumption of Liabilities
FRB Order No. 2018-02 (January 16, 2018)

Huron Community Bank ("Huron Bank"), the state member bank subsidiary of Huron Community Financial Services, Inc. ("Huron Financial"), both ofEast Tawas, Michigan, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[1] to acquire certain assets and assume certain liabilities of a branch of First Federal of Northern Michigan ("First Federal"), a federal savings association subsidiary of First Federal of Northern Michigan Bancorp, Inc. ("First Federal Bancorp"), both of Alpena, Michigan.

Under the proposal, Huron Bank would assume approximately $11.5 million of First Federal's $286.5 million in deposits, as well as acquire approximately $1.5 million of First Federal's loans and related assets. The deposits and assets are currently held at First Federal's branch in Oscoda, Michigan ("Oscoda Branch"), and, upon consummation of the proposal, would be integrated into Huron Bank.[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 no comments were received. The Board has considered the proposal in light of the factors set forth in the Bank Merger Act. As required by the Bank Merger Act, a report on the competitive effects of the proposal was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

Huron Financial is the 2,898th largest insured depository organization in the United States by deposits, controlling deposits of approximately $160.8 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions[4] in the United States.[5] Huron Financial controls Huron Bank, which has offices only in Michigan. Huron Bank is the 81st largest insured depository institution in Michigan, controlling approximately $160.8 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state. Huron Bank has total assets of approximately $215 million.[6]

First Federal Bancorp is the 1,890th largest insured depository organization in the United States by deposits, controlling deposits of approximately $286.5 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. First Federal Bancorp controls First Federal, which has offices only in

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1 12 U.S.C. § 1828(c).

2 The Oscoda Branch is located at 201 North State Street, Oscoda, Michigan 48750. Huron Bank would not acquire the Oscoda Branch as a result of the transaction. Instead, Huron Bank would assume all of the deposit liabilities held at the branch as of the closing date of the transaction, in addition to a small amount of the branch's loans.

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

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

5 National deposit, ranking, and market share data are as of June 30, 2017. State deposit ranking data are as of June 30, 2017. Market deposit data are as of June 30, 2017.

6 Total asset data are as of September 30, 2017.

Michigan. The Oscoda Branch of First Federal has $11.5 million in deposits, which represents a small percentage of First Federal's total state deposits of $286.5 million. First Federal has total assets of $335.1 million.

On consummation of the proposal, Huron Financial would control approximately $172.3 million in deposits. Huron Bank would become the 77th largest insured depository institution in Michigan, controlling approximately 0.1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

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

Huron Bank and First Federal compete directly in the Oscoda, Michigan, banking market ("Oscoda market").[9] 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 of insured depository institutions in the market ("market deposits") that Huron Bank would control;[10] the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[11] and other characteristics of the Oscoda market.

The competitive effects of the proposal in the Oscoda market warrant a detailed review because Huron Bank's pro forma share of market deposits exceeds 35 percent, using initial competitive screening data. Huron Bank is the largest competitor in the Oscoda market, controlling approximately $151.5 million in deposits, which represent approximately 44.5 percent of market deposits. First Federal is the fifth largest depository institution in the Oscoda market, controlling approximately $5.8 million in weighted deposits, which represent approximately 1.7 percent of market deposits. On consummation of the proposal, Huron Bank would remain the largest depository institution in the Oscoda market,

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7 12 U.S.C. § 1828(c)(5)(A).

8 12 U.S.C. § 1828(c)(5)(B).

9 The Oscoda market is defined as follows: Iosco County; Mason, Turner, and Whitney townships of Arenac County; and Alcona County, except Caledonia, Alcona, Haynes, and Mitchell townships — all in Michigan.

10 Local deposit and market share data are as of June 30, 2017, 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).

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 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 (August19,2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

controlling approximately $163.0 million in market deposits, which would represent approximately 47.1 percent of market deposits. The HHI in the market would increase by 192 points, from 3248 to 3440.

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 Oscoda market.[12] Several factors indicate that the increase in concentration in the Oscoda 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 one credit union in the Oscoda market that offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.[13] The Board finds that these circumstances warrant including the deposits of this credit union at a 50 percent weight in its calculations to estimate market influence. This weighting takes into account the limited lending done by this credit union to small businesses relative to commercial banks' lending levels.

After consummation, adjusting to reflect competition from this credit union, the market concentration level in the Oscoda market as measured by the HHI would increase by 157 points, from a level of 2673 to 2830, and the market share of Huron Bank resulting from the transaction would increase from 39.3 percent to 41.7 percent.

The Board has also examined other aspects of the structure of the Oscoda 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 Oscoda market. The Oscoda market is a relatively small, rural banking market, and the change in Huron Bank's market share would be relatively small. Although consummation of this proposal would eliminate one existing competitor, the market would continue to be served by five depository institutions, including the credit union noted above. These include, apart from Huron Bank, one depository institution with a more than 25 percent share of market deposits and two depository institutions each with a more than 10 percent share of market deposits. In addition, the Board has considered the competitive influence of a second credit union that serves a significant portion of the Oscoda market.[14] The presence of these market competitors suggests that Huron Bank would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Huron Bank in the Oscoda 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

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[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 Corporation* , 84 *Federal Reserve Bulletin* 129 (1998).

[13] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *Central Bancompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *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); T*he 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).

[14] The Board finds that the presence of this credit union increases competition in the Oscoda market. However, because the membership criteria only includes a simple majority rather than essentially the entire market population, the deposits of this credit union are not included in calculating market influence.

significantly adverse effect on competition in any relevant banking market, including the Oscoda 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 market, the number of remaining competitors, 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 Oscoda market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[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 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. 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.

Huron Bank is well capitalized and would remain so on consummation of the proposal. As noted, the proposed transaction involves an assumption of deposits and an acquisition of loans and related assets. Huron Bank appears to have adequate financial resources to effect the proposal. The asset quality, earnings, and liquidity of Huron Bank are consistent with approval, and Huron Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the deposits to be assumed and assets to be acquired. In addition, the future prospects of Huron Bank are considered consistent with approval.

The Board also has considered the managerial resources of the institutions involved and of Huron Bank after consummation of the proposal. The Board has reviewed the examination record of Huron Bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered information provided by Huron Bank; the Board's supervisory experiences with the institution; and Huron Bank's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Huron Bank is considered to be well managed. Huron Bank's board of directors and senior management have substantial knowledge of and experience in the banking sector, and the bank's risk-management program appears consistent with approval of this expansionary proposal. Huron Bank has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal.

[15] 12 U.S.C. § 1828(c)(5).

Huron Bank would continue to apply its risk-management policies, procedures, and controls following the acquisition, and these are considered acceptable from a supervisory perspective. In addition, Huron 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 of the facts of record, including Huron Bank's supervisory record, managerial and operational resources, and plans for operating the bank 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 Huron Bank and First Federal 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.[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 these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[17] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[18] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[19]

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Huron Bank and First Federal; the compliance record of Huron Bank; the supervisory views of the Federal Reserve Bank of Chicago ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC"); confidential supervisory information; and information provided by Huron Bank.

[16] 12 U.S.C. § 1828(c)(5).
[17] 12 U.S.C. § 2901 *et seq*.
[18] 12 U.S.C. § 2901(b).
[19] 12 U.S.C. § 2903.

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.[20] In this case, the Board considered the supervisory views of the Reserve Bank 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.[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 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 data reported under the Home Mortgage Disclosure Act of 1975,[22] automated loan reports, and other reports generated by the institution 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 institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas ("AAs"), 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 the institution's performance.[23]

CRA Performance of Huron Bank

Huron Bank was assigned an overall "Satisfactory" rating by the Reserve Bank at its most recent CRA performance evaluation, as of September 21, 2015 ("Huron Bank Evaluation").[24] Examiners found that Huron Bank's average loan-to-deposit ratio, which is a measure of the overall level of lending, was reasonable given its financial condition and AA credit needs. Examiners also found that a majority of the bank's home mortgage and small business loans were originated within its AA and that the geographic distribution of those loans reflected reasonable dispersion throughout the bank's AA. Examiners determined that the distribution of the bank's home mortgage loans reflected reasonable penetration among individuals of different income levels. Examiners noted that the distribution of the bank's home mortgage loans to low-income borrowers was reasonable. Examiners also noted that the percentage of the bank's home mortgage loans to moderate-income borrowers, as measured by loan volume and dollar amount, was comparable to the percentage of moderate-income families in its AA. In addition, examiners determined

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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] 12 U.S.C. § 2801 *et seq*.

[23] *See* 12 CFR 228.26(b).

[24] The Huron Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed home mortgage loans and small business loans from January 1, 2014, through December 31, 2014. The Huron Bank Evaluation included a full-scope evaluation in the Michigan Non-Metropolitan Statistical Area (consisting of Alcona, Arenac, and Iosco counties), its sole AA.

that the distribution of Huron Bank's small business lending reflected reasonable penetration among businesses of different sizes.

CRA Performance of First Federal

First Federal was assigned an overall CRA rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of September 29, 2014 ("First Federal Evaluation").[25] Examiners determined that First Federal's average loan-to-deposit ratio was more than reasonable given the bank's size and financial condition and the credit needs of its community.

Examiners found that First Federal's lending levels within its AA were excellent and that a substantial majority of the bank's loans were made within the bank's AA. According to examiners, the geographic distribution of residential mortgage and business loans throughout the bank's AA was excellent. Examiners also noted that First Federal's distribution of loans to borrowers reflected reasonable penetration among retail customers of different income levels and businesses of different sizes.

Examiners determined that First Federal engaged in a variety of qualified community development investments and grants, including contributions to affordable housing, economic development, revitalization and stabilization of business districts, and community services to LMI individuals and households. Examiners further noted that the bank exhibited excellent responsiveness to community development service needs.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Huron Bank conducted by Reserve Bank examiners, which included a review of the bank's consumer compliance risk-management program and the bank's compliance with consumer protection laws and regulations. The Board has also considered the results of the most recent examination of First Federal conducted by the OCC, which included a review of the bank's compliance function and the bank's compliance with certain consumer protection laws and regulations.

The Board has taken this information, as well as the CRA performance records of Huron Bank and First Federal, into account in evaluating the proposed transaction, including in considering whether Huron Financial has the experience and resources to ensure that Huron Bank helps to meet the credit needs of the communities within its AA.

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. Huron Bank represents that it does not have any plans to discontinue or significantly change any of its products or services as a result of the proposal. In addition, Huron Bank represents that customers of First Federal that become customers of Huron Bank as a result of the proposed transaction would have access to the same products and services that are currently available to customers of Huron Bank. Furthermore, Huron Bank represents that these First Federal customers would benefit from access to Huron Bank's branch network, which includes three branches within approximately 20 miles of the Oscoda Branch of First Federal.

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[25] The First Federal Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed residential mortgage loans and business loans from 2012 and 2013. The First Federal Evaluation included an evaluation of its sole AA, consisting of Alcona, Alpena, Charlevoix, Cheboygan, Crawford, Emmet, Iosco, Montmorency, Ogemaw, Oscoda, Otsego, and Presque Isle counties in Michigan.

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."[26]

To assess the likely effect of a proposed transaction on the stability of the 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 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 United States 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 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 organization in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with

[26] Dodd-Frank Act § 604(f), Pub. L. No. 111-203, 124 Stat. 1376, 1602 (2010), codified at 12 U.S.C. § 1828(c)(5).

[27] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

[28] For further discussion of the financial stability standard, *see Capital One Financial Corporation* , FRB Order No. 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.

other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all 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 Bank Merger Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Huron 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 by the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective January 16, 2018.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

IBERIABANK
Lafayette, Louisiana

Order Approving the Merger of Depository Institutions and Establishment of Branches
FRB Order No. 18-06 (February 21, 2018)

IBERIABANK, the state member bank subsidiary of IBERIABANK Corporation ("IBKC"),[1] both of Lafayette, Louisiana, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[2] to merge with Gibraltar Private Bank & Trust Company ("Gibraltar"), Coral Gables, Florida, a federal savings bank, with IBERIABANK as the surviving entity. IBERIABANK also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the locations of Gibraltar's main office and branches.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Bank Merger Act and the Board's Rules of Procedure.[4] As required by the Bank Merger Act, a report on the competitive effects of the bank merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation. 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 and the FRA.

IBKC, with consolidated assets of approximately $28.0 billion, is the 65th largest insured depository organization in the United States, controlling deposits of approximately $21.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] IBKC controls IBERIABANK, which has offices in eight states. IBKC is the 14th largest insured depository organization in Florida, with approximately $8.7 billion in deposits, which represent approximately 1.5 percent of the total deposits of insured depository institutions in that state.[6]

Gibraltar, with consolidated assets of approximately $1.6 billion, is the 476th largest insured depository organization in the United States, controlling deposits of approximately $1.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Gibraltar has offices in Florida and New York. Gibraltar is the 49th largest insured depository institution in Florida, with approximately $1.0 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in Florida. Gibraltar is the 173rd largest insured depository institution in New York, with approximately $79.2 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in New York.

On consummation of the proposal, IBKC would become the 64th largest depository organization in the United States, with consolidated assets of approximately $29.6 billion. IBKC would control approximately $22.4 billion in deposits, representing less than 1 percent of the total deposits of insured depository institutions in the United States. IBKC would continue to operate the 14th largest insured depository institution in Florida,

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1 IBKC is a financial holding company within the meaning of the Bank Holding Company Act of 1956.

2 12 U.S.C. § 1828(c).

3 12 U.S.C. § 321. These locations are listed in the Appendix.

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

5 Asset and nationwide deposit-ranking data are as of September 30, 2017, unless otherwise noted. In this context, insured depository institutions include insured commercial banks, savings and loan associations, and savings banks.

6 State deposit-ranking data are as of June 30, 2017, unless otherwise noted.

controlling deposits of approximately $9.7 billion, representing approximately 1.7 percent of the total deposits of insured depository institutions in the state. IBKC would operate the 173rd largest insured depository institution in New York, controlling deposits of approximately $79.2 million, representing less than 1 percent of the total deposits of insured depository institutions in the state.

Interstate and Deposit Cap Analysis

The Bank Merger Act generally provides that the Board may not approve an application by one insured depository institution to acquire another insured depository institution if the home state of the target insured depository institution is a state other than the home state of the applicant and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United States.[7] For purposes of the Bank Merger Act, the home state of IBERIABANK is Louisiana and the home state of Gibraltar is Florida.[8] Consummation of the proposal would result in IBERIABANK controlling less than 1 percent of the deposits of insured depository institutions in the United States. The proposed acquisition of Gibraltar would not be prohibited by the law of any state in which Gibraltar is located.[9] Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under the interstate merger provisions of the Bank Merger Act.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[10] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant 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 communities to be served.[11]

IBERIABANK and Gibraltar compete directly in the Miami-Fort Lauderdale and Naples, Florida banking markets.[12] The Board has reviewed the competitive effects of the proposal in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in each market; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that IBERIABANK would control;[13] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index

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[7] 12 U.S.C. § 1828(c)(13).

[8] A state bank's home state is the state by which the bank is chartered. 12 U.S.C. §1828(c)(13)(C)(ii)(II). A federal savings association's home state is the state in which the home office of the savings association is located. 12U.S.C.§1828(c)(13)(C)(ii)(III).

[9] Florida law permits an out-of-state bank to acquire a Florida bank through an interstate merger provided the resulting bank would not control 30 percent or more of the total amount of deposits held by all insured depository institutions in Florida. *See* Fla. Stat. Ann. §658.2953. On consummation, IBERIABANK would control less than 30percent of the total deposits of insured depository institutions in Florida. New York does not have a deposit cap applicable to this proposal.

[10] 12 U.S.C. § 1828(c)(5)(A).

[11] 12 U.S.C. § 1828(c)(5)(B).

[12] The Miami-Fort Lauderdale banking market includes Broward and Miami-Dade counties, and the Naples banking market consists of Collier County, all in Florida.

[13] Local deposit and market share figures are as of June 30, 2017, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See*, *e.g.*,

("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 these markets. On consummation of the proposal, both the Miami-Fort Lauderdale and Naples, Florida banking markets would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in each market would be minimal, and numerous competitors would remain in each market.[15]

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 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 Miami-Fort Lauderdale and Naples 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 Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[16] 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

Midwest Financial Group, 75 *Federal Reserve Bulletin* 386(1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 53 (1991).

[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 have 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.

[15] In the Miami-Fort Lauderdale banking market, IBKC operates the 13th largest depository institution, controlling approximately $3.2 billion in deposits, which represent approximately 1.8 percent of market deposits. Gibraltar is the 39th largest depository institution in the same market, controlling approximately $412.2 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBKC would become the 12th largest depository organization in the market, controlling deposits of approximately $4.0 billion, which represent approximately 2.2 percent of market deposits. The HHI for the Miami-Fort Lauderdale banking market would decrease by 2 points to 793, and 78 competitors would remain in the market.

In the Naples banking market, IBKC operates the 5th largest depository institution, controlling approximately $991.8 million in deposits, which represent approximately 5.9 percent of market deposits. Gibraltar is the 33rd largest depository institution in the market, controlling approximately $21.8 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBKC would remain the 5th largest depository organization in the market, controlling deposits of approximately $1.0 billion, which represent approximately 6.2 percent of market deposits. The HHI for the Naples banking market would increase by 1 point to 957, and 35 competitors would remain in the market.

[16] 12 U.S.C.§1828(c)(5).

considers a variety of 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 involved in the proposal in light of their financial and managerial resources and the proposed business plan.

IBERIABANK and Gibraltar are well capitalized, and IBERIABANK would remain so on consummation of the proposed transaction. The proposal is a merger structured as a stock conversion.[17] The asset quality, earnings, and liquidity of IBERIABANK and Gibraltar are consistent with approval. IBERIABANK appears to have adequate resources to absorb the costs of the proposal and to integrate Gibraltar's operations. In addition, the future prospects of IBERIABANK are considered consistent with approval.

The Board also has considered the managerial resources of the institutions involved and of IBERIABANK after consummation of the proposal. The Board has reviewed the examination records of IBKC, IBERIABANK, and Gibraltar, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by IBERIABANK; the Board's supervisory experiences and those of other relevant bank supervisory agencies with IBERIABANK and Gibraltar; and the organizations' record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

IBERIABANK and Gibraltar are considered to be well managed. IBERIABANK's board of directors and senior management have substantial knowledge of and experience in the banking sector, and the bank's risk-management program appears consistent with approval of this expansionary proposal.

The Board has also considered IBERIABANK's plans for implementing the proposal. IBERIABANK has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal. IBERIABANK would apply its risk-management policies, procedures, and controls at the combined organization and these are considered acceptable from a supervisory perspective. In addition, IBERIABANK'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 IBERIABANK'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 the organizations in combatting money-laundering activities, are consistent with approval.

[17] At the effective time of the merger, each share of Gibraltar common stock would convert into a right to receive shares of IBKC common stock.

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.[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 these communities, 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 the results of recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers 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 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 IBERIABANK and Gibraltar, the compliance records of both banks, the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, information provided by IBERIABANK, and the public comment received on the proposal.

Public Comment Regarding the Proposal

In this case, a commenter objected to the proposal, expressing fair lending and convenience and needs concerns with respect to IBERIABANK.[22] The commenter alleged that IBERIABANK's current branching activities in African American communities and the bank's marketing of products and services to African American businesses and professionals are limited. Specifically, the commenter asserted that IBERIABANK has avoided placing branches in proximity to densely populated African American neighborhoods.[23] In

[18] 12 U.S.C. § 1828(c)(5).

[19] 12 U.S.C. § 2901 *et seq*.

[20] 12 U.S.C. § 2901(b).

[21] 12 U.S.C. § 2903.

[22] The commenter also alleged that IBERIABANK has engaged in discriminatory employment practices. A bank's internal employment practices, however, are outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the Bank Merger Act.

[23] For example, the commenter alleged that IBERIABANK has established no branches in the African American communities of South Atlanta, in Georgia, and South Dallas and South Houston, in Texas. In addition, the commenter contends that only seven of IBERIABANK's branches are located in low-income neighborhoods and that five of these branches appear to engage in limited deposit-taking activities, which the commenter alleges indicates minimal activity and commitment in these communities.

addition, the commenter alleged that IBERIABANK does not have an organized outreach program for developing commercial lending relationships with African American businesses and professionals.[24] Based on these alleged practices, the commenter expressed concern that IBERIABANK will not meet the needs of disadvantaged African American communities in South Florida if the proposal is approved.

Business of the Involved Institutions and Response to the Public Comment

Through its network of branches in seven states,[25] IBERIABANK offers a range of retail and commercial products and services to individual customers and businesses, including checking, savings, money market, and certificate of deposit accounts; consumer, residential, commercial, construction, and auto loans; wealth management services; credit card and merchant card services; and treasury management services.

Gibraltar provides private comprehensive wealth management and private banking services to individuals and families, businesses, foundations, and nonprofit organizations. Gibraltar also offers commercial, commercial real estate, construction and land development, and consumer loans.

In response to the commenter's allegations, IBERIABANK states that it has an extensive legacy of meeting the needs of all communities in its footprint, including LMI communities, and highlights a community development plan the bank entered into with the National Community Reinvestment Coalition that became effective on January 1, 2018 ("CRA Plan").

With respect to the commenter's allegations about IBERIABANK's branch locations, the bank notes that as part of its most recent CRA performance evaluation, Reserve Bank examiners found the bank's retail delivery systems to be reasonably accessible to the bank's geographies and to individuals of different income levels in its assessment areas ("AAs"). The bank asserts that it is committed to maintaining this accessibility for individuals of different income levels throughout the communities it serves. IBERIABANK represents that it currently operates 47 active, full-service branches in LMI census tracts, representing approximately 22.6 percent of all of IBERIABANK's full-service branches, and that, as part of its CRA Plan, it has agreed to open two new bank branches in LMI census tracts, one in Miami-Dade County, Florida, and one in Atlanta, Georgia.

In response to the commenter's criticism that IBERIABANK has no organized outreach program to African American businesses and professionals, IBERIABANK asserts that it does not develop or target products or services specifically based on race or ethnicity because it does not assume all borrowers of a particular race or ethnicity have the same credit needs. IBERIABANK represents that it recognizes the credit challenges faced by LMI communities and has developed initiatives designed to meet the credit needs of such communities, including through community development loans, CRA-qualified investments, and affordable financial product offerings to improve banking access for underserved communities. IBERIABANK asserts that, among other programs designed specifically to meet the needs of LMI communities, it has created the IBERIABANK Subsidy

[24] The commenter alleged that IBERIABANK only finances African American businesses and professionals that come into the bank's offices, rather than actively soliciting business from them in their communities, in markets such as Atlanta, Dallas, and Houston, where there are a large number of creditworthy African American businesses.

[25] IBERIABANK has branch locations in Louisiana, Florida, Arkansas, Alabama, Texas, Tennessee, and Georgia. IBERIABANK does not operate any full-service branches in South Carolina, but has one limited service administrative office in that state, which does not accept deposits or make loans. In addition, IBERIABANK has recently been approved to establish a branch in North Carolina.

Program to provide $4,000 in down-payment and closing-cost assistance for the purchase or refinancing of loans for LMI borrowers. The bank also offers an unsecured home improvement loan designed to assist homeowners who lack equity, invests in Low-Income Housing Tax Credit projects that provide affordable rental housing, and provides grants and donations to community development organizations engaged in community services for LMI individuals and communities. IBERIABANK further represents that the bank will provide support to LMI communities in those states where it currently has a branch presence consistent with its CRA 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 institution, as well as information and views provided by the appropriate federal supervisors.[26] In this case, the Board considered the supervisory views of the Reserve Bank 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, such as IBERIABANK, 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 under the Home Mortgage Disclosure Act ("HMDA"),[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 amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of such loans, 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 such loans based on borrower characteristics, including the number and amounts of home mortgage 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

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

[27] 12 U.S.C. § 2906.

[28] 12 U.S.C. § 2801 *et seq*.

[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).

needs of LMI individuals and geographies.[30] Large institutions are also subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[31]

CRA Performance of IBERIABANK

IBERIABANK was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of August 5, 2013 ("IBERIABANK Evaluation").[32] IBERIABANK received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.[33]

Examiners found IBERIABANK's overall lending performance to be good in Alabama, Arkansas, Louisiana, and Texas and adequate in Florida and Tennessee. Examiners found that IBERIABANK originated a substantial majority of its loans within its AAs, reflecting excellent AA penetration. Examiners found that the bank's penetration of loans among borrowers of different income levels and businesses of different sizes was adequate. Examiners noted that the overall distribution of small business lending reflected adequate penetration in LMI geographies and among small businesses (businesses with revenues of $1 million or less). Examiners further noted that the bank made a high level of community development loans during the review period. The community development loans were for a variety of purposes, including financing affordable housing for LMI individuals, promoting economic development by financing small businesses that resulted in job creation and/or retention, revitalizing and/or stabilizing targeted LMI census tracts or other qualified geographies, and community services targeted to LMI individuals.

In the Houston AA, an area of concern to the commenter, examiners considered IBERIABANK's lending performance to be good. The geographic distribution of small business loans was found to reflect good penetration throughout the AA, and examiners noted that the bank's small business lending in low-income census tracts was excellent.

Examiners found IBERIABANK's investment performance to be excellent in Louisiana, good in Alabama, Arkansas, and Texas, and adequate in Florida and Tennessee. Examiners noted that IBERIABANK had made substantial qualified investments and provided

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[30] *See* 12 CFR 228.22(b).

[31] *See* 12 CFR 228.21 *et seq* .

[32] The IBERIABANK Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and small business loans for the period January 1, 2011, through December 31, 2012. The evaluation period for community development loans and investments was January 1, 2011, through March 31, 2013. Due to IBERIABANK's significant expansion and growth during the review period, the bank's performance in 2012 was weighted slightly more than its performance in 2011 in determining the final rating for lending.

[33] The IBERIABANK Evaluation included a full-scope review in the New Orleans-Metairie-Kenner MSA; Lafayette MSA; Little Rock-North Little Rock-Conway MSA; Fayetteville-Springdale-Rogers MSA; North Port-Bradenton-Sarasota MSA; Naples-Marco Island MSA; Birmingham-Hoover MSA; Houston-Sugar Land-Baytown MSA; and Memphis-Forest City Combined Statistical Area. A limited-scope review was performed in Baldwin County, Alabama; Huntsville MSA; Mobile MSA; Montgomery MSA; Jonesboro MSA; Northeast Arkansas; Palm Beach-Broward MSA; Ft.Myers MSA; Florida Keys, Florida; Acadiana, Louisiana; Allen, Louisiana; Baton Rouge MSA; Houma MSA; Lake Charles MSA; Lincoln, Louisiana; Monroe MSA; Morehouse, Louisiana; and Shreveport MSA.

The IBERIABANK Evaluation did not include a review of Dallas or Atlanta, areas of concern to the commenter, because IBERIABANK did not enter the Dallas market until completion of its acquisition of First Private Bank or the Atlanta market until completion of its acquisition of Georgia Commerce Bancshares Inc., both in 2015.

significant financial support to address the needs for affordable housing, financial counseling, emergency assistance, job training, and the revitalization of LMI communities.

Examiners highlighted the bank's provision of an excellent level of community development services throughout its AAs. Examiners found the bank's retail delivery systems to be reasonably accessible to geographies and individuals of different income levels and that the bank's record of opening and closing branches had not adversely affected the accessibility of delivery systems, particularly in LMI geographies and to LMI individuals. Examiners noted that the bank offered several retail products designed to meet the financial needs of lower-income customers and small businesses and that the bank participated in organized programs and other outreach efforts to expand banking access to LMI customers across its entire banking footprint. During the examination review period, the bank and its employees provided over 10,000 hours of community development services through service activities aimed at promoting or facilitating affordable housing for LMI individuals, economic development, and the revitalization of LMI areas.

In the Houston AA, an area of concern to the commenter, IBERIABANK's performance was found to be adequate. Examiners observed that the bank's retail delivery systems were reasonably accessible to geographies and individuals of different income levels, including LMI geographies and individuals. Examiners also noted that IBERIABANK provided a relatively high level of community development services that benefited residents of, and small businesses in, the Houston AA. During the review period, the bank and its employees provided almost 500 hours of community development services, including providing financial education, homeownership counseling, and small business assistance, as well as working with a variety of organizations that provided community services in LMI geographies and for LMI individuals.

IBERIABANK's Efforts since the IBERIABANK Evaluation

IBERIABANK represents that, since the IBERIABANK Evaluation, it has continued to build upon its commitment to provide financial services to LMI individuals, within LMI geographies, to small businesses, and to underserved communities. IBERIABANK also represents that it has opened eight bank branches in LMI communities since the IBERIABANK Evaluation, including one in Dallas and one in Houston, and that it has committed to open two new bank branches in LMI census tracts, including one in Miami-Dade County and one in Atlanta.

IBERIABANK asserts that it has continued to make a high level of community development loans throughout its AAs to increase affordable housing, revitalize LMI geographies, and promote economic development through financing small businesses in LMI communities. IBERIABANK represents that since the IBERIABANK Evaluation it has originated community development loans to support nonprofit organizations involved in affordable housing and economic activities that benefit LMI individuals and communities in Atlanta, has maintained its high level of community development lending in Houston, and has partnered with the Dallas Habitat for Humanity to provide affordable mortgage loans to its clientele and extended a line of credit to the nonprofit organization LiftFund for its minority-owned small business loan fund that targets businesses in the Dallas market.

IBERIABANK also represents that it made an equity investment in Liberty Financial Services, the holding company of Liberty Bank, an African-American owned financial institution. In addition, the bank has offered a suite of products and services to address the financial needs of LMI borrowers, including mortgage loan products and low-cost individual development accounts.

As noted, as part of its CRA Plan, the bank has agreed to commitments and goals designed to meet the needs of underserved communities in the states in which the bank currently has a branch presence. Such commitments and goals relate to mortgage and small business lending, community development lending and investments, philanthropy, and increasing access to financial services in LMI communities. IBERIABANK represents that it has committed to increase its small business lending in LMI census tracts by 5 percent annually for the first three years and by 2.5 percent annually for the last two years of the plan. IBERIABANK also represents that it has committed to increase home mortgage lending to LMI borrowers and LMI geographies by 3 percent annually over five years.

CRA Performance of Gibraltar

Gibraltar was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of July 11, 2016 ("Gibraltar Evaluation").[34] Gibraltar received "Outstanding" ratings for the Lending Test and Investment Test and a "High Satisfactory" rating for the Service Test.[35] Although Gibraltar's overall rating took into consideration the bank's performance in each AA that received a full-scope review, examiners gave the greatest weight to the bank's record in the Miami-Dade-Broward AA due to the higher volume of deposits and loans in that area.

Examiners found that Gibraltar demonstrated excellent responsiveness to the credit needs of its AAs. Examiners noted that, overall, Gibraltar originated a substantial majority of its loans within its AAs. Examiners found that the bank had good distribution among borrowers of different income levels and that the geographic distribution of loans reflected good penetration. Examiners also determined that the bank made an excellent level of community development loans.

Examiners found that the bank's community development investments were responsive to the credit needs of its AAs in the state of Florida, primarily addressing the need for rehabilitation of affordable housing for LMI individuals. Examiners observed that the bank's retail delivery systems were adequately distributed throughout the bank's AAs. Moreover, branches were found to be reasonably accessible to geographies and individuals of different income levels in Florida.[36]

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance examination of IBERIABANK conducted by Reserve Bank examiners, which included a review of the

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[34] The Gibraltar Evaluation was conducted using Large Bank CRA Examination Procedures. The examiners reviewed residential mortgage and small business loans from January 1, 2013, through December 31, 2015. The evaluation period for community development loans and services was January 1, 2013, through December 31, 2015. The evaluation period for community development investments was August 1, 2013, through February 29, 2016.

[35] The Gibraltar Evaluation included a full-scope evaluation of the Miami-Dade-Broward AA and the New York-Northern New Jersey-Long Island, New York-New Jersey-Pennsylvania MSA ("NY-NJ-PA MSA"). The Miami-Dade-Broward AA is composed of the Fort Lauderdale-Pompano Beach-Deerfield Beach, Florida Metropolitan Division ("MD"), and the Miami-Miami Beach-Kendall, Florida MD. A limited-scope review was performed in the Collier County, Florida MSA, and Monroe County, Florida Non-MSA. The ratings in the State of Florida were based on the bank's performance in the Miami-Dade-Broward AA.

[36] None of Gibraltar's Florida branches is located in a LMI geography. Although two Florida branches are in reasonable proximity to LMI geographies, ease of access is limited due to their location within commercial office towers. However, Gibraltar offers electronic banking services that include no-charge automated teller machine ("ATM") access when using Publix Supermarket's PRESTO ATM network, online banking, and mobile banking. Gibraltar's New York branch is located in proximity to LMI geographies, but primarily provides wealth management services. However, Gibraltar offers electronic banking services in New York, including through ATM networks, online banking, and mobile banking.

bank's consumer compliance risk-management program. The Board has considered the preliminary results of a pending review of IBERIABANK's compliance with the Fair Housing Act ("FHA"),[37] which included a redlining analysis, and the results of a previous review of IBERIABANK's compliance with the FHA. The Board also considered the preliminary results of a new CRA evaluation of IBERIABANK and considered IBERIABANK's supervisory record with the Consumer Financial Protection Bureau. Moreover, the Board has considered the results of the most recent consumer compliance examination of Gibraltar conducted by the OCC, which included a review of the bank's consumer compliance program and compliance with certain consumer protection laws and regulations.

The Board has taken this information, as well as the CRA performance records of both banks, into account in evaluating the proposal, including in considering whether IBERIABANK has the experience and resources to ensure that it helps to meet the credit needs of the communities within its AAs.

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. IBERIABANK represents that, following consummation of the proposal, existing customers of IBERIABANK and legacy customers of Gibraltar would benefit from an expanded branch and ATM network, expanded commercial loan capacity, and a broader range of financial products and services. IBERIABANK also represents that it does not expect to discontinue any material products or services currently provided by Gibraltar.

Conclusions 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 consumer protection laws, supervisory views of the Reserve Bank and the OCC, confidential supervisory information, information provided by IBERIABANK, 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") 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.[38]

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

[37] 42 U.S.C. § 3601 *et seq*.

[38] Dodd-Frank Act § 604(f), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), amending 12 U.S.C. § 1828(c)(5).

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]

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.[41]

In this case, the Board has considered information relevant to risks to the stability of the United States 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. As noted, the acquirer is predominately engaged in a variety of consumer and commercial banking activities, and the target engages in private wealth management and commercial and consumer loan activities. 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 United States 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

As noted, IBERIABANK has applied under section 9 of the FRA to establish branches at the current locations of Gibraltar.[42] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered IBERIABANK's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and invest-

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

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

[41] *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.

[42] *See* 12U.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. A national bank 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). In addition, section 341 of the Dodd-Frank Act provides authority for savings associations that become banks to continue to operate branches that they operated immediately before becoming a bank. Dodd-Frank Act §341, Pub. L. No. 111-203, 124 Stat. 1376, 1540-41 (2010)), codified at 12 U.S.C.§ 5451. Upon consummation, IBERIABANK's branches would be permissible under applicable state law. *See* Fla. Stat. Ann. §658.2953 and N.Y. Banking Law Article 5-C, §§ 223 and 225.

ment in bank premises.[43] 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 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 Bank Merger Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by IBERIABANK with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. 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 February 21, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Appendix

Branches to be Established by IBERIABANK

Florida Branches

450 East Las Olas Boulevard, Suite 1220
Fort Lauderdale, Florida

5551 Ridgewood Drive, Suite 100
Naples, Florida

200 South Biscayne Boulevard, Suite 2850
Miami, Florida

1575 San Ignacio Avenue
Coral Gables, Florida

55 Alhambra Plaza, 8th Floor
Coral Gables, Florida

400 Arthur Godfrey Road, Suite 102
Miami Beach, Florida

[43] 12 U.S.C.§§321 and 322; 12 CFR 208.6. In addition, upon consummation of the proposal, IBERIABANK's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

35 Ocean Reef Drive, Suite 100
Key Largo, Florida

New York Branch

280 Park Avenue, 29th Floor
New York, New York

First Financial Bancorp
Cincinnati, Ohio

First Financial Bank
Cincinnati, Ohio

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches, and Determination on a Financial Holding Company Election
FRB Order No. 2018-07 (February 22, 2018)

First Financial Bancorp ("First Financial"), Cincinnati, Ohio, 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 MainSource Financial Group, Inc. ("MainSource"), and thereby indirectly acquire MainSource Bank, both of Greensburg, Indiana.

In addition, First Financial's subsidiary state member bank, First Financial Bank, Cincinnati, Ohio, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with MainSource Bank, with First Financial Bank as the surviving entity.[3] First Financial 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 MainSource Bank.[4]

In connection with this proposal, First Financial 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 (82 *FederalRegister* 195 (October 11, 2017)).[6] The time for submitting comments has expired, and no comments were received. The Board has considered the proposal 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 of First Financial Bank and MainSource Bank was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

First Financial, with consolidated assets of approximately $8.8 billion, is the 149th largest insured depository organization in the United States. First Financial 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.[7] First Financial controls First Financial Bank, which operates in Indiana, Kentucky, and Ohio. First Financial is the 14th largest insured depository organization in Indiana, controlling deposits of approximately $2.8 billion, which represent 2.2 percent of the total deposits of insured depository institutions in that state. First Financial is the 71st largest insured depository organization in Kentucky, controlling deposits of approximately $187.7 million,

1 12 U.S.C. § 1841 *et seq*.
2 12 U.S.C. § 1842.
3 12 U.S.C. § 1828(c).
4 12 U.S.C. § 321. These locations are listed in Appendix A.
5 12 U.S.C. § 1843(k) and (*l*); 12 CFR 225.82.
6 12 CFR 262.3(b).
7 Nationwide asset and deposit data are as of September 30, 2017, unless otherwise noted.

which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8] First Financial is the 11th largest insured depository organization in Ohio, controlling deposits of approximately $3.6 billion, which represent 1.1 percent of the total deposits of insured depository institutions in that state.

MainSource, with consolidated assets of approximately $4.6 billion, is the 218th largest insured depository organization in the United States. MainSource controls approximately $3.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MainSource controls MainSource Bank, which operates in Illinois, Indiana, Kentucky, and Ohio. MainSource is the 233rd largest insured depository organization in Illinois, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 17th largest insured depository organization in Indiana, controlling deposits of approximately $2.3 billion, which represent 1.8 percent of the total deposits of insured depository institutions in that state. MainSource is the 31st largest insured depository organization in Kentucky, controlling deposits of approximately $486.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 41st largest insured depository organization in Ohio, controlling deposits of approximately $613.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, First Financial would have consolidated assets of approximately $13.8 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States.[9] First Financial would control total deposits of approximately $10.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, First Financial would become the 233rd largest insured depository organization, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Indiana, First Financial would become the 6th largest insured depository organization, controlling deposits of approximately $5.1 billion, which represent 4.1 percent of the total deposits of insured depository institutions in that state. In Kentucky, First Financial would become the 24th largest insured depository organization, controlling deposits of approximately $674.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Ohio, First Financial would remain the 11th largest insured depository organization, controlling deposits of approximately $4.2 billion, which represent approximately 1.2 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.[10] Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited

[8] State deposit data are as of June 30, 2017, unless otherwise noted.

[9] Excluding purchase accounting adjustments, First Financial would become the 109th largest insured depository institution in the United States, with consolidated assets of approximately $13.4 billion.

[10] 12 U.S.C. § 1842(d)(1)(A).

under state law.[11] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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.[12] In addition, under section 3(d) of the BHC Act, 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, if 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.[13]

For purposes of the BHC Act, the home state of First Financial is Ohio, and MainSource Bank is located in Illinois, Indiana, Kentucky, and Ohio.[14] For purposes of section 44 of the FDI Act, the home state of First Financial Bank is Ohio, and the home state of MainSource Bank is Indiana. First Financial and First Financial Bank are well capitalized and well managed under applicable law, and First Financial Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[15] Neither Indiana nor Kentucky has statutory minimum age requirements,[16] and MainSource Bank has been in existence for more than five years.

On consummation of the proposed transaction, First Financial would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Kentucky imposes a 15 percent limit on the total amount of in-state deposits that a single banking organization may control.[17] Ohio imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[18] The combined organization would control approximately 4.1 percent of the total amount of deposits of insured depository institutions in Indiana, approximately 0.9 percent of the total amount of deposits of insured depository institutions in Kentucky, and approximately 1.2 percent of the total amount of deposits of insured depository institutions in Ohio, the only states in which First Financial and MainSource have overlapping banking operations. The Board has considered all other requirements of section 3(d) of the BHC Act and section 44 of the FDI Act, including First Financial Bank'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 both statutes.

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[11] 12 U.S.C. § 1831u(a)(1).

[12] 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

[13] 12 U.S.C. § 1842(d)(2)(A) and (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, 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. 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).

[14] *See* 12 U.S.C. §§ 1831u(g)(4) and 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.

[15] 12 U.S.C. § 2901 *et seq*.

[16] *See* Ind. Code § 28-2-17; Ky. Rev. Stat. Ann. 286.3-900. Illinois has a statutory minimum age requirement, but it only applies to the acquisition of a bank that is organized under the laws of that state. *See* 205 Ill. Comp. Stat. 5/21.2. This age requirement is not applicable to the proposed transaction because MainSource Bank is organized under the laws of Indiana.

[17] Ky. Rev. Stat. Ann. § 286.3-900(2), -920(4). Indiana does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

[18] Ohio Rev. Code Ann. § 1115.05.

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.[19] 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 communities to be served.[20]

First Financial and MainSource have subsidiary depository institutions that compete directly in eight banking markets in Indiana and Ohio.[21] The Board has considered the competitive effects of the proposal in each of 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 ("market deposits") that First Financial would control;[22] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the U.S. Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[23] other characteristics of the markets; and, as discussed below, commitments made by First Financial to divest three branches in the Columbus market and one branch in the Greensburg market.

Banking Markets Within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in five of the eight banking markets in which First Financial Bank and MainSource Bank compete directly.[24] On consummation of the proposal, one of these markets would remain highly concentrated, and the four other markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in the highly concentrated banking market and the moderately concentrated banking markets would be small and consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in all five banking markets.

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[19] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[20] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[21] The Columbus banking market ("Columbus market"), Fayette County banking market ("Fayette County market"), and Greensburg banking market ("Greensburg market"), all in Indiana, are defined below. The other five banking markets are defined in Appendix B.

[22] Local deposit and market share data are as of June 30, 2017, and, unless otherwise indicated, 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).

[23] 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.

[24] The competitive effects of the proposal in these five markets are described in Appendix B.

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Columbus, Fayette County, and Greensburg markets warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Columbus Market

Using initial screening data, First Financial is the largest depository organization in the Columbus market, controlling approximately $652.7 million in deposits, which represent approximately 27.0 percent of market deposits.[25] MainSource is the fourth largest depository organization in the Columbus market, controlling approximately $247.8 million in deposits, which represent approximately 10.2 percent of market deposits. On consummation, First Financial would remain the largest depository organization in the Columbus market, controlling approximately $900.5 million in market deposits, which would represent approximately 37.2 percent of market deposits. The HHI in this market would increase by 552 points, from 1465 to 2017.

To mitigate the potentially adverse competitive effects of the proposal in the Columbus market, First Financial has committed to divest three of MainSource Bank's nine branches in that market, which account for approximately $112.9 million in deposits, to a competitively suitable, in-market purchaser.[26] After the divestiture, First Financial would remain the largest depository organization in the market, controlling approximately $787.6 million in deposits, which would represent approximately 32.5 percent of market deposits.

In addition to the divestiture, the Board also has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Columbus market.[27] Several factors indicate that the increase in concentration in the Columbus market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of one credit union in the Columbus market that offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the market.[28] The Board finds that these circumstances warrant including the deposits of this credit union at a 50 percent weight in its calculations to estimate market influence. This

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[25] The Columbus market is defined as Bartholomew, Jennings, Jackson, and Brown counties, all in Indiana.

[26] As a condition of consummation of the proposal, First Financial has committed that it will execute, before consummating the proposal, an agreement to sell the three branches to one or more purchasers determined by the Board to be competitively suitable. First Financial also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, First Financial has committed that, if the proposed divestiture is not completed within the 180-day period, First Financial will transfer the unsold branches to an independent trustee, who will be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. *See*, *e.g.*, *BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

[27] The number and strength of the 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).

[28] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *Central Bancompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *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,*

weighting takes into account the limited lending done by the credit union to small businesses relative to commercial banks' lending levels.

Taking into account the divestiture of the three MainSource Bank branches to an in-market competitor, and adjusting to reflect competition from the credit union, after consummation First Financial's market share would increase to 29.6 percent, and the market concentration level as measured by the HHI would increase by 231 points, from a level of 1295 to 1526. The market concentration, as well as the resulting market share, would be within the DOJ Bank Merger Guidelines. Including the credit union, 14 other depository organizations would continue to serve the Columbus market, including two with market shares greater than 12 percent each.

Fayette County Market

Using initial screening data, First Financial is the second largest depository organization in the Fayette County market, controlling approximately $54.7 million in deposits, which represent approximately 19.7 percent of market deposits.[29] MainSource is the sixth largest depository organization in the Fayette County market, controlling approximately $21.0 million in deposits, which represent approximately 7.6 percent of market deposits. On consummation, First Financial would become the largest depository organization in the Fayette County market, controlling approximately $75.7 million in deposits, which would represent approximately 27.2 percent of market deposits. The HHI in this market would increase by 297 points, from 1704 to 2001.

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 Fayette County market. Several factors indicate that the increase in concentration in the Fayette County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of two credit unions in the Fayette County market that meet the Board's standard conditions for inclusion in its structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, adjusting to reflect competition from these two credit unions, the market concentration level in the Fayette County market, as measured by the HHI, would increase by 267 points from a level of 1547 to 1814, and First Financial's market share would increase from 19.7 percent to 25.8 percent. After consummation, the Fayette County market would continue to be served by seven other depository organizations, including the two credit unions noted above, including three which would each control more than 16 percent of market deposits.

Greensburg Market

Using initial screening data, First Financial is the fifth largest depository organization in the Greensburg market, controlling approximately $31.9 million in deposits, which represent approximately 5.8 percent of market deposits.[30] MainSource is the largest depository organization in the Greensburg market, controlling approximately $343.0 million in deposits, which represent approximately 62.6 percent of market deposits. On consumma-

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).

[29] The Fayette County market is defined as Fayette County, Indiana.

[30] The Greensburg market is defined as Decatur County, Indiana.

tion, First Financial would become the largest depository organization in the Greensburg market, controlling approximately $374.9 million in market deposits, which would represent approximately 68.5 percent of market deposits. The HHI in this market would increase by 729 points, from 4300 to 5029.

To mitigate the potentially adverse competitive effects of the proposal in the Greensburg market, First Financial has committed to divest one of MainSource Bank's two branches in the Greensburg market to a competitively suitable, out-of-market purchaser. The branch to be divested is slightly smaller than the only branch currently operated by First Financial in the Greensburg market.[31] After this divestiture, First Financial would become the largest depository organization in the market, controlling approximately $345.1 million in deposits, which would represent approximately 63 percent of market deposits. If the branch is sold to an out-of-market competitor, the structure of the Greensburg market would be approximately the same both before and after consummation of the proposal.[32]

In addition to the divestiture, the Board also has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Greensburg market. Several factors indicate that the increase in concentration as measured by the above HHI, as well as First Financial's resulting market share, overstate the potential competitive effects of the proposal in the Greensburg market.

The Board has considered the competitive influence of one credit union in the Greensburg market that meets the Board's standard conditions for inclusion in the structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, taking into account the divestiture of the MainSource Bank branch to an out-of-market competitor, and adjusting to reflect competition from the credit union, the market concentration level in the Greensburg market as measured by the HHI would increase by 40 points, from a level of 3967 to 4007, and First Financial's share of market deposits resulting from the transaction would be 60.4 percent. Including the credit union and a new competitor entering the market through the divestiture, after consummation the Greensburg market would be served by five other depository organizations, including two with market shares greater than 10 percent each. The presence of these market competitors suggests that First Financial would have limited ability unilaterally to offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on First Financial in the Greensburg market.

Notwithstanding these circumstances, the Board views the competitive effects in this market as presenting a close case.

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, with the proposed divestitures of branches in the Columbus and Greensburg markets, would not likely have a significantly adverse effect on competition in the Columbus, Fayette County, and Greensburg markets or in any other relevant banking market. In addition, the appropriate banking

[31] First Financial Bank's only branch in the Greensburg market has $31.9 million in deposits, representing 5.6 percent of total market deposits. MainSource Bank has two branches with deposits in Greensburg, with $312.8 million and $29.8 million, respectively. First Financial proposes to divest the smaller of these branches, representing 5.2 percent of market deposits.

[32] The Board has previously approved two applications in which the post-divestiture HHI and the percentage of market deposits exceeded the post-divestiture effects in this case. *See Umpqua Holdings Corp.*, 100 *Federal Reserve Bulletin* 42 (2014); *Southern National Corp.*, 83 *Federal Reserve Bulletin* 597 (1997).

agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on the facts of record, including First Financial's commitment to divest a total of four branches in the Columbus and Greensburg markets, 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 of the eight banking markets in which First Financial Bank and MainSource Bank compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Consideration

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.[33] 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.

First Financial and MainSource 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 share exchange, with a subsequent merger of the subsidiary depository institutions.[34] The asset quality, earnings, and liquidity of both First Financial Bank and MainSource Bank are consistent with approval, and First Financial appears to have adequate resources to absorb the related 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 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 Financial, MainSource, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Financial; 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.

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[33] 12 U.S.C. §§ 1842(c)(2), (5), and (6) and 1828(c)(5).

[34] As part of the proposed transaction, each share of MainSource common stock would be converted into the right to receive 1.3875 shares of First Financial common stock.

First Financial, MainSource, and their subsidiary depository institutions are each considered to be well managed. First Financial has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. First Financial's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and First Financial's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered First Financial's plans for implementing the proposal. First Financial 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. First Financial 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 Financial's management has the experience and resources to operate the combined organization in a safe and sound manner, and First Financial plans to integrate MainSource's existing management and personnel in a manner that augments First Financial's and First Financial Bank's management.[35]

Based on all of the facts of record, including First Financial'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 First Financial and MainSource 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.[36] 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.[37] 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,[38] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[39]

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

[35] Following consummation of the proposed transaction, six MainSource directors will join First Financial's board of directors.

[36] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[37] 12 U.S.C. § 2901 *et seq*.

[38] 12 U.S.C. § 2901(b).

[39] 12 U.S.C. § 2903.

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 of the facts of record, including reports of examination of the CRA performance of First Financial Bank and MainSource Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Cleveland ("Reserve Bank") and other federal regulatory agencies; confidential supervisory information; and information provided by First Financial.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.[40] In this case, the Board considered the supervisory views of the Reserve Bank and the Office of the Comptroller of the Currency ("OCC") with respect to First Financial Bank and the Federal Deposit Insurance Corporation ("FDIC") with respect to MainSource Bank.[41]

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.[42] 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"),[43] 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;[44] (4) the institution's community development lending, including the

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

[41] Until its conversion on December 30, 2016, to a state member bank supervised by the Board, First Financial Bank was a national bank supervised by the OCC.

[42] 12 U.S.C. § 2906.

[43] 12 U.S.C. § 2801 *et seq*.

[44] 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).

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. Large institutions are also subject to an investment test that evaluates the number and amounts of qualified investments that benefit their assessment areas and 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.[45]

CRA Performance of First Financial Bank

First Financial Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of November 4, 2013 ("First Financial Bank Evaluation").[46] The bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and the Service Test.[47]

Examiners found that First Financial Bank originated a majority of its loans inside its AAs and that the bank's overall lending activity was good. Examiners also noted that the bank's geographic distribution of home mortgage loans and small loans to businesses was good. In addition, examiners found the bank's distribution of home mortgage loans by income level of the borrower to be good and the bank's distribution of loans to businesses with different revenue sizes to be adequate.

Examiners determined that First Financial Bank's level of qualified community development investments was adequate and responsive to community needs. Examiners found that the bank's service delivery systems were accessible to geographies and individuals of different income levels within the bank's AAs. Examiners also noted that, in the state of Indiana, the bank's branches were reasonably accessible. Overall, examiners found that the community development services provided by the bank were adequate and that the bank provided a good level of services in Ohio.

CRA Performance of MainSource Bank

MainSource Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 29, 2014 ("MainSource Bank Evaluation").[48] The bank received "Low Satisfactory" ratings for each of the Lending Test, the Investment Test, and the Service Test.[49]

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[45] *See* 12 CFR 228.21 *et seq*.

[46] The First Financial Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated from January 1,2010, through December 31,2011. The evaluation period for community development loans, investments, and services was from June 1,2010, through December 31, 2011.

[47] The First Financial Bank Evaluation included full-scope evaluations of the Cincinnati-Middleton Ohio-Kentucky-Indiana Multistate Metropolitan Statistical Area ("MSA"); Columbus, Indiana MSA; and the Ohio Non-MSA AA. Limited scope evaluations were performed of the Bloomington, Indiana MSA; Indianapolis, Indiana MSA; Gary, Indiana MSA; Lafayette, Indiana MSA; Indiana Non-MSA AA; Lima, Ohio MSA; and the Dayton, Ohio MSA.

[48] The MainSource Bank Evaluation was conducted using Large Bank CRA Evaluation Procedures. Examiners reviewed HMDA, small business, and small farm loans originated from January 1,2012, through December 31,2013. The evaluation period for community development loans, investments, and services was from October 20, 2011, through September 29, 2014.

[49] The MainSource Bank Evaluation included full-scope evaluations of the Louisville-Jefferson County, Kentucky-Indiana Multistate MSA; Cincinnati-Middletown, Ohio-Indiana-Kentucky Multistate MSA; State of Indiana Non-MSA AA; Kankakee-Bradley, Illinois MSA; Dayton, Ohio MSA; and the Kentucky Non-MSA AA. Limited-scope evaluations were performed of the Anderson, Indiana MSA; Bloomington, Indiana MSA; Columbus, Indiana MSA; Gary Metropolitan Division, Indiana AA; Indianapolis-Carmel, Indiana MSA; Danville, Illinois MSA; and the State of Illinois Non-MSA AA.

Examiners found that MainSource Bank's lending levels reflected good responsiveness to credit needs within its AAs and that a substantial majority of the bank's loans were made within its AAs. Examiners further found that the geographic distribution of MainSource Bank's loans reflected adequate penetration throughout its AAs. Examiners noted that the bank's distribution of borrowers reflected adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners found that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners stated that MainSource Bank made a relatively high level of community development loans and originated qualifying community development loans in all of the bank's AAs. Further, the bank was found to use innovative and/or flexible lending practices in order to serve AA credit needs.

Examiners found that MainSource Bank made an adequate level of qualified community development investments and grants, particularly those that were not routinely provided by private investors, although rarely in a leadership position. Examiners further noted that the bank exhibited adequate responsiveness to credit and community economic development needs, but that the bank rarely used innovative or complex investments to support community development initiatives.

Examiners found that the bank's delivery systems were reasonably accessible to essentially all portions of the bank's AAs. Examiners also found that MainSource Bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals, and that branch services and business hours did not vary in a way that inconvenienced certain portions of the AAs, particularly LMI geographies and individuals. Examiners further noted that the bank provided an adequate level of community development services.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the Reserve Bank regarding its views of First Financial Bank's consumer compliance risk-management systems. The Board considered the most recent consumer compliance examination and fair lending review of First Financial Bank by the OCC. The Board also considered the most recent consumer compliance examination of MainSource Bank conducted by the FDIC.

The Board has taken this information, as well as the CRA performance records of First Financial Bank and MainSource Bank into account in evaluating the proposed transaction, including in considering whether First Financial has the experience and resources to effectively implement policies and programs that would assist the combined organization in helping to meet the credit needs of all of the communities within the firm's AAs.

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 Financial represents that it would provide a full range of deposit, savings, and other financial products and services to consumers and small- and medium-sized businesses in Ohio, Indiana, and Kentucky. First Financial states that it would continue offering all of the significant products and services currently offered by First Financial Bank and MainSource Bank after consummation of the proposal. Further, First Financial represents that, following the proposed transaction, the combined organization would be able to increase its lending limits and better meet the credit and banking needs of the small- and medium-sized businesses in its expanded service area.

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 Financial, 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 "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."[50]

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.[51] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[52]

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.[53]

In this case, the Board has considered information relevant to risks to the stability of the United States 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

[50] Dodd-Frank Act § 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-02(2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

[51] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[53] *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.

activities.[54] 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 United States 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 Financial Bank has applied under section 9 of the FRA to establish and operate branches at the current main office and branches of MainSource Bank.[55] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered First Financial 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.[56] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Election

As noted, First Financial has elected to become a financial holding company in connection with the proposal. First Financial has certified that, upon consummation of the proposal, First Financial and First Financial Bank would be well capitalized and well managed, and First Financial has provided all of the information required under the Board's Regulation Y.[57] Based on all the facts of record, the Board determines that First Financial's election will become effective upon consummation of the proposal if, on that date, First Financial is well capitalized and well managed and all depository institutions it controls are well capitalized and 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 proposal should be, and hereby is, approved. In reaching its conclusion, the Board has considered all

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[54] First Financial Bank and MainSource Bank offer a broad range of retail and commercial banking products and services. First Financial has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

[55] *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. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also 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), (c). In addition, under section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, First Financial Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/21.4; Ind. Code § 28-2-13-19; Ky. Rev. Stat. Ann. 286.3-920; Ohio Rev. Code Ann. §1117.01.

[56] 12 U.S.C.§ 322; 12 CFR 208.6. Upon consummation of the proposal, First Financial Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

[57] *See* Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(*l*)(1).

the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and other applicable statutes. The Board's approval is specifically conditioned on compliance by First Financial with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. 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 February 22, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Appendix A

Branches to be Established by First Financial Bank

Illinois Branches

1. 101 North Hilgert Drive, Grant Park, Illinois 60940
2. 323 East Main Street, Hoopeston, Illinois 60942
3. 2000 West Court Street, Kankakee, Illinois 60901
4. 216 South Fourth Street, Watseka, Illinois 60970

Indiana Branches

1. 202 North Harrison Street, Alexandria, Indiana 46001
2. 1802 Allison Lane, Jeffersonville, Indiana 47130
3. 104 East Link's Way, Aurora, Indiana 47001
4. 136 East Harriman, Bargersville, Indiana 46106
5. 1053 State Road 229 North, Batesville, Indiana 47006
6. 3205 East Third Street, Bloomington, Indiana 47401
7. 24004 Stateline Road, Lawrenceburg, Indiana 47025
8. 9014 State Road 101, Brookville, Indiana 47012
9. 1051 West Spring Street, Brownstown, Indiana 47220
10. 221 East Main Street, Crawfordsville, Indiana 47933
11. 8740 South Emerson Avenue, Indianapolis, Indiana 46237
12. 597 Banta Street, Franklin, Indiana 46131
13. 6671 Highway 150, Floyds Knobs, Indiana 47119
14. 7700 State Road 64, Georgetown, Indiana 47122
15. 3610 Grant Line Road, New Albany, Indiana 47150
16. 122 West Washington Street, Greensburg, Indiana 47240
17. 102 West Main Street, Hagerstown, Indiana 47346
18. 136 Thornton Road, Hanover, Indiana 47243
19. 555 East Third Street, Hobart, Indiana 46342
20. 8475 North State Road 9, Hope, Indiana 47246
21. 3535 East 96th Street, Indianapolis, Indiana 46240
22. 120 East Main Street, Knightstown, Indiana 46148
23. 2253 State Road 54 East, Linton, Indiana 47441
24. 201 South Main Street, Lynn, Indiana 47355

25. 1315 Clifty Drive, Madison, Indiana 47250
26. 417 Jefferson Street, Madison, Indiana 47250
27. 201 North Broadway, Greensburg, Indiana 47240
28. 11 South Meridian, Ste 101, Indianapolis, Indiana 46204
29. 100 East Spring Street, New Albany, Indiana 47150
30. 600 South Memorial Drive, New Castle, Indiana 47362
31. 501 Clifty Drive, Madison, Indiana 47250
32. 521 North State Street, North Vernon, Indiana 47265
33. 112 North Meridian Street, Portland, Indiana 47371
34. 3433 East Main Street, Richmond, Indiana 47374
35. 230 Main Street, Rising Sun, Indiana 47040
36. 202 North Main Street, Rushville, Indiana 46173
37. 1130 East Tipton Street, Seymour, Indiana 47274
38. 28287 State Route 1, West Harrison, Indiana 47060
39. 3880 West Presidential Way, Edinburgh, Indiana 46124
40. 1012 South Adams Street, Versailles, Indiana 47042
41. 102 West Main Street, Vevay, Indiana 47043
42. 1263 North Indiana 135, Greenwood, Indiana 46142
43. 120 North Monroe Street, Williamsport, Indiana 47993

Kentucky Branches

1. 1905 Blankenbaker Parkway, Louisville, Kentucky 40299
2. 9819 Brownsboro Road, Louisville, Kentucky 40241
3. 6512 Bardstown Road, Louisville, Kentucky 40291
4. 2862 Frankfort Avenue, Louisville, Kentucky 40206
5. 201 Limestone Drive, Frankfort, Kentucky 40601
6. 104 South Chiles Street, Harrodsburg, Kentucky 40330
7. 1012 Bypass North, Lawrenceburg, Kentucky 40342
8. 293 North Hubbards Lane, Louisville, Kentucky 40207
9. 293 North Hubbards Lane, Louisville, Kentucky 40207
10. 13704 Shelbyville Road, Louisville, Kentucky 40245
11. 1734 Midland Trail, Shelbyville, Kentucky 40065
12. 2735 Bardstown Road, Louisville, Kentucky 40205
13. 9306 Taylorsville Road, Louisville, Kentucky 40299
14. 211 West Oak Street, Louisville, Kentucky 40203
15. 295 North Hubbards Lane, Louisville, Kentucky 40207

Ohio Branches

1. 7637 Beechmont Avenue, Cincinnati, Ohio 45255
2. 3723 Glenmore Avenue, Cincinnati, Ohio 45211
3. Summit Woods 1, 100 East Business Way, Suite 150, Cincinnati, Ohio 45241
4. 585 Anderson Ferry Road, Cincinnati, Ohio 45238
5. 6300 Harrison Avenue, Cincinnati, Ohio 45247
6. 10425 Harrison Avenue, Harrison, Ohio 45030
7. 3442 Edwards Road, Cincinnati, Ohio 45208
8. 5550 Cheviot Road, Cincinnati, Ohio 45239
9. 2000 Madison Road, Cincinnati, Ohio 45208
10. 7615 Reading Road, Cincinnati, Ohio 45237
11. 11186 Reading Road, Cincinnati, Ohio 45241
12. 635 South Market Street, Troy, Ohio 45373
13. 1580 West Main Street, Troy, Ohio 45373
14. 101 East Elm Street, Union City, Ohio 45390
15. 5791 Glenway Avenue, Cincinnati, Ohio 45238

Appendix B

First Financial/MainSource 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
Bloomington, Indiana – includes Greene, Monroe, and Lawrence counties.						
First Financial Pre-Consummation	3	$317.3M	10.04			
MainSource	9	$137.0M	4.33			
First Financial Post-Consummation	3	$454.3M	14.37	1499	87	15
Gary/Hammond, Indiana – includes Lake, Porter, La Porte, Newton, Jasper counties; and Center, Jackson, California (minus the city of Bass Lake), Wayne, and Railroad townships in Starke County.						
First Financial Pre-Consummation	9	$702.5M	4.81			
MainSource	16	$134.2M	0.92			
First Financial Post-Consummation	8	$836.7M	5.73	1003	8	29
Indianapolis, Indiana – includes Boone, Hamilton, Hancock, Hendricks, Henry, Johnson, Madison, Marion, Morgan, Owen, Putnam, Rush, Shelby, and Tipton counties.						
First Financial Pre-Consummation	14	$620.0M	1.32			
MainSource	18	$452.7M	0.91			
First Financial Post-Consummation	12	$1.05B	2.23	1125	2	48
Cincinnati, Ohio – includes Brown, Butler, Clermont, Hamilton, and Warren counties, Ohio; Dearborn County, Indiana; Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton counties, Kentucky; and the New Liberty and Owenton census county divisions in Owen County, Kentucky.						
First Financial Pre-Consummation	6	$2.24B	2.03			
MainSource	11	$568.5M	0.52			
First Financial Post-Consummation	4	$2.80B	2.54	3426	2	63
Dayton, Ohio – includes Montgomery, Miami, Greene, and Preble counties.						
First Financial Pre-Consummation	7	$370.3M	3.13			
MainSource	11	$144.3M	1.22			
First Financial Post-Consummation	7	$514.7M	4.35	1534	8	28

Data and rankings are as of June 30, 2017. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Orders Issued Under Federal Reserve Act

IBERIABANK
Lafayette, Louisiana

Order Approving the Merger of Depository Institutions and Establishment of Branches
FRB Order No. 18-06 (February 21, 2018)

IBERIABANK, the state member bank subsidiary of IBERIABANK Corporation ("IBKC"),[1] both of Lafayette, Louisiana, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[2] to merge with Gibraltar Private Bank & Trust Company ("Gibraltar"), Coral Gables, Florida, a federal savings bank, with IBERIABANK as the surviving entity. IBERIABANK also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the locations of Gibraltar's main office and branches.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Bank Merger Act and the Board's Rules of Procedure.[4] As required by the Bank Merger Act, a report on the competitive effects of the bank merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation. 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 and the FRA.

IBKC, with consolidated assets of approximately $28.0 billion, is the 65th largest insured depository organization in the United States, controlling deposits of approximately $21.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] IBKC controls IBERIABANK, which has offices in eight states. IBKC is the 14th largest insured depository organization in Florida, with approximately $8.7 billion in deposits, which represent approximately 1.5 percent of the total deposits of insured depository institutions in that state.[6]

Gibraltar, with consolidated assets of approximately $1.6 billion, is the 476th largest insured depository organization in the United States, controlling deposits of approximately $1.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Gibraltar has offices in Florida and New York. Gibraltar is the 49th largest insured depository institution in Florida, with approximately $1.0 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in Florida. Gibraltar is the 173rd largest insured depository institution in New York, with approximately $79.2 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in New York.

On consummation of the proposal, IBKC would become the 64th largest depository organization in the United States, with consolidated assets of approximately $29.6 billion. IBKC would control approximately $22.4 billion in deposits, representing less than

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1 IBKC is a financial holding company within the meaning of the Bank Holding Company Act of 1956.

2 12 U.S.C. § 1828(c).

3 12 U.S.C. § 321. These locations are listed in the Appendix.

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

5 Asset and nationwide deposit-ranking data are as of September 30, 2017, unless otherwise noted. In this context, insured depository institutions include insured commercial banks, savings and loan associations, and savings banks.

6 State deposit-ranking data are as of June 30, 2017, unless otherwise noted.

1 percent of the total deposits of insured depository institutions in the United States. IBKC would continue to operate the 14th largest insured depository institution in Florida, controlling deposits of approximately $9.7 billion, representing approximately 1.7 percent of the total deposits of insured depository institutions in the state. IBKC would operate the 173rd largest insured depository institution in New York, controlling deposits of approximately $79.2 million, representing less than 1 percent of the total deposits of insured depository institutions in the state.

Interstate and Deposit Cap Analysis

The Bank Merger Act generally provides that the Board may not approve an application by one insured depository institution to acquire another insured depository institution if the home state of the target insured depository institution is a state other than the home state of the applicant and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United States.[7] For purposes of the Bank Merger Act, the home state of IBERIABANK is Louisiana and the home state of Gibraltar is Florida.[8] Consummation of the proposal would result in IBERIABANK controlling less than 1 percent of the deposits of insured depository institutions in the United States. The proposed acquisition of Gibraltar would not be prohibited by the law of any state in which Gibraltar is located.[9] Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under the interstate merger provisions of the Bank Merger Act.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[10] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant 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 communities to be served.[11]

IBERIABANK and Gibraltar compete directly in the Miami-Fort Lauderdale and Naples, Florida banking markets.[12] The Board has reviewed the competitive effects of the proposal in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in each market; the relative shares of total deposits in insured depository institutions in the markets ("market

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[7] 12 U.S.C. § 1828(c)(13).

[8] A state bank's home state is the state by which the bank is chartered. 12 U.S.C. §1828(c)(13)(C)(ii)(II). A federal savings association's home state is the state in which the home office of the savings association is located. 12U.S.C.§1828(c)(13)(C)(ii)(III).

[9] Florida law permits an out-of-state bank to acquire a Florida bank through an interstate merger provided the resulting bank would not control 30 percent or more of the total amount of deposits held by all insured depository institutions in Florida. *See* Fla. Stat. Ann. § 658.2953. On consummation, IBERIABANK would control less than 30percent of the total deposits of insured depository institutions in Florida. New York does not have a deposit cap applicable to this proposal.

[10] 12 U.S.C. § 1828(c)(5)(A).

[11] 12 U.S.C. § 1828(c)(5)(B).

[12] The Miami-Fort Lauderdale banking market includes Broward and Miami-Dade counties, and the Naples banking market consists of Collier County, all in Florida.

deposits") that IBERIABANK would control;[13] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[14] 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 these markets. On consummation of the proposal, both the Miami-Fort Lauderdale and Naples, Florida banking markets would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in each market would be minimal, and numerous competitors would remain in each market.[15]

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 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 Miami-Fort Lauderdale and Naples 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 Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[16] In its evalua-

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[13] Local deposit and market share figures are as of June 30, 2017, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 53 (1991).

[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 1800and the merger increases the HHI by more than 200points. Although the DOJ and the Federal Trade Commission have 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.

[15] In the Miami-Fort Lauderdale banking market, IBKC operates the 13th largest depository institution, controlling approximately $3.2 billion in deposits, which represent approximately 1.8 percent of market deposits. Gibraltar is the 39th largest depository institution in the same market, controlling approximately $412.2million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBKC would become the 12th largest depository organization in the market, controlling deposits of approximately $4.0 billion, which represent approximately 2.2 percent of market deposits. The HHI for the Miami-Fort Lauderdale banking market would decrease by 2 points to 793, and 78 competitors would remain in the market.

In the Naples banking market, IBKC operates the 5th largest depository institution, controlling approximately $991.8 million in deposits, which represent approximately 5.9 percent of market deposits. Gibraltar is the 33rd largest depository institution in the market, controlling approximately $21.8 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBKC would remain the 5th largest depository organization in the market, controlling deposits of approximately $1.0 billion, which represent approximately 6.2 percent of market deposits. The HHI for the Naples banking market would increase by 1 point to 957, and 35 competitors would remain in the market.

[16] 12 U.S.C.§1828(c)(5).

tion 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 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 involved in the proposal in light of their financial and managerial resources and the proposed business plan.

IBERIABANK and Gibraltar are well capitalized, and IBERIABANK would remain so on consummation of the proposed transaction. The proposal is a merger structured as a stock conversion.[17] The asset quality, earnings, and liquidity of IBERIABANK and Gibraltar are consistent with approval. IBERIABANK appears to have adequate resources to absorb the costs of the proposal and to integrate Gibraltar's operations. In addition, the future prospects of IBERIABANK are considered consistent with approval.

The Board also has considered the managerial resources of the institutions involved and of IBERIABANK after consummation of the proposal. The Board has reviewed the examination records of IBKC, IBERIABANK, and Gibraltar, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by IBERIABANK; the Board's supervisory experiences and those of other relevant bank supervisory agencies with IBERIABANK and Gibraltar; and the organizations' record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

IBERIABANK and Gibraltar are considered to be well managed. IBERIABANK's board of directors and senior management have substantial knowledge of and experience in the banking sector, and the bank's risk-management program appears consistent with approval of this expansionary proposal.

The Board has also considered IBERIABANK's plans for implementing the proposal. IBERIABANK has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal. IBERIABANK would apply its risk-management policies, procedures, and controls at the combined organization and these are considered acceptable from a supervisory perspective. In addition, IBERIABANK'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 IBERIABANK'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 the organizations in combatting money-laundering activities, are consistent with approval.

[17] At the effective time of the merger, each share of Gibraltar common stock would convert into a right to receive shares of IBKC common stock.

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.[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 these communities, 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 the results of recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers 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 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 IBERIABANK and Gibraltar, the compliance records of both banks, the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, information provided by IBERIABANK, and the public comment received on the proposal.

Public Comment Regarding the Proposal

In this case, a commenter objected to the proposal, expressing fair lending and convenience and needs concerns with respect to IBERIABANK.[22] The commenter alleged that IBERIABANK's current branching activities in African American communities and the bank's marketing of products and services to African American businesses and professionals are limited. Specifically, the commenter asserted that IBERIABANK has avoided placing branches in proximity to densely populated African American neighborhoods.[23] In

[18] 12 U.S.C. § 1828(c)(5).

[19] 12 U.S.C. § 2901 *et seq*.

[20] 12 U.S.C. § 2901(b).

[21] 12 U.S.C. § 2903.

[22] The commenter also alleged that IBERIABANK has engaged in discriminatory employment practices. A bank's internal employment practices, however, are outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the Bank Merger Act.

[23] For example, the commenter alleged that IBERIABANK has established no branches in the African American communities of South Atlanta, in Georgia, and South Dallas and South Houston, in Texas. In addition, the commenter contends that only seven of IBERIABANK's branches are located in low-income neighborhoods and that five of these branches appear to engage in limited deposit-taking activities, which the commenter alleges indicates minimal activity and commitment in these communities.

addition, the commenter alleged that IBERIABANK does not have an organized outreach program for developing commercial lending relationships with African American businesses and professionals.[24] Based on these alleged practices, the commenter expressed concern that IBERIABANK will not meet the needs of disadvantaged African American communities in South Florida if the proposal is approved.

Business of the Involved Institutions and Response to the Public Comment

Through its network of branches in seven states,[25] IBERIABANK offers a range of retail and commercial products and services to individual customers and businesses, including checking, savings, money market, and certificate of deposit accounts; consumer, residential, commercial, construction, and auto loans; wealth management services; credit card and merchant card services; and treasury management services.

Gibraltar provides private comprehensive wealth management and private banking services to individuals and families, businesses, foundations, and nonprofit organizations. Gibraltar also offers commercial, commercial real estate, construction and land development, and consumer loans.

In response to the commenter's allegations, IBERIABANK states that it has an extensive legacy of meeting the needs of all communities in its footprint, including LMI communities, and highlights a community development plan the bank entered into with the National Community Reinvestment Coalition that became effective on January 1, 2018 ("CRA Plan").

With respect to the commenter's allegations about IBERIABANK's branch locations, the bank notes that as part of its most recent CRA performance evaluation, Reserve Bank examiners found the bank's retail delivery systems to be reasonably accessible to the bank's geographies and to individuals of different income levels in its assessment areas ("AAs"). The bank asserts that it is committed to maintaining this accessibility for individuals of different income levels throughout the communities it serves. IBERIABANK represents that it currently operates 47 active, full-service branches in LMI census tracts, representing approximately 22.6 percent of all of IBERIABANK's full-service branches, and that, as part of its CRA Plan, it has agreed to open two new bank branches in LMI census tracts, one in Miami-Dade County, Florida, and one in Atlanta, Georgia.

In response to the commenter's criticism that IBERIABANK has no organized outreach program to African American businesses and professionals, IBERIABANK asserts that it does not develop or target products or services specifically based on race or ethnicity because it does not assume all borrowers of a particular race or ethnicity have the same credit needs. IBERIABANK represents that it recognizes the credit challenges faced by LMI communities and has developed initiatives designed to meet the credit needs of such communities, including through community development loans, CRA-qualified investments, and affordable financial product offerings to improve banking access for underserved communities. IBERIABANK asserts that, among other programs designed specifically to meet the needs of LMI communities, it has created the IBERIABANK Subsidy

[24] The commenter alleged that IBERIABANK only finances African American businesses and professionals that come into the bank's offices, rather than actively soliciting business from them in their communities, in markets such as Atlanta, Dallas, and Houston, where there are a large number of creditworthy African American businesses.

[25] IBERIABANK has branch locations in Louisiana, Florida, Arkansas, Alabama, Texas, Tennessee, and Georgia. IBERIABANK does not operate any full-service branches in South Carolina, but has one limited service administrative office in that state, which does not accept deposits or make loans. In addition, IBERIABANK has recently been approved to establish a branch in North Carolina.

Program to provide $4,000 in down-payment and closing-cost assistance for the purchase or refinancing of loans for LMI borrowers. The bank also offers an unsecured home improvement loan designed to assist homeowners who lack equity, invests in Low-Income Housing Tax Credit projects that provide affordable rental housing, and provides grants and donations to community development organizations engaged in community services for LMI individuals and communities. IBERIABANK further represents that the bank will provide support to LMI communities in those states where it currently has a branch presence consistent with its CRA 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 institution, as well as information and views provided by the appropriate federal supervisors.[26] In this case, the Board considered the supervisory views of the Reserve Bank 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, such as IBERIABANK, 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 under the Home Mortgage Disclosure Act ("HMDA"),[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 amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of such loans, 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 such loans based on borrower characteristics, including the number and amounts of home mortgage 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

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

[27] 12 U.S.C. § 2906.

[28] 12 U.S.C. § 2801 *et seq*.

[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).

needs of LMI individuals and geographies.[30] Large institutions are also subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[31]

CRA Performance of IBERIABANK

IBERIABANK was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of August 5, 2013 ("IBERIABANK Evaluation").[32] IBERIABANK received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.[33]

Examiners found IBERIABANK's overall lending performance to be good in Alabama, Arkansas, Louisiana, and Texas and adequate in Florida and Tennessee. Examiners found that IBERIABANK originated a substantial majority of its loans within its AAs, reflecting excellent AA penetration. Examiners found that the bank's penetration of loans among borrowers of different income levels and businesses of different sizes was adequate. Examiners noted that the overall distribution of small business lending reflected adequate penetration in LMI geographies and among small businesses (businesses with revenues of $1 million or less). Examiners further noted that the bank made a high level of community development loans during the review period. The community development loans were for a variety of purposes, including financing affordable housing for LMI individuals, promoting economic development by financing small businesses that resulted in job creation and/or retention, revitalizing and/or stabilizing targeted LMI census tracts or other qualified geographies, and community services targeted to LMI individuals.

In the Houston AA, an area of concern to the commenter, examiners considered IBERIABANK's lending performance to be good. The geographic distribution of small business loans was found to reflect good penetration throughout the AA, and examiners noted that the bank's small business lending in low-income census tracts was excellent.

Examiners found IBERIABANK's investment performance to be excellent in Louisiana, good in Alabama, Arkansas, and Texas, and adequate in Florida and Tennessee. Examiners noted that IBERIABANK had made substantial qualified investments and provided

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[30] *See* 12 CFR 228.22(b).

[31] *See* 12 CFR 228.21 *et seq*.

[32] The IBERIABANK Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and small business loans for the period January 1, 2011, through December 31, 2012. The evaluation period for community development loans and investments was January 1, 2011, through March 31, 2013. Due to IBERIABANK's significant expansion and growth during the review period, the bank's performance in 2012 was weighted slightly more than its performance in 2011 in determining the final rating for lending.

[33] The IBERIABANK Evaluation included a full-scope review in the New Orleans-Metairie-Kenner MSA; Lafayette MSA; Little Rock-North Little Rock-Conway MSA; Fayetteville-Springdale-Rogers MSA; North Port-Bradenton-Sarasota MSA; Naples-Marco Island MSA; Birmingham-Hoover MSA; Houston-Sugar Land-Baytown MSA; and Memphis-Forest City Combined Statistical Area. A limited-scope review was performed in Baldwin County, Alabama; Huntsville MSA; Mobile MSA; MontgomeryMSA; Jonesboro MSA; Northeast Arkansas; Palm Beach-Broward MSA; Ft. Myers MSA; Florida Keys, Florida; Acadiana, Louisiana; Allen, Louisiana; Baton Rouge MSA; Houma MSA; Lake Charles MSA; Lincoln, Louisiana; Monroe MSA; Morehouse, Louisiana; and Shreveport MSA.

The IBERIABANK Evaluation did not include a review of Dallas or Atlanta, areas of concern to the commenter, because IBERIABANK did not enter the Dallas market until completion of its acquisition of First Private Bank or the Atlanta market until completion of its acquisition of Georgia Commerce Bancshares Inc., both in 2015.

significant financial support to address the needs for affordable housing, financial counseling, emergency assistance, job training, and the revitalization of LMI communities.

Examiners highlighted the bank's provision of an excellent level of community development services throughout its AAs. Examiners found the bank's retail delivery systems to be reasonably accessible to geographies and individuals of different income levels and that the bank's record of opening and closing branches had not adversely affected the accessibility of delivery systems, particularly in LMI geographies and to LMI individuals. Examiners noted that the bank offered several retail products designed to meet the financial needs of lower-income customers and small businesses and that the bank participated in organized programs and other outreach efforts to expand banking access to LMI customers across its entire banking footprint. During the examination review period, the bank and its employees provided over 10,000 hours of community development services through service activities aimed at promoting or facilitating affordable housing for LMI individuals, economic development, and the revitalization of LMI areas.

In the Houston AA, an area of concern to the commenter, IBERIABANK's performance was found to be adequate. Examiners observed that the bank's retail delivery systems were reasonably accessible to geographies and individuals of different income levels, including LMI geographies and individuals. Examiners also noted that IBERIABANK provided a relatively high level of community development services that benefited residents of, and small businesses in, the Houston AA. During the review period, the bank and its employees provided almost 500 hours of community development services, including providing financial education, homeownership counseling, and small business assistance, as well as working with a variety of organizations that provided community services in LMI geographies and for LMI individuals.

IBERIABANK's Efforts since the IBERIABANK Evaluation

IBERIABANK represents that, since the IBERIABANK Evaluation, it has continued to build upon its commitment to provide financial services to LMI individuals, within LMI geographies, to small businesses, and to underserved communities. IBERIABANK also represents that it has opened eight bank branches in LMI communities since the IBERIABANK Evaluation, including one in Dallas and one in Houston, and that it has committed to open two new bank branches in LMI census tracts, including one in Miami-Dade County and one in Atlanta.

IBERIABANK asserts that it has continued to make a high level of community development loans throughout its AAs to increase affordable housing, revitalize LMI geographies, and promote economic development through financing small businesses in LMI communities. IBERIABANK represents that since the IBERIABANK Evaluation it has originated community development loans to support nonprofit organizations involved in affordable housing and economic activities that benefit LMI individuals and communities in Atlanta, has maintained its high level of community development lending in Houston, and has partnered with the Dallas Habitat for Humanity to provide affordable mortgage loans to its clientele and extended a line of credit to the nonprofit organization LiftFund for its minority-owned small business loan fund that targets businesses in the Dallas market.

IBERIABANK also represents that it made an equity investment in Liberty Financial Services, the holding company of Liberty Bank, an African-American owned financial institution. In addition, the bank has offered a suite of products and services to address the financial needs of LMI borrowers, including mortgage loan products and low-cost individual development accounts.

As noted, as part of its CRA Plan, the bank has agreed to commitments and goals designed to meet the needs of underserved communities in the states in which the bank currently has a branch presence. Such commitments and goals relate to mortgage and small business lending, community development lending and investments, philanthropy, and increasing access to financial services in LMI communities. IBERIABANK represents that it has committed to increase its small business lending in LMI census tracts by 5 percent annually for the first three years and by 2.5 percent annually for the last two years of the plan. IBERIABANK also represents that it has committed to increase home mortgage lending to LMI borrowers and LMI geographies by 3 percent annually over five years.

CRA Performance of Gibraltar

Gibraltar was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of July 11, 2016 ("Gibraltar Evaluation").[34] Gibraltar received "Outstanding" ratings for the Lending Test and Investment Test and a "High Satisfactory" rating for the Service Test.[35] Although Gibraltar's overall rating took into consideration the bank's performance in each AA that received a full-scope review, examiners gave the greatest weight to the bank's record in the Miami-Dade-Broward AA due to the higher volume of deposits and loans in that area.

Examiners found that Gibraltar demonstrated excellent responsiveness to the credit needs of its AAs. Examiners noted that, overall, Gibraltar originated a substantial majority of its loans within its AAs. Examiners found that the bank had good distribution among borrowers of different income levels and that the geographic distribution of loans reflected good penetration. Examiners also determined that the bank made an excellent level of community development loans.

Examiners found that the bank's community development investments were responsive to the credit needs of its AAs in the state of Florida, primarily addressing the need for rehabilitation of affordable housing for LMI individuals. Examiners observed that the bank's retail delivery systems were adequately distributed throughout the bank's AAs. Moreover, branches were found to be reasonably accessible to geographies and individuals of different income levels in Florida.[36]

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance examination of IBERIABANK conducted by Reserve Bank examiners, which included a review of the

[34] The Gibraltar Evaluation was conducted using Large Bank CRA Examination Procedures. The examiners reviewed residential mortgage and small business loans from January 1, 2013, through December 31, 2015. The evaluation period for community development loans and services was January 1, 2013, through December 31, 2015. The evaluation period for community development investments was August 1, 2013, through February 29, 2016.

[35] The Gibraltar Evaluation included a full-scope evaluation of the Miami-Dade-Broward AA and the New York-Northern New Jersey-Long Island, New York-New Jersey-Pennsylvania MSA ("NY-NJ-PA MSA"). The Miami-Dade-Broward AA is composed of the Fort Lauderdale-Pompano Beach-Deerfield Beach, Florida Metropolitan Division ("MD"), and the Miami-Miami Beach-Kendall, Florida MD. A limited-scope review was performed in the Collier County, Florida MSA, and Monroe County, Florida Non-MSA. The ratings in the State of Florida were based on the bank's performance in the Miami-Dade-Broward AA.

[36] None of Gibraltar's Florida branches is located in a LMI geography. Although two Florida branches are in reasonable proximity to LMI geographies, ease of access is limited due to their location within commercial office towers. However, Gibraltar offers electronic banking services that include no-charge automated teller machine ("ATM") access when using Publix Supermarket's PRESTO ATM network, online banking, and mobile banking. Gibraltar's New York branch is located in proximity to LMI geographies, but primarily provides wealth management services. However, Gibraltar offers electronic banking services in New York, including through ATM networks, online banking, and mobile banking.

bank's consumer compliance risk-management program. The Board has considered the preliminary results of a pending review of IBERIABANK's compliance with the Fair Housing Act ("FHA"),[37] which included a redlining analysis, and the results of a previous review of IBERIABANK's compliance with the FHA. The Board also considered the preliminary results of a new CRA evaluation of IBERIABANK and considered IBERIABANK's supervisory record with the Consumer Financial Protection Bureau. Moreover, the Board has considered the results of the most recent consumer compliance examination of Gibraltar conducted by the OCC, which included a review of the bank's consumer compliance program and compliance with certain consumer protection laws and regulations.

The Board has taken this information, as well as the CRA performance records of both banks, into account in evaluating the proposal, including in considering whether IBERIABANK has the experience and resources to ensure that it helps to meet the credit needs of the communities within its AAs.

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. IBERIABANK represents that, following consummation of the proposal, existing customers of IBERIABANK and legacy customers of Gibraltar would benefit from an expanded branch and ATM network, expanded commercial loan capacity, and a broader range of financial products and services. IBERIABANK also represents that it does not expect to discontinue any material products or services currently provided by Gibraltar.

Conclusions 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 consumer protection laws, supervisory views of the Reserve Bank and the OCC, confidential supervisory information, information provided by IBERIABANK, 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") 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.[38]

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

[37] 42 U.S.C. § 3601 *et seq*.
[38] Dodd-Frank Act § 604(f), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), amending 12 U.S.C. § 1828(c)(5).

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]

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.[41]

In this case, the Board has considered information relevant to risks to the stability of the United States 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. As noted, the acquirer is predominately engaged in a variety of consumer and commercial banking activities, and the target engages in private wealth management and commercial and consumer loan activities. 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 United States 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

As noted, IBERIABANK has applied under section 9 of the FRA to establish branches at the current locations of Gibraltar.[42] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered IBERIABANK's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and invest-

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

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

[41] *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.

[42] *See* 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. A national bank 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). In addition, section 341 of the Dodd-Frank Act provides authority for savings associations that become banks to continue to operate branches that they operated immediately before becoming a bank. Dodd-Frank Act §341, Pub. L. No. 111-203, 124 Stat. 1376, 1540-41 (2010)), codified at 12 U.S.C. §5451. Upon consummation, IBERIABANK's branches would be permissible under applicable state law. *See* Fla. Stat. Ann. § 658.2953 and N.Y. Banking Law Article 5-C, §§ 223 and 225.

ment in bank premises.[43] 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 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 Bank Merger Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by IBERIABANK with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. 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 February 21, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Appendix

Branches to be Established by IBERIABANK

Florida Branches

450 East Las Olas Boulevard, Suite 1220
Fort Lauderdale, Florida

5551 Ridgewood Drive, Suite 100
Naples, Florida

200 South Biscayne Boulevard, Suite 2850
Miami, Florida

1575 San Ignacio Avenue
Coral Gables, Florida

55 Alhambra Plaza, 8th Floor
Coral Gables, Florida

400 Arthur Godfrey Road, Suite 102
Miami Beach, Florida

[43] 12 U.S.C. §§ 321 and 322; 12 CFR 208.6. In addition, upon consummation of the proposal, IBERIABANK's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

35 Ocean Reef Drive, Suite 100
Key Largo, Florida

New York Branch

280 Park Avenue, 29th Floor
New York, New York

First Financial Bancorp
Cincinnati, Ohio

First Financial Bank
Cincinnati, Ohio

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches, and Determination on a Financial Holding Company Election
FRB Order No. 2018-07 (February 22, 2018)

First Financial Bancorp ("First Financial"), Cincinnati, Ohio, 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 MainSource Financial Group, Inc. ("MainSource"), and thereby indirectly acquire MainSource Bank, both of Greensburg, Indiana.

In addition, First Financial's subsidiary state member bank, First Financial Bank, Cincinnati, Ohio, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with MainSource Bank, with First Financial Bank as the surviving entity.[3] First Financial 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 MainSource Bank.[4]

In connection with this proposal, First Financial 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 (82 *FederalRegister* 195 (October 11, 2017)).[6] The time for submitting comments has expired, and no comments were received. The Board has considered the proposal 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 of First Financial Bank and MainSource Bank was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

First Financial, with consolidated assets of approximately $8.8 billion, is the 149th largest insured depository organization in the United States. First Financial 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.[7] First Financial controls First Financial Bank, which operates in Indiana, Kentucky, and Ohio. First Financial is the 14th largest insured depository organization in Indiana, controlling deposits of approximately $2.8 billion, which represent 2.2 percent of the total deposits of insured depository institutions in that state. First Financial is the 71st largest insured depository organization in Kentucky, controlling deposits of approximately $187.7 million,

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1 12 U.S.C. § 1841 *etseq.*
2 12 U.S.C. § 1842.
3 12 U.S.C. § 1828(c).
4 12 U.S.C. § 321. These locations are listed in Appendix A.
5 12 U.S.C. § 1843(k) and (*l*); 12 CFR 225.82.
6 12 CFR 262.3(b).
7 Nationwide asset and deposit data are as of September 30, 2017, unless otherwise noted.

which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8] First Financial is the 11th largest insured depository organization in Ohio, controlling deposits of approximately $3.6 billion, which represent 1.1 percent of the total deposits of insured depository institutions in that state.

MainSource, with consolidated assets of approximately $4.6 billion, is the 218th largest insured depository organization in the United States. MainSource controls approximately $3.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MainSource controls MainSource Bank, which operates in Illinois, Indiana, Kentucky, and Ohio. MainSource is the 233rd largest insured depository organization in Illinois, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 17th largest insured depository organization in Indiana, controlling deposits of approximately $2.3 billion, which represent 1.8 percent of the total deposits of insured depository institutions in that state. MainSource is the 31st largest insured depository organization in Kentucky, controlling deposits of approximately $486.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 41st largest insured depository organization in Ohio, controlling deposits of approximately $613.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, First Financial would have consolidated assets of approximately $13.8 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States.[9] First Financial would control total deposits of approximately $10.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, First Financial would become the 233rd largest insured depository organization, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Indiana, First Financial would become the 6th largest insured depository organization, controlling deposits of approximately $5.1 billion, which represent 4.1 percent of the total deposits of insured depository institutions in that state. In Kentucky, First Financial would become the 24th largest insured depository organization, controlling deposits of approximately $674.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Ohio, First Financial would remain the 11th largest insured depository organization, controlling deposits of approximately $4.2 billion, which represent approximately 1.2 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.[10] Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited

[8] State deposit data are as of June 30, 2017, unless otherwise noted.

[9] Excluding purchase accounting adjustments, First Financial would become the 109th largest insured depository institution in the United States, with consolidated assets of approximately $13.4 billion.

[10] 12 U.S.C. § 1842(d)(1)(A).

under state law.[11] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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.[12] In addition, under section 3(d) of the BHC Act, 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, if 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.[13]

For purposes of the BHC Act, the home state of First Financial is Ohio, and MainSource Bank is located in Illinois, Indiana, Kentucky, and Ohio.[14] For purposes of section 44 of the FDI Act, the home state of First Financial Bank is Ohio, and the home state of MainSource Bank is Indiana. First Financial and First Financial Bank are well capitalized and well managed under applicable law, and First Financial Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[15] Neither Indiana nor Kentucky has statutory minimum age requirements,[16] and MainSource Bank has been in existence for more than five years.

On consummation of the proposed transaction, First Financial would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Kentucky imposes a 15 percent limit on the total amount of in-state deposits that a single banking organization may control.[17] Ohio imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[18] The combined organization would control approximately 4.1 percent of the total amount of deposits of insured depository institutions in Indiana, approximately 0.9 percent of the total amount of deposits of insured depository institutions in Kentucky, and approximately 1.2 percent of the total amount of deposits of insured depository institutions in Ohio, the only states in which First Financial and MainSource have overlapping banking operations. The Board has considered all other requirements of section 3(d) of the BHC Act and section 44 of the FDI Act, including First Financial Bank'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 both statutes.

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[11] 12 U.S.C. § 1831u(a)(1).

[12] 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

[13] 12 U.S.C. § 1842(d)(2)(A) and (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, 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. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See*12U.S.C.§1841(o)(4)–(7).

[14] *See* 12 U.S.C. §§ 1831u(g)(4) and 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.

[15] 12 U.S.C. § 2901 *etseq.*

[16] *See* Ind. Code § 28-2-17; Ky. Rev. Stat. Ann. 286.3-900. Illinois has a statutory minimum age requirement, but it only applies to the acquisition of a bank that is organized under the laws of that state. *See* 205 Ill. Comp. Stat. 5/21.2. This age requirement is not applicable to the proposed transaction because MainSource Bank is organized under the laws of Indiana.

[17] Ky. Rev. Stat. Ann. § 286.3-900(2), -920(4). Indiana does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

[18] Ohio Rev. Code Ann. § 1115.05.

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.[19] 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 communities to be served.[20]

First Financial and MainSource have subsidiary depository institutions that compete directly in eight banking markets in Indiana and Ohio.[21] The Board has considered the competitive effects of the proposal in each of 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 ("market deposits") that First Financial would control;[22] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the U.S. Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[23] other characteristics of the markets; and, as discussed below, commitments made by First Financial to divest three branches in the Columbus market and one branch in the Greensburg market.

Banking Markets Within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in five of the eight banking markets in which First Financial Bank and MainSource Bank compete directly.[24] On consummation of the proposal, one of these markets would remain highly concentrated, and the four other markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in the highly concentrated banking market and the moderately concentrated banking markets would be small and consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in all five banking markets.

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[19] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[20] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[21] The Columbus banking market ("Columbus market"), Fayette County banking market ("Fayette County market"), and Greensburg banking market ("Greensburg market"), all in Indiana, are defined below. The other five banking markets are defined in Appendix B.

[22] Local deposit and market share data are as of June 30, 2017, and, unless otherwise indicated, are based on calculations in which the deposits of thrift institutions are included at 50percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[23] 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.

[24] The competitive effects of the proposal in these five markets are described in Appendix B.

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Columbus, Fayette County, and Greensburg markets warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Columbus Market

Using initial screening data, First Financial is the largest depository organization in the Columbus market, controlling approximately $652.7 million in deposits, which represent approximately 27.0 percent of market deposits.[25] MainSource is the fourth largest depository organization in the Columbus market, controlling approximately $247.8 million in deposits, which represent approximately 10.2 percent of market deposits. On consummation, First Financial would remain the largest depository organization in the Columbus market, controlling approximately $900.5 million in market deposits, which would represent approximately 37.2 percent of market deposits. The HHI in this market would increase by 552 points, from 1465 to 2017.

To mitigate the potentially adverse competitive effects of the proposal in the Columbus market, First Financial has committed to divest three of MainSource Bank's nine branches in that market, which account for approximately $112.9 million in deposits, to a competitively suitable, in-market purchaser.[26] After the divestiture, First Financial would remain the largest depository organization in the market, controlling approximately $787.6 million in deposits, which would represent approximately 32.5 percent of market deposits.

In addition to the divestiture, the Board also has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Columbus market.[27] Several factors indicate that the increase in concentration in the Columbus market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of one credit union in the Columbus market that offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the market.[28] The Board finds that these circumstances warrant including the deposits of this credit union at a 50 percent weight in its calculations to estimate market influence. This

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[25] The Columbus market is defined as Bartholomew, Jennings, Jackson, and Brown counties, all in Indiana.

[26] As a condition of consummation of the proposal, First Financial has committed that it will execute, before consummating the proposal, an agreement to sell the three branches to one or more purchasers determined by the Board to be competitively suitable. First Financial also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, First Financial has committed that, if the proposed divestiture is not completed within the 180-day period, First Financial will transfer the unsold branches to an independent trustee, who will be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. *See*, *e.g.*, *BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

[27] The number and strength of the 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).

[28] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *Central Bancompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *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,*

weighting takes into account the limited lending done by the credit union to small businesses relative to commercial banks' lending levels.

Taking into account the divestiture of the three MainSource Bank branches to an in-market competitor, and adjusting to reflect competition from the credit union, after consummation First Financial's market share would increase to 29.6 percent, and the market concentration level as measured by the HHI would increase by 231 points, from a level of 1295 to 1526. The market concentration, as well as the resulting market share, would be within the DOJ Bank Merger Guidelines. Including the credit union, 14 other depository organizations would continue to serve the Columbus market, including two with market shares greater than 12 percent each.

Fayette County Market

Using initial screening data, First Financial is the second largest depository organization in the Fayette County market, controlling approximately $54.7 million in deposits, which represent approximately 19.7 percent of market deposits.[29] MainSource is the sixth largest depository organization in the Fayette County market, controlling approximately $21.0 million in deposits, which represent approximately 7.6 percent of market deposits. On consummation, First Financial would become the largest depository organization in the Fayette County market, controlling approximately $75.7 million in deposits, which would represent approximately 27.2 percent of market deposits. The HHI in this market would increase by 297 points, from 1704 to 2001.

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 Fayette County market. Several factors indicate that the increase in concentration in the Fayette County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of two credit unions in the Fayette County market that meet the Board's standard conditions for inclusion in its structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, adjusting to reflect competition from these two credit unions, the market concentration level in the Fayette County market, as measured by the HHI, would increase by 267 points from a level of 1547 to 1814, and First Financial's market share would increase from 19.7 percent to 25.8 percent. After consummation, the Fayette County market would continue to be served by seven other depository organizations, including the two credit unions noted above, including three which would each control more than 16 percent of market deposits.

Greensburg Market

Using initial screening data, First Financial is the fifth largest depository organization in the Greensburg market, controlling approximately $31.9 million in deposits, which represent approximately 5.8 percent of market deposits.[30] MainSource is the largest depository organization in the Greensburg market, controlling approximately $343.0 million in deposits, which represent approximately 62.6 percent of market deposits. On consumma-

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).

[29] The Fayette County market is defined as Fayette County, Indiana.

[30] The Greensburg market is defined as Decatur County, Indiana.

tion, First Financial would become the largest depository organization in the Greensburg market, controlling approximately $374.9 million in market deposits, which would represent approximately 68.5 percent of market deposits. The HHI in this market would increase by 729 points, from 4300 to 5029.

To mitigate the potentially adverse competitive effects of the proposal in the Greensburg market, First Financial has committed to divest one of MainSource Bank's two branches in the Greensburg market to a competitively suitable, out-of-market purchaser. The branch to be divested is slightly smaller than the only branch currently operated by First Financial in the Greensburg market.[31] After this divestiture, First Financial would become the largest depository organization in the market, controlling approximately $345.1 million in deposits, which would represent approximately 63 percent of market deposits. If the branch is sold to an out-of-market competitor, the structure of the Greensburg market would be approximately the same both before and after consummation of the proposal.[32]

In addition to the divestiture, the Board also has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Greensburg market. Several factors indicate that the increase in concentration as measured by the above HHI, as well as First Financial's resulting market share, overstate the potential competitive effects of the proposal in the Greensburg market.

The Board has considered the competitive influence of one credit union in the Greensburg market that meets the Board's standard conditions for inclusion in the structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, taking into account the divestiture of the MainSource Bank branch to an out-of-market competitor, and adjusting to reflect competition from the credit union, the market concentration level in the Greensburg market as measured by the HHI would increase by 40 points, from a level of 3967 to 4007, and First Financial's share of market deposits resulting from the transaction would be 60.4 percent. Including the credit union and a new competitor entering the market through the divestiture, after consummation the Greensburg market would be served by five other depository organizations, including two with market shares greater than 10 percent each. The presence of these market competitors suggests that First Financial would have limited ability unilaterally to offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on First Financial in the Greensburg market.

Notwithstanding these circumstances, the Board views the competitive effects in this market as presenting a close case.

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, with the proposed divestitures of branches in the Columbus and Greensburg markets, would not likely have a significantly adverse effect on competition in the Columbus, Fayette County, and Greensburg markets or in any other relevant banking market. In addition, the appropriate banking

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[31] First Financial Bank's only branch in the Greensburg market has $31.9 million in deposits, representing 5.6 percent of total market deposits. MainSource Bank has two branches with deposits in Greensburg, with $312.8 million and $29.8 million, respectively. First Financial proposes to divest the smaller of these branches, representing 5.2 percent of market deposits.

[32] The Board has previously approved two applications in which the post-divestiture HHI and the percentage of market deposits exceeded the post-divestiture effects in this case. *See Umpqua Holdings Corp.*, 100 *Federal Reserve Bulletin* 42 (2014); *Southern National Corp.*, 83 *Federal Reserve Bulletin* 597 (1997).

agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on the facts of record, including First Financial's commitment to divest a total of four branches in the Columbus and Greensburg markets, 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 of the eight banking markets in which First Financial Bank and MainSource Bank compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Consideration

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.[33] 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.

First Financial and MainSource 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 share exchange, with a subsequent merger of the subsidiary depository institutions.[34] The asset quality, earnings, and liquidity of both First Financial Bank and MainSource Bank are consistent with approval, and First Financial appears to have adequate resources to absorb the related 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 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 Financial, MainSource, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Financial; 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.

[33] 12 U.S.C. §§ 1842(c)(2), (5), and (6) and 1828(c)(5).

[34] As part of the proposed transaction, each share of MainSource common stock would be converted into the right to receive 1.3875 shares of First Financial common stock.

First Financial, MainSource, and their subsidiary depository institutions are each considered to be well managed. First Financial has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. First Financial's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and First Financial's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered First Financial's plans for implementing the proposal. First Financial 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. First Financial 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 Financial's management has the experience and resources to operate the combined organization in a safe and sound manner, and First Financial plans to integrate MainSource's existing management and personnel in a manner that augments First Financial's and First Financial Bank's management.[35]

Based on all of the facts of record, including First Financial'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 First Financial and MainSource 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.[36] 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.[37] 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,[38] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[39]

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

[35] Following consummation of the proposed transaction, six MainSource directors will join First Financial's board of directors.

[36] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[37] 12 U.S.C. § 2901 *et seq*.

[38] 12 U.S.C. § 2901(b).

[39] 12 U.S.C. § 2903.

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 of the facts of record, including reports of examination of the CRA performance of First Financial Bank and MainSource Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Cleveland ("Reserve Bank") and other federal regulatory agencies; confidential supervisory information; and information provided by First Financial.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.[40] In this case, the Board considered the supervisory views of the Reserve Bank and the Office of the Comptroller of the Currency ("OCC") with respect to First Financial Bank and the Federal Deposit Insurance Corporation ("FDIC") with respect to MainSource Bank.[41]

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.[42] 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"),[43] 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;[44] (4) the institution's community development lending, including the

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

[41] Until its conversion on December 30, 2016, to a state member bank supervised by the Board, First Financial Bank was a national bank supervised by the OCC.

[42] 12 U.S.C. § 2906.

[43] 12 U.S.C. § 2801 *etseq*.

[44] 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).

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. Large institutions are also subject to an investment test that evaluates the number and amounts of qualified investments that benefit their assessment areas and 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.[45]

CRA Performance of First Financial Bank

First Financial Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of November 4, 2013 ("First Financial Bank Evaluation").[46] The bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and the Service Test.[47]

Examiners found that First Financial Bank originated a majority of its loans inside its AAs and that the bank's overall lending activity was good. Examiners also noted that the bank's geographic distribution of home mortgage loans and small loans to businesses was good. In addition, examiners found the bank's distribution of home mortgage loans by income level of the borrower to be good and the bank's distribution of loans to businesses with different revenue sizes to be adequate.

Examiners determined that First Financial Bank's level of qualified community development investments was adequate and responsive to community needs. Examiners found that the bank's service delivery systems were accessible to geographies and individuals of different income levels within the bank's AAs. Examiners also noted that, in the state of Indiana, the bank's branches were reasonably accessible. Overall, examiners found that the community development services provided by the bank were adequate and that the bank provided a good level of services in Ohio.

CRA Performance of MainSource Bank

MainSource Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 29, 2014 ("MainSource Bank Evaluation").[48] The bank received "Low Satisfactory" ratings for each of the Lending Test, the Investment Test, and the Service Test.[49]

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[45] *See* 12 CFR 228.21 *et seq*.

[46] The First Financial Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated from January 1, 2010, through December 31, 2011. The evaluation period for community development loans, investments, and services was from June 1, 2010, through December 31, 2011.

[47] The First Financial Bank Evaluation included full-scope evaluations of the Cincinnati-Middleton Ohio-Kentucky-Indiana Multistate Metropolitan Statistical Area ("MSA"); Columbus, Indiana MSA; and the Ohio Non-MSA AA. Limited scope evaluations were performed of the Bloomington, Indiana MSA; Indianapolis, Indiana MSA; Gary, Indiana MSA; Lafayette, Indiana MSA; Indiana Non-MSA AA; Lima, Ohio MSA; and the Dayton, Ohio MSA.

[48] The MainSource Bank Evaluation was conducted using Large Bank CRA Evaluation Procedures. Examiners reviewed HMDA, small business, and small farm loans originated from January 1, 2012, through December 31, 2013. The evaluation period for community development loans, investments, and services was from October 20, 2011, through September 29, 2014.

[49] The MainSource Bank Evaluation included full-scope evaluations of the Louisville-Jefferson County, Kentucky-Indiana Multistate MSA; Cincinnati-Middletown, Ohio-Indiana-Kentucky Multistate MSA; State of Indiana Non-MSA AA; Kankakee-Bradley, Illinois MSA; Dayton, Ohio MSA; and the Kentucky Non-MSA AA. Limited-scope evaluations were performed of the Anderson, Indiana MSA; Bloomington, Indiana MSA; Columbus, Indiana MSA; Gary Metropolitan Division, Indiana AA; Indianapolis-Carmel, Indiana MSA; Danville, Illinois MSA; and the State of Illinois Non-MSA AA.

Examiners found that MainSource Bank's lending levels reflected good responsiveness to credit needs within its AAs and that a substantial majority of the bank's loans were made within its AAs. Examiners further found that the geographic distribution of MainSource Bank's loans reflected adequate penetration throughout its AAs. Examiners noted that the bank's distribution of borrowers reflected adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners found that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners stated that MainSource Bank made a relatively high level of community development loans and originated qualifying community development loans in all of the bank's AAs. Further, the bank was found to use innovative and/or flexible lending practices in order to serve AA credit needs.

Examiners found that MainSource Bank made an adequate level of qualified community development investments and grants, particularly those that were not routinely provided by private investors, although rarely in a leadership position. Examiners further noted that the bank exhibited adequate responsiveness to credit and community economic development needs, but that the bank rarely used innovative or complex investments to support community development initiatives.

Examiners found that the bank's delivery systems were reasonably accessible to essentially all portions of the bank's AAs. Examiners also found that MainSource Bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals, and that branch services and business hours did not vary in a way that inconvenienced certain portions of the AAs, particularly LMI geographies and individuals. Examiners further noted that the bank provided an adequate level of community development services.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the Reserve Bank regarding its views of First Financial Bank's consumer compliance risk-management systems. The Board considered the most recent consumer compliance examination and fair lending review of First Financial Bank by the OCC. The Board also considered the most recent consumer compliance examination of MainSource Bank conducted by the FDIC.

The Board has taken this information, as well as the CRA performance records of First Financial Bank and MainSource Bank into account in evaluating the proposed transaction, including in considering whether First Financial has the experience and resources to effectively implement policies and programs that would assist the combined organization in helping to meet the credit needs of all of the communities within the firm's AAs.

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 Financial represents that it would provide a full range of deposit, savings, and other financial products and services to consumers and small- and medium-sized businesses in Ohio, Indiana, and Kentucky. First Financial states that it would continue offering all of the significant products and services currently offered by First Financial Bank and MainSource Bank after consummation of the proposal. Further, First Financial represents that, following the proposed transaction, the combined organization would be able to increase its lending limits and better meet the credit and banking needs of the small- and medium-sized businesses in its expanded service area.

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 Financial, 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 "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."[50]

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.[51] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[52]

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.[53]

In this case, the Board has considered information relevant to risks to the stability of the United States 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

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[50] Dodd-Frank Act § 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-02(2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

[51] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[53] *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.

activities.[54] 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 United States 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 Financial Bank has applied under section 9 of the FRA to establish and operate branches at the current main office and branches of MainSource Bank.[55] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered First Financial 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.[56] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Election

As noted, First Financial has elected to become a financial holding company in connection with the proposal. First Financial has certified that, upon consummation of the proposal, First Financial and First Financial Bank would be well capitalized and well managed, and First Financial has provided all of the information required under the Board's Regulation Y.[57] Based on all the facts of record, the Board determines that First Financial's election will become effective upon consummation of the proposal if, on that date, First Financial is well capitalized and well managed and all depository institutions it controls are well capitalized and 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 proposal should be, and hereby is, approved. In reaching its conclusion, the Board has considered all

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[54] First Financial Bank and MainSource Bank offer a broad range of retail and commercial banking products and services. First Financial has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

[55] *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. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also 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), (c). In addition, under section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, First Financial Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/21.4; Ind. Code § 28-2-13-19; Ky. Rev. Stat. Ann. 286.3-920; Ohio Rev. Code Ann. §1117.01.

[56] 12 U.S.C.§ 322; 12 CFR 208.6. Upon consummation of the proposal, First Financial Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

[57] *See* Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(*l*)(1).

the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and other applicable statutes. The Board's approval is specifically conditioned on compliance by First Financial with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. 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 February 22, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Appendix A

Branches to be Established by First Financial Bank

Illinois Branches
1. 101 North Hilgert Drive, Grant Park, Illinois 60940
2. 323 East Main Street, Hoopeston, Illinois 60942
3. 2000 West Court Street, Kankakee, Illinois 60901
4. 216 South Fourth Street, Watseka, Illinois 60970

Indiana Branches
1. 202 North Harrison Street, Alexandria, Indiana 46001
2. 1802 Allison Lane, Jeffersonville, Indiana 47130
3. 104 East Link's Way, Aurora, Indiana 47001
4. 136 East Harriman, Bargersville, Indiana 46106
5. 1053 State Road 229 North, Batesville, Indiana 47006
6. 3205 East Third Street, Bloomington, Indiana 47401
7. 24004 Stateline Road, Lawrenceburg, Indiana 47025
8. 9014 State Road 101, Brookville, Indiana 47012
9. 1051 West Spring Street, Brownstown, Indiana 47220
10. 221 East Main Street, Crawfordsville, Indiana 47933
11. 8740 South Emerson Avenue, Indianapolis, Indiana 46237
12. 597 Banta Street, Franklin, Indiana 46131
13. 6671 Highway 150, Floyds Knobs, Indiana 47119
14. 7700 State Road 64, Georgetown, Indiana 47122
15. 3610 Grant Line Road, New Albany, Indiana 47150
16. 122 West Washington Street, Greensburg, Indiana 47240
17. 102 West Main Street, Hagerstown, Indiana 47346
18. 136 Thornton Road, Hanover, Indiana 47243
19. 555 East Third Street, Hobart, Indiana 46342
20. 8475 North State Road 9, Hope, Indiana 47246
21. 3535 East 96th Street, Indianapolis, Indiana 46240
22. 120 East Main Street, Knightstown, Indiana 46148
23. 2253 State Road 54 East, Linton, Indiana 47441
24. 201 South Main Street, Lynn, Indiana 47355

25. 1315 Clifty Drive, Madison, Indiana 47250
26. 417 Jefferson Street, Madison, Indiana 47250
27. 201 North Broadway, Greensburg, Indiana 47240
28. 11 South Meridian, Ste 101, Indianapolis, Indiana 46204
29. 100 East Spring Street, New Albany, Indiana 47150
30. 600 South Memorial Drive, New Castle, Indiana 47362
31. 501 Clifty Drive, Madison, Indiana 47250
32. 521 North State Street, North Vernon, Indiana 47265
33. 112 North Meridian Street, Portland, Indiana 47371
34. 3433 East Main Street, Richmond, Indiana 47374
35. 230 Main Street, Rising Sun, Indiana 47040
36. 202 North Main Street, Rushville, Indiana 46173
37. 1130 East Tipton Street, Seymour, Indiana 47274
38. 28287 State Route 1, West Harrison, Indiana 47060
39. 3880 West Presidential Way, Edinburgh, Indiana 46124
40. 1012 South Adams Street, Versailles, Indiana 47042
41. 102 West Main Street, Vevay, Indiana 47043
42. 1263 North Indiana 135, Greenwood, Indiana 46142
43. 120 North Monroe Street, Williamsport, Indiana 47993

Kentucky Branches

1. 1905 Blankenbaker Parkway, Louisville, Kentucky 40299
2. 9819 Brownsboro Road, Louisville, Kentucky 40241
3. 6512 Bardstown Road, Louisville, Kentucky 40291
4. 2862 Frankfort Avenue, Louisville, Kentucky 40206
5. 201 Limestone Drive, Frankfort, Kentucky 40601
6. 104 South Chiles Street, Harrodsburg, Kentucky 40330
7. 1012 Bypass North, Lawrenceburg, Kentucky 40342
8. 293 North Hubbards Lane, Louisville, Kentucky 40207
9. 293 North Hubbards Lane, Louisville, Kentucky 40207
10. 13704 Shelbyville Road, Louisville, Kentucky 40245
11. 1734 Midland Trail, Shelbyville, Kentucky 40065
12. 2735 Bardstown Road, Louisville, Kentucky 40205
13. 9306 Taylorsville Road, Louisville, Kentucky 40299
14. 211 West Oak Street, Louisville, Kentucky 40203
15. 295 North Hubbards Lane, Louisville, Kentucky 40207

Ohio Branches

1. 7637 Beechmont Avenue, Cincinnati, Ohio 45255
2. 3723 Glenmore Avenue, Cincinnati, Ohio 45211
3. Summit Woods 1, 100 East Business Way, Suite 150, Cincinnati, Ohio 45241
4. 585 Anderson Ferry Road, Cincinnati, Ohio 45238
5. 6300 Harrison Avenue, Cincinnati, Ohio 45247
6. 10425 Harrison Avenue, Harrison, Ohio 45030
7. 3442 Edwards Road, Cincinnati, Ohio 45208
8. 5550 Cheviot Road, Cincinnati, Ohio 45239
9. 2000 Madison Road, Cincinnati, Ohio 45208
10. 7615 Reading Road, Cincinnati, Ohio 45237
11. 11186 Reading Road, Cincinnati, Ohio 45241
12. 635 South Market Street, Troy, Ohio 45373
13. 1580 West Main Street, Troy, Ohio 45373
14. 101 East Elm Street, Union City, Ohio 45390
15. 5791 Glenway Avenue, Cincinnati, Ohio 45238

Appendix B

First Financial/MainSource 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
Bloomington, Indiana – includes Greene, Monroe, and Lawrence counties.						
First Financial Pre-Consummation	3	$317.3M	10.04			
MainSource	9	$137.0M	4.33			
First Financial Post-Consummation	3	$454.3M	14.37	1499	87	15
Gary/Hammond, Indiana – includes Lake, Porter, La Porte, Newton, Jasper counties; and Center, Jackson, California (minus the city of Bass Lake), Wayne, and Railroad townships in Starke County.						
First Financial Pre-Consummation	9	$702.5M	4.81			
MainSource	16	$134.2M	0.92			
First Financial Post-Consummation	8	$836.7M	5.73	1003	8	29
Indianapolis, Indiana – includes Boone, Hamilton, Hancock, Hendricks, Henry, Johnson, Madison, Marion, Morgan, Owen, Putnam, Rush, Shelby, and Tipton counties.						
First Financial Pre-Consummation	14	$620.0M	1.32			
MainSource	18	$452.7M	0.91			
First Financial Post-Consummation	12	$1.05B	2.23	1125	2	48
Cincinnati, Ohio – includes Brown, Butler, Clermont, Hamilton, and Warren counties, Ohio; Dearborn County, Indiana; Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton counties, Kentucky; and the New Liberty and Owenton census county divisions in Owen County, Kentucky.						
First Financial Pre-Consummation	6	$2.24B	2.03			
MainSource	11	$568.5M	0.52			
First Financial Post-Consummation	4	$2.80B	2.54	3426	2	63
Dayton, Ohio – includes Montgomery, Miami, Greene, and Preble counties.						
First Financial Pre-Consummation	7	$370.3M	3.13			
MainSource	11	$144.3M	1.22			
First Financial Post-Consummation	7	$514.7M	4.35	1534	8	28

Data and rankings are as of June 30, 2017. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Order Issued Under International Banking Act

Deutsche Pfandbriefbank AG
Unterschleissheim, Germany

Order Approving the Establishment of a Representative Office
FRB Order No. 2018-01 (January 3, 2018)

Deutsche Pfandbriefbank AG ("PBB"), Unterschleissheim, Germany, a foreign bank within the meaning of the International Banking Act of 1978 ("IBA"), has applied under section 10(a) of the IBA[1] to establish a representative office in New York, New York. The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Daily News*, June 5, 2017). The time for submitting comments has expired, and the Board has considered all comments received.

Hypo Real Estate Holding GmbH ("HRE Holding"), Munich, Germany, owns 20 percent of PBB's outstanding shares and is the largest individual shareholder of PBB. The German government is the sole owner of HRE Holding.[2] No other shareholder owns more than 5 percent of the shares of PBB.

PBB, with total assets of approximately $68 billion, is the 15th largest bank in Germany by asset size.[3] PBB engages primarily in commercial real estate and public investment finance through five offices in Germany. PBB operates branches in France, Spain, Sweden, and the United Kingdom. PBB has two nonbank subsidiaries in the United States, Hypo Real Estate International Trust I and Hypo Real Estate International LLCI.[4]

The proposed representative office would act as a liaison between PBB on the one hand and its existing and potential customers, U.S. service providers, and business contacts on the other. The proposed representative office would also engage in other representational activities, including soliciting business, conducting research, and performing preliminary steps in connection with lending, including assembling credit information.[5] These activities would be limited to facilitating the origination of commercial real estate financing transactions.

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

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1 12 U.S.C. § 3107(a).

2 The German Financial Market Stabilization Fund, which is under the control of the German Federal Ministry of Finance, owns 100 percent of HRE Holding.

3 Asset and ranking data are as of September 30, 2017, and are based on the exchange rate as of that date.

4 PBB plans to dissolve these subsidiaries in the near future.

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

to comprehensive supervision on a consolidated basis by their home country supervisor.[6] The Board also considers additional standards set forth in the IBA and Regulation K.[7]

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

PBB is subject to the direct prudential supervision of the European Central Bank ("ECB") within the context of the Single Supervisory Mechanism ("SSM") because the total value of its assets exceeds €30 billion. The SSM is a system of financial supervision composed of the ECB and the national competent authorities of the participating member states in which specific tasks are distributed between the ECB and each national competent authority. Under the SSM, the ECB has direct prudential supervisory responsibility for PBB, while Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin"), as the relevant national competent authority for PBB, retains supervisory authority over all other areas, including consumer protection and the prevention of money laundering and terrorist financing.

The methodologies and standards that underpin the day-to-day supervision of large European Union banking organizations by the ECB under the SSM regulatory framework are aimed at achieving a consistent supervisory approach across the European Union. The Board has previously found that other European banking organizations supervised by the SSM and the relevant national competent authority are subject to comprehensive consolidated supervision.[8] The system of supervision applied to all large banks within the European Union has not changed materially since it was last considered by the Board.

Based on all the facts of record, including the above information, it has been determined that PBB is subject to comprehensive supervision on a consolidated basis by the ECB and BaFin acting through the SSM.

The Board also has considered the following additional standards set forth in the IBA and Regulation K: (1) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering,

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[6] 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings 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] *See* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. In the case of a foreign bank that presents a risk to the stability of the United States, the Board also may take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

[8] *SeeING Bank N.V.*, FRB Order 2017-27 (October 20, 2017); Board letter to Rita Milazzo dated August 1, 2017 (comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.); Board letter to Andrea Tokheim dated July 24, 2017 (comprehensive consolidated supervision for Bank of Ireland Group plc); and *Unione di Banche Italiane, S.p.A.*, FRB Order 2016-01 (January 19, 2016).

and whether the home country is participating in multilateral efforts to combat money laundering; (2) the financial and managerial resources of the bank; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.[9]

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

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

PBB has committed to make available to the Board such information on the operations of PBB and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended,[10] and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, PBB has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the ECB and BaFin may share information on PBB'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 PBB has provided adequate assurances of access to any necessary information that the Board may request. In addition, the ECB has no objection to the establishment of the proposed representative office.

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

On the basis of all the facts of record and subject to commitments made by PBB, PBB's application to establish the proposed representative office is hereby approved by the

[9] *See* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).
[10] 12 U.S.C. § 1841 *et seq*.

Director of the Division of Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.[11] Should any restrictions on access to information on the operations or activities of PBB and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by PBB or its affiliates with applicable federal statutes, the Board may require termination of any of PBB's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by PBB with the conditions imposed in this order and the commitments made to the Board in connection with this application.[12] For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective December 21, 2017.

Ann E. Misback
Secretary of the Board

[11] 12 CFR 265.7(d)(12).

[12] The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Department of Financial Services, to license the proposed office of PBB in accordance with any terms or conditions that they may impose.

Order Issued Under Home Owners' Loan Act

The Charles Schwab Corporation
San Francisco, California

Order Approving the Acquisition of a State Savings Bank
FRB Order No. 2018-08 (March 20, 2018)

The Charles Schwab Corporation ("Charles Schwab"), San Francisco, California, a savings and loan holding company ("SLHC"), has requested the Board's approval under section 10(e) of the Home Owners' Loan Act, as amended ("HOLA"),[1] to acquire Charles Schwab Trust Bank, Henderson, Nevada, a *de novo* state savings bank that has elected to be treated as a savings association pursuant to section 10(*l*) of HOLA.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 58604 (December 13, 2017)).[3] 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.[4] The Federal Deposit Insurance Corporation ("FDIC") has approved the related application under section 18(c) of the Federal Deposit Insurance Act[5] for Charles Schwab Trust Bank to acquire certain assets and assume certain liabilities from Charles Schwab Bank, Henderson, Nevada.[6]

Charles Schwab, with consolidated assets of approximately $243.3 billion, is the 15th largest insured depository organization in the United States.[7] Charles Schwab controls two insured depository institutions, Charles Schwab Bank and Charles Schwab Signature Bank, both of Henderson, Nevada, with approximately $165.3 billion in consolidated deposits, which represent approximately 1.3 percent of the total amount of deposits of insured depository institutions in the United States.[8]

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

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1 12 U.S.C. § 1467a(e).

2 12 U.S.C. § 1467a(*l*).

3 12 CFR 238.14(c)(2).

4 12 U.S.C. § 1467a(e)(2); *see also* 12 CFR 238.15.

5 12 U.S.C. § 1828(c).

6 Charles Schwab proposes to establish Charles Schwab Trust Bank as a *de novo* state-chartered savings bank to consolidate the firm's trust services and related activities into a single fiduciary-oriented bank. Charles Schwab Trust Bank would acquire certain trust assets and assume certain liabilities from Charles Schwab Bank. On December 26, 2017, the FDIC approved Charles Schwab Trust Bank's deposit insurance application. On December 28, 2017, the state of Nevada approved Charles Schwab Trust Bank's charter application.

7 The national asset datum is as of December 31, 2017, and the deposit and ranking data are as of September 30, 2017.

8 For purposes of HOLA, a state bank or state savings association's home state is the state by which the savings association is chartered. *See* 12 U.S.C. § 1467a(e)(7)(B)(ii). 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. *See* 12 U.S.C. § 1467a(e)(7)(B)(iv). Nevada is the home state for Charles Schwab, its subsidiary depository institutions, and CharlesSchwab Trust Bank. In addition, Charles Schwab Trust Bank has offices only in Nevada. Accordingly, the proposed acquisition does not trigger the interstate provisions of HOLA. *See* 12 U.S.C. §1467a(e)(2)(E) and 1467a(e)(3).

United States.[9] 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.[10]

The proposal involves the formation and acquisition of a *de novo* state-chartered savings bank in the Las Vegas, Nevada banking market, which would expand the operations of Charles Schwab in the market and increase its ability to offer products and services to customers in that market.[11] The Board previously has noted that the establishment of a *de novo* bank enhances competition in the relevant banking market and is a positive consideration in an application under section 3 of the Bank Holding Company Act.[12] The Board believes the same considerations are applicable under section 10(e) of HOLA.

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. In this evaluation, the Board considers a variety of 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, 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 Office of the Comptroller of the Currency ("OCC") and the Consumer Financial Protection Bureau ("CFPB") regarding this proposal.

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[9] 12 U.S.C. § 1467a(e)(2)(A); *see also* 12 CFR 238.15(a)(1).

[10] 12 U.S.C. § 1467a(e)(2)(B); *see also* 12 CFR 238.15(a)(2).

[11] The Las Vegas, Nevada, banking market is defined as the Las Vegas Metropolitan Area in Clark County, Nevada.

[12] *See Synovus Financial Corp.*, 91 *Federal Reserve Bulletin* 273, 274 (2005); *Wilson Bank Holding Company*, 82 *Federal Reserve Bulletin* 568, 568 (1996).

Charles Schwab is well capitalized and would remain so on consummation of the proposal. The asset quality, earnings, and liquidity of Charles Schwab and its subsidiary depository institutions are consistent with approval, and Charles Schwab appears to have adequate resources to absorb the costs of the proposal. In addition, future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of Charles Schwab and Charles Schwab Trust Bank.[13] This consideration included an evaluation of the competence, experience, and integrity of the officers, directors, and principal shareholders of Charles Schwab and Charles Schwab Trust Bank; their record of compliance with laws and regulations; and the record of Charles Schwab and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.[14] The Board has reviewed the examination records of Charles Schwab and its subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Charles Schwab; the supervisory experiences of the Board and of other relevant bank supervisory agencies with Charles Schwab and its subsidiary depository institutions; and the organization's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

The existing risk-management program and the directors and senior management of Charles Schwab are considered to be satisfactory. The directors and senior executive officers of Charles Schwab have knowledge of and experience in the banking and financial services sectors. Charles Schwab has indicated that it will devote significant financial and other resources to address all aspects of the post-integration process for this proposal.

Based on all the facts of record, including the supervisory record of Charles Schwab and its subsidiary depository institutions, the managerial and operational resources of Charles Schwab, the business plan of Charles Schwab Trust Bank after consummation, and the public 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 record of effectiveness of Charles Schwab in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 10(e) of HOLA, the Board considers the effect of the transaction on the convenience and needs of the communities to be served.[15] 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 these communities, 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").[16] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[17] and requires the appropriate federal financial supervisory agency to

[13] 12 CFR 238.15(b)(2).
[14] *See* 12 U.S.C. § 1467a(e)(1)(B); 12 CFR 238.15(b)(2).
[15] 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(3).
[16] 12 CFR 238.15(b)(3).
[17] 12 U.S.C. § 2901(b).

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.[18]

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 public 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 Charles Schwab Bank and Charles Schwab Signature Bank, 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 Charles Schwab, and the public comment received on the proposal.

Summary of Public Comment on Convenience and Needs

A commenter objected to the proposal alleging that, based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[19] Charles Schwab Bank lent only to white borrowers with incomes above 120 percent of the area median income in the Reno, Nevada, Metropolitan Statistical Area ("Reno MSA").[20]

Businesses of Involved Institutions and Response to Comment

Charles Schwab, a savings and loan holding company headquartered in San Francisco, California, engages in securities brokerage, retail banking, and related financial services. The subsidiary depository institutions of Charles Schwab offer a range of loan and deposit products, including checking, savings, and residential mortgage loans, as well as trust and custody services and related products to retirement plan sponsors and participants. With respect to Charles Schwab Bank's lending record in the Reno MSA, Charles Schwab notes that Charles Schwab Bank's existing CRA rating is "Outstanding." Charles Schwab also argues that with respect to its full lending record in the Reno MSA, it is meeting the needs of the communities it serves.

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

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[18] 12 U.S.C. § 2903.

[19] 12 U.S.C. § 2801 *et seq*.

[20] The commenter also criticized the workplace benefit plans of Charles Schwab, noting that employees of Charles Schwab had filed a lawsuit alleging that the 401(k) plans of Charles Schwab have expensive fees and poor performance that have benefited Charles Schwab at the expense of its employees. *See Severson v. Charles Schwab Corp.*, No. 4:17-cv-00285-CW (N.D. Cal. 2017). Charles Schwab has denied any wrongdoing. The allegations regarding the performance of 401(k)plans and fees charged by plan sponsors are matters that are reviewed under the Employee Retirement Income Security Act of 1974. *See* 29 U.S.C. § 1001 *et seq*. The allegations are currently under review in the appropriate legal forum, and action on this proposal would not interfere with the court's ability to resolve the pending litigation. *See Natcom Bancshares Inc.*, FRB Order No. 2017-37 at 6 n.18 (December 18, 2017); *M&P Community Bancshares, Inc.*, 92 *Federal Reserve Bulletin* C156, C156 n.7 (2006).

supervisors of the CRA performance records of the relevant institutions, as well as information and views by the appropriate federal supervisors.[21] In this case, the Board considered the supervisory views of the OCC and CFPB.

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

Under the CRA, an institution may elect to use a strategic plan for the evaluation of its record of helping to meet the credit needs of its assessment areas. Under this alternative, a bank submits a plan, subject to the approval of the firm's primarily federal regulator, specifying measurable goals for meeting the lending, investment, and service needs of the bank's assessment areas.[23] The primary federal regulator then evaluates the bank on its success in achieving the goals in the approved plan.[24] The primary federal regulator generally evaluates the plan's measurable goals by examining (1) the extent and breadth of lending or lending-related activities; (2) the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels; (3) the extent of community development lending; (4) the use of innovative or flexible lending practices to address credit needs; (5) the amount and innovativeness, complexity, and responsiveness of the bank's qualified investments; and (6) the availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.[25]

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 Charles Schwab Bank

Charles Schwab Bank was assigned an overall "Outstanding" rating by the OCC at its most recent CRA performance evaluation, as of January 6, 2014 (the "Charles Schwab Bank Evaluation").[27] Charles Schwab Bank received "Outstanding" ratings for each of the Lending Test, the Investment Test, and the Service Test.

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

[22] 12 U.S.C. § 2906.

[23] *See* 12 CFR 25.27, 12 CFR 228.27, and 12 CFR 345.27. Before submitting its plan for approval, the institution must seek suggestions from members of the public in the bank's assessment areas, and, once the plan has been developed, the bank must solicit public comment on its plan for at least 30 days. *See*, *e.g.*, 12 CFR 228.27(d).

[24] *See*, *e.g.*, 12 CFR 228.27(f)(3).

[25] *Id.*

[26] 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.

[27] The Charles Schwab Bank Evaluation was conducted pursuant to an OCC-approved strategic CRA plan. *See* 12 CFR 25.27. The evaluation period for the Charles Schwab Bank Evaluation was October 1, 2010, through December 31, 2013, and the evaluation reviewed the bank's CRA performance under strategic plans approved by the OCC in October 2012 for the period of October 1, 2012, through December 31, 2015 (the"2012 Plan")

Examiners found that Charles Schwab Bank significantly exceeded the community development lending thresholds in both the 2009 Plan and the 2012 Plan for outstanding performance. Examiners also noted that the bank's percentage of LMI loans exceeded the 2009 Plan thresholds for satisfactory performance and met the 2012 goals for satisfactory performance. In the Reno MSA, an area of concern to the commenter, examiners found that the bank's overall lending performance exceeded the goals for outstanding performance for the entire evaluation period. Examiners also noted that Charles Schwab Bank's lending to LMI borrowers and in LMI geographies exceeded the satisfactory performance goals set forth in the bank's plans. Examiners found that the bank exceeded its satisfactory performance goals for originating HMDA loans to LMI borrowers and in LMI geographies.

Examiners found that Charles Schwab Bank's community development investments exceeded the threshold for satisfactory performance in the 2009 Plan and substantially exceeded the 2012 Plan thresholds for outstanding performance. In the Reno MSA, examiners found the bank exceeded its goals for outstanding performance in originating community development investments. Examiners also noted that some of the bank's investments were highly responsive to assessment area needs.

Examiners found that the bank's community development services exceeded the goals set for outstanding performance in the 2009 Plan and substantially exceeded the thresholds for outstanding performance in the 2012 Plan. In the Reno MSA, examiners noted that Charles Schwab Bank exceeded its outstanding performance goals for community development services. Examiners found that Charles Schwab Bank was a service leader in the Reno MSA, and its community development services were highly responsive to identified needs in the Reno MSA.

Charles Schwab Bank's Efforts Since the 2014 CRA Evaluation

Charles Schwab represents that, since the Charles Schwab Bank Evaluation, the bank has continued its CRA efforts in its community and continues to strive to implement innovative and complex lending, investing, and services programs. Charles Schwab Bank represents that it is now operating under a new strategic plan that runs from 2016 through 2018. The bank also represents that its CRA program includes a number of services in its assessment areas, including to promote financial opportunities for low-income students and to bring together community partners to work on improving initiatives for the public benefit, such as food access, employment opportunities, affordable housing, health care access, and health education.

CRA Performance of Charles Schwab Signature Bank

Charles Schwab acquired Nordstrom fsb ("Nordstrom Bank") in November 2017, renaming it Charles Schwab Signature Bank and fundamentally changing its business plan. The OCC has not yet conducted a CRA evaluation of Charles Schwab Signature Bank.[28]

and by the Office of Thrift Supervision in 2009 for the period of October 1, 2009, through September 30, 2012 (the "2009 Plan"). The Charles Schwab Bank Evaluation reviewed the bank's performance toward meeting the strategic plan in the Reno MSA, as well as the San Francisco–Oakland–Hayward and the San Jose–Sunnyvale–Santa Clara MSAs, both in California.

[28] NordstromBank, the predecessor bank to Charles Schwab Signature Bank, received an "Outstanding" rating by the OCC at its most recent CRA performance evaluation, as of September 28, 2015 (the "Nordstrom Bank Evaluation"). The Nordstrom 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 January 1, 2010, through August 31, 2015. The Nordstrom Bank Evaluation included a review of the bank's assessment area in the

Charles Schwab notes it is in the process of constituting a new CRA program at Charles Schwab Signature Bank. Charles Schwab represents that the new CRA program will be based on Charles Schwab Bank's existing CRA program and will be integrated with the overall CRA efforts of Charles Schwab.

Additional Supervisory Views

In its review of the proposal, the Board has considered the supervisory views of the OCC and the CFPB regarding the records of Charles Schwab Bank and Charles Schwab Signature Bank in complying with the CRA, fair lending laws, and other consumer statutes

The Board has considered the results of recent consumer compliance examinations of Charles Schwab Bank conducted by the OCC and the CFPB. As part of its consumer compliance review, the OCC reviewed Charles Schwab Bank's policies, procedures, board reports, audits, internal risk reports, risk assessments, and consumer compliance management processes for complying with fair lending and other consumer compliance laws. The CFPB also conducted supervisory reviews of Charles Schwab Bank's compliance with certain consumer laws, including a review of the bank's compliance policies, procedures, training, and monitoring and corrective action process.[29]

The Board has taken these consultations into account in evaluating this proposal, including in considering whether Charles Schwab has the experience and resources to ensure that it helps to meet the credit needs of the communities within 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. Charles Schwab represents that, as a result of the proposal, Charles Schwab Trust Bank would be a fiduciary-oriented bank that offers the trust and custody services and related products currently offered by a division of Charles Schwab Bank to retirement plan sponsors and participants and that this will better allow the firm to serve the needs of the growing retirement market. Charles Schwab also represents that Charles Schwab Trust Bank would be able to offer more consistent services that are better tailored to its customers' needs than those currently offered by Charles Schwab Bank.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of Charles Schwab Bank and Charles Schwab Signature Bank under the CRA, the records of compliance with fair lending and other consumer protection laws, consultations with the OCC and the CFPB, confidential supervisory information, information provided by Charles Schwab, 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.

Phoenix–Mesa–Scottsdale, Arizona MSA. Examiners found that the bank demonstrated a high level of community development lending, qualified investments, and community development services. Examiners also noted that the bank demonstrated excellent responsiveness to credit and community development needs in its assessment area.

[29] No consumer compliance examination of Charles Schwab Signature Bank has yet been completed.

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 insured depository institutions of Charles Schwab and believes that it is consistent with approval. In view of the current resources, capital, and future prospects of Charles Schwab; the managerial resources of Charles Schwab and its insured depository institutions; the significant financial, managerial, and other resources being devoted to support the *de novo* bank; and the likely effect of the transaction on the proposed organization, the Board, after consulting with the FDIC, 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. 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 Charles Schwab 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 San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 20, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[30] 12 U.S.C. § 1467a(e)(2).

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Survey of Finance Companies, 2015

Lisa Chen, Gregory Elliehausen, and Mark Wicks

Introduction and Summary

Finance companies are nondepository financial firms whose primary business is providing debt and lease financing to consumers and businesses. At the end of 2015, finance companies held nearly $747 billion of consumer credit and lease receivables, $160 billion of real estate debt, and $405 billion of business credit and lease receivables.[1] Of note, finance companies are the third-largest institutional supplier of consumer credit, behind banks and the federal government, holding nearly one-third of consumer motor vehicle debt and providing a substantial amount of lease financing of motor vehicles. By contrast, while finance companies continue to account for a substantial share of residential mortgage originations, they hold only a modest share of such credit. In addition, finance companies' business portfolios include short- and medium-term credit and leases to finance inventory, accounts receivable, and acquisition of motor vehicles and equipment. Finance companies hold a small amount of commercial real estate debt as well.

The Federal Reserve produces comprehensive data on the volume and composition of credit and lease financing provided by the finance company industry and reports these data in its G.19, "Consumer Credit"; G.20, "Finance Companies"; and Z.1, "Financial Accounts of the United States" statistical releases. To maintain the quality of its statistics, the Federal Reserve conducts a Survey of Finance Companies every five years to benchmark its finance company estimates.[2] This article reports developments in the finance company industry using data from its latest survey in 2015. In addition to the balance sheet data used to benchmark its statistical releases, the Federal Reserve for the first time requested respondents to the 2015 survey to provide income statement data. The last section of this article presents the new 2015 income statement data, the first time such data have been collected since the late 1980s.

The following list highlights several prominent findings from our analysis:

- The finance company industry is highly concentrated. Small firms are numerous but accounted for a very small share of aggregate industry assets in 2015. In contrast, firms

[1] Consumer credit is reported in the Board of Governors of the Federal Reserve's Statistical Release G.19, "Consumer Credit," available at https://www.federalreserve.gov/releases/g19/current/default.htm. Consumer credit consists of all types of credit that are used by individuals and that are not collateralized by real estate or by specific financial assets (such as stocks and bonds) or used for business purposes. Finance company receivables are reported in the Board of Governors of the Federal Reserve's Statistical Release G.20, "Finance Companies," available at https://www.federalreserve.gov/releases/g20/current/g20.htm.

[2] The Federal Reserve collects monthly data on loans and leases and benchmarks these data using the universe estimates derived from a quinquennial census of the industry and the Survey of Finance Companies. Benchmarking aligns the monthly sample estimates with the higher-quality population estimates produced every five years. This procedure ensures coherence and consistency between the two time-series data while minimizing revisions of the observed movements in the benchmarked series.

with assets of $20 billion or more accounted for less than 0.5 percent of firms but provided 71 percent of the industry's assets in 2015.

- Finance companies provide many types of financing to households and businesses, but their primary business is consumer credit and consumer lease financing. Consumer loans and leases accounted for over one-half of receivables of finance companies in 2015.
- Overall, total assets of the finance company industry was 10 percent lower in 2015 than in 2010. Declines in credit and lease financing were broadly distributed, with the exceptions of consumer motor vehicle, business motor vehicle wholesale, and business equipment financing.
- While the finance company industry provides a wide variety of credit and lease products, firms in the industry are highly specialized. Nearly all finance companies hold a majority of their assets in one type of credit—consumer, real estate, or business credit.
- In 2015, about one-half of consumer lenders' assets consisted of motor vehicle loans and leases, but consumer lenders also held a considerable share of assets in other (nonvehicle) closed-end consumer credit. By far, most real estate lenders' assets were mortgages on one- to four-family homes, with multifamily or other commercial mortgages constituting the small remaining share. More than one-half of business lenders' assets consisted of equipment loans and leases. Business lenders also provided business motor vehicle–related financing, but that financing accounted for only a relatively small share of assets.
- Finance charges among the consumer, real estate, and business lenders varied significantly in 2015, in large part reflecting differences in operating costs. Despite large differences in revenue and expenses, operating return on assets (a measure of the efficiency of generating income from assets) was about the same for the three types of lenders.
- Among consumer lenders, auto lenders had relatively low operating expenses. Low operating costs can be attributed at least in part to the prevalence of sales finance in auto lending, in which auto dealers incur much of the expense of originating loans and leases. Personal loan companies have higher revenue per $100 of outstanding credit and higher operating costs than auto lenders. Personal loan companies' relatively high finance charges and operating expenses can largely be attributed to their loans' high risk and small dollar amount.
- Comparing revenues and costs of personal loan companies in 2015 with available historical data from selected earlier years, we find that revenues and operating costs in 2015 were higher than in 1987, one of the last years in which such industry data were collected. However, operating income in 2015 was somewhat lower than in 1987. Greater risk may at least in part explain greater finance charges and losses and additions to loss reserves for personal loans in 2015.
- The cost of borrowed funds did not account for much of gross revenue in the recent low-rate environment. The cost of borrowed funds was just 8 percent of gross revenue in 2015, a considerably lower percentage than in 1959, 1983, and 1987.

The remainder of this article is divided into six sections:

- A Brief History of the Federal Reserve's Survey of Finance Companies
- Recent Finance Company Industry Developments
- Financial Characteristics of Different Specialized Types of Finance Companies
- Major Types of Consumer Lenders: Auto Lenders and Personal Loan Companies
- Trends in Revenue, Cost, and Performance at Personal Finance Companies
- Appendix: Historical Survey Practices, Recent Innovations, and Current Procedures

A Brief History of the Federal Reserve's Survey of Finance Companies

The Federal Reserve's statistics on finance companies date back to 1919.[3] At that time, two distinct types of finance companies focusing on consumer lending had emerged. Sales finance companies primarily purchased from retailers installment paper arising from sales of automobiles and other consumer goods. Consumer finance companies (also known as small-loan companies or licensed lenders) primarily provided direct personal loans authorized by state small-loan laws, which created exemptions from rate ceilings in state usury laws for firms that obtained a license.[4] Consumer credit outstanding at sales finance companies and at consumer finance companies were reported in separate categories in the Federal Reserve's statistical system between 1919 and 1964.[5]

The Federal Reserve obtained estimates of finance company lending before 1939 from data collected by the Russell Sage Foundation, the National Bureau of Economic Research (NBER), and the Department of Commerce. Between 1939 and 1954, estimates of sales finance and consumer finance lending were derived from monthly surveys and were benchmarked by available Census Bureau surveys, Federal Reserve surveys, or regulatory reports. In February 1945, the Census Bureau's survey of sales finance companies was transferred to the Federal Reserve, which earlier had begun to collect consumer credit data to implement wartime credit restrictions. The transfer centralized the collection of statistics for consumer installment credit at finance companies in one agency, the Federal Reserve.

By the 1950s, many sales finance companies had established subsidiaries that lent directly to consumers. Some of the larger companies also financed or factored business accounts receivable or financed sales of commercial, industrial, and farm equipment. Similarly, consumer finance companies purchased some sales finance contracts and originated business credit.[6] Beginning in 1955, the Federal Reserve began conducting regular benchmark surveys covering the finance company industry on a regular five-year interval.[7] The 1955 benchmark survey covered nondepository financial institutions that were primarily engaged in installment lending to consumers. The Federal Reserve expanded the 1960 benchmark survey to include finance companies specializing in financing sales of business and farm equipment and financing or factoring business receivables. Assets and liabilities of the specialist business finance companies were first reported in an October 1961 *Federal Reserve Bulletin* article discussing changes in finances of sales finance and consumer finance companies from 1955 to 1960.[8]

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[3] For a detailed discussion of the history of the Federal Reserve's statistics on finance companies, see section 16 in Board of Governors of the Federal Reserve System (1976), *Banking and Monetary Statistics, 1941–1970* (Washington: Board of Governors), pp. 1049–81, https://fraser.stlouisfed.org/title/41.

[4] The distinction between sales and consumer finance companies is in large part a consequence of state regulation of interest rates. See Thomas A. Durkin, Gregory Elliehausen, Michael E. Staten, and Todd J. Zywicki (2014), "State Regulation of Consumer Credit," chapter 11 in *Consumer Credit and the American Economy* (New York: Oxford University Press), pp. 482–541.

[5] See Board of Governors, *Banking and Monetary Statistics, 1941–1970,* in note 3. Until 1950, the Federal Reserve's consumer finance category contained consumer credit held by other types of financial institutions, which included consumer credit held by mutual savings banks and savings and loan companies.

[6] See Paul F. Smith and Francis R. Pawley (1957), "Survey of Finance Companies, Mid-1955," *Federal Reserve Bulletin,* vol. 43 (April), pp. 392–408, https://fraser.stlouisfed.org/files/docs/publications/FRB/1950s/frb_041957.pdf.

[7] For a description of the 1955 survey, see Smith and Pawley, "Survey of Finance Companies, Mid-1955," in note 6.

[8] Francis R. Pawley (1961), "Survey of Finance Companies, Mid-1960," *Federal Reserve Bulletin,* vol. 47 (October), pp. 1140–60, https://fraser.stlouisfed.org/files/docs/publications/FRB/1960s/frb_101961.pdf. For the 1965 benchmark survey, a separate article focusing solely on business finance companies was written; see Evelyn M. Hurley (1968), "Business Financing by Business Finance Companies," *Federal Reserve Bulletin,* vol. 54 (October), pp. 815–27, https://fraser.stlouisfed.org/files/docs/publications/FRB/1960s/frb_101968.pdf. An article reporting changes in financing for each of the different types of finance companies between the 1960

Reflecting a trend toward multiproduct credit offerings in the finance company industry, the Federal Reserve in 1965 combined the sales finance and consumer finance categories in its consumer credit releases. In its finance company releases, however, the Federal Reserve continued to report sales finance and consumer finance company lending separately until September 1970. At that time, a new, consolidated G.20 "Finance Companies" release replaced the previous G.20 "Sales Finance Companies" and G.22 "Consumer Credit at Consumer Finance Companies" releases. The new G.20 "Finance Companies" release also reflected the expansion of the finance company industry to include lending by business finance companies.[9]

Recent Additions in Finance Company Industry Coverage

The Federal Reserve continues to update its coverage of the finance company industry to reflect developments in the industry. Finance companies historically have not been a large supplier of mortgage credit. However, finance companies participated in the growth in home equity lending in the mid-1990s.[10] In addition, nondepository mortgage lenders specializing in originating residential mortgages using their own or borrowed funds had an increasing market presence in the late 1990s and 2000s. These nondepository mortgage lenders typically did not hold the mortgages in their own asset portfolios but instead sold them to investors. The expansion of mortgage originations by nondepository mortgage lenders prompted the Federal Reserve in 2005 to expand its coverage of the finance company industry to include nondepository mortgage lenders.

For the 2015 survey, the prominence of high-rate, single-payment lenders led the Federal Reserve to further expand its coverage of the finance company industry to include pawn shops, payday lenders, and vehicle title lenders. Each of these single-payment lenders' primary product is a distinct small, short-term (commonly one month or less), single-payment cash loan. Another consideration in including these lenders is that some of these firms also offer small installment cash loans, which is the main product of traditional consumer finance companies.

Income Statement Data

The collection of income statement data is a further innovation of the 2015 Survey of Finance Companies. Previously, the survey did not collect income statement data. Past efforts to collect income statement data include Ernst Dauer for the NBER in the 1930s and 1940s, Paul Smith for the NBER in the 1940s and 1950s, and the American Financial Services Association (AFSA) in the 1960s, 1970s, and 1980s. The most recent income statement data available are from the 1989 AFSA survey, which were analyzed by Durkin and Elliehausen (1998).[11]

and 1965 benchmark surveys was also written; see Evelyn M. Hurley (1967), "Survey of Finance Companies, Mid-1965," *Federal Reserve Bulletin,* vol. 53 (April), pp. 534–59, https://fraser.stlouisfed.org/files/docs/publications/FRB/1960s/frb_041967.pdf.

[9] Board of Governors of the Federal Reserve System (1970), Statistical Release G.20, "Finance Companies" (November 12), https://fraser.stlouisfed.org/files/docs/releases/g20/g20_19701112.pdf.

[10] See Glenn B. Canner, Thomas A. Durkin, and Charles A. Luckett (1998), "Recent Developments in Home Equity Lending," *Federal Reserve Bulletin,* vol. 84 (April), pp. 241–51, https://www.federalreserve.gov/pubs/bulletin/1998/199804lead.pdf.

[11] See Ernst A. Dauer (1944), *Comparative Operating Experience of Consumer Instalment Financing Agencies and Commercial Banks, 1929–41,* National Bureau of Economic Research, Studies in Consumer Instalment Financing No. 10 (New York: NBER); Paul F. Smith (1964), *Consumer Credit Costs, 1949–59,* National Bureau of Economic Research, Studies in Consumer Instalment Financing No. 11 (Princeton, N.J.: Princeton University Press); Thomas A. Durkin and Gregory Elliehausen (1998), "The Cost Structure of the Consumer Finance Industry," *Journal of Financial Services Research,* vol. 13 (February), pp. 71–86.

Income statement data are useful to understand the relationships between operational scale and costs, competition and the level of finance charges, and rate ceilings and credit availability. Furthermore, income statement data also speak to the effects of deregulation and financial innovation. However, the most recent evidence on the cost structure (for example, economies of scale at firm and office levels as well as economies of average loan size) is based on the last four AFSA surveys in the late 1980s. Advances in credit reporting and credit evaluation as well as changes in consumer protection regulation have significantly influenced credit underwriting, monitoring, and collection. Research based on more recent data is needed to inform policy and is long overdue.

Recent Finance Company Industry Developments

We look first at the balance sheet data that the Federal Reserve uses to benchmark the finance company industry. The finance company industry has a large percentage of small firms. Just over one-half of finance companies had assets of less than $1 million in 2015, and 82 percent had assets of less than $10 million (table 1). These small firms provided an insignificant share of aggregate assets in 2015, however. In contrast, the largest finance companies (less than 0.5 percent of all companies) provided 71 percent of the industry's assets in 2015.

The percentage of firms in the two smallest asset groups increased between 2010 and 2015, and the percentage of firms in the third asset group declined. These results largely reflect changes in the size distribution of real estate lenders (not shown in tables). The percentages of firms in larger asset-size groups were little changed between 2010 and 2015. In both years, firms in the largest two asset categories accounted for nearly all of aggregate assets.

The finance company industry provides many types of financing, but consumer financing predominates. In dollar volume, the largest type is consumer motor vehicle financing (consisting of both credit and leases). In 2015, finance companies held $479 billion of consumer motor vehicle credit and leases, of which $303 billion (63 percent) was credit financing and $176 billion (37 percent) was lease financing (table 2). Motor vehicle financing includes not only dealer-originated credit and leases held by the large captive

Table 1. Percentage distribution of finance companies by number of firms and asset size, 2005, 2010, and 2015

Asset size (dollars)	Number of firms (percent)			Aggregate assets (percent)		
	2005	2010	2015	2005	2010	2015
Less than 1 million	25	44	52	<0.5	1	<0.5
1–10 million	38	25	30	<0.5	<0.5	1
10–100 million	23	24	12	1	3	2
100 million–1 billion	9	5	5	2	4	5
1–20 billion	4	2	1	17	18	21
20 billion or greater	1	<0.5	<0.5	81	74	71
Total	**100**	**100**	**100**	**100**	**100**	**100**

Note: Components may not sum to totals because of rounding.

Source: Board of Governors of the Federal Reserve System (2005, 2010, and 2015), Census of Finance Companies (Washington: Board of Governors).

Table 2. Loan and lease receivables by asset category, 2005, 2010, and 2015

Asset category	Level ($billion)			Percent change		Share of total assets (percent)		
	2005	2010	2015	2005-2010	2010-2015	2005	2010	2015
Consumer								
Motor vehicle loans	278	277	303	0	9	13	15	18
Motor vehicle leases	85	112	176	32	57	4	6	11
Revolving	66	85	26	29	-69	3	5	2
Other	175	346	233	98	-33	8	19	14
Subtotal	604	820	738	36	-10	28	44	44
Real estate								
1–4 family	466	170	123	-64	-28	22	9	7
Other	48	74	36	54	-51	2	4	2
Subtotal	513	244	159	-52	-35	24	13	10
Business								
Motor vehicles	106	117	104	10	-11	5	6	6
Retail loans	15	18	15	20	-17	1	1	1
Wholesale loans	61	69	80	13	16	3	4	5
Leases	29	30	9	3	-70	1	2	1
Equipment	286	204	219	-29	7	13	11	13
Loans	98	118	122	20	3	5	6	7
Leases	188	86	97	-54	13	9	5	6
Other	92	86	82	-7	-5	4	5	5
Subtotal	484	408	405	-16	-1	23	22	24
Total loans and leases	1,601	1,472	1,302	-8	-12	75	79	78
Memo: Total assets	2,142	1,875	1,680	-12	-10	100	100	100

Note: Components may not sum to totals because of rounding.
Source: Board of Governors of the Federal Reserve System (2005, 2010, and 2015), Survey of Finance Companies (Washington: Board of Governors).

finance companies of motor vehicle manufacturers, but also credit held by independent finance companies, especially in the used vehicle market segment.[12]

Other consumer credit is the second-largest type of financing provided by finance companies. This category consists mainly of closed-end sales credit for other (nonvehicle) consumer goods, cash loans, and student loans. Finance companies held $233 billion of such credit, which accounted for 14 percent of industry assets. The industry also held about $26 billion of revolving consumer credit, which was just 2 percent of industry assets.

At $219 billion, business equipment financing was the third-largest type of financing. It accounted for 13 percent of industry assets in 2015 and a little more than one-half of the industry's nonmortgage business assets. Business equipment financing includes loans and leases for diverse equipment such as construction equipment, aircraft, farm equipment, railway cars, computers, and office equipment. Loans accounted for $122 billion (56 percent) of business equipment financing, and leases accounted for $97 billion (44 percent) of business equipment financing. Leases can be classified as either capital leases or operating leases. Capital leases extend over most of the economic life of the asset and are not cancelable by the lessee without penalty. Operating leases are short term and

[12] See Melinda Zabritski (2018) "State of the Automotive Finance Market: A Look at Loans and Leases in Q4 2017," Experian, presentation slides, http://www.experian.com/automotive/automotive-credit-webinar.html.

are cancelable at the option of the lessee. In 2015, 42 percent of business equipment leases were capital leases, and 58 percent were operating leases (numbers not shown in tables).

Finance companies also provide motor vehicle financing to businesses. Wholesale loans finance dealer inventories of commercial and light motor vehicles for sale ($80 billion in 2015). Business retail loans and leases finance vehicle acquisitions by businesses ($15 billion and $9 billion, respectively, in 2015).

Finance companies held $159 billion of real estate debt on their balance sheets in 2015 (10 percent of total assets). Of this amount, $123 billion was mortgages on one- to four-family homes, and $36 billion was mortgages on multifamily housing or commercial real estate.

In total, loans and leases were $1,302 billion in 2015, which was 78 percent of total assets. Non-loan, non-lease assets consist of cash, deposits, securities, and any other assets.

Overall, the finance company industry shrank between 2010 and 2015. In percentage terms, the greatest declines were in business motor vehicle lease financing, revolving consumer credit, other real estate financing, and other consumer credit, all of which are among the generally riskier areas of finance company lending. Finance companies originated many near-prime and subprime loans and closed-end second mortgages before the most recent recession. Licensed small-loan companies provide small high-risk cash loans in many states.[13] Most revolving consumer credit consists of unsecured credit card lending. The financial crisis in 2008 and 2009 and the subsequent recession apparently prompted many lenders to reduce their exposure to riskier forms of credit.[14]

Consumer motor vehicle and business equipment financing were among the types of financing that did not decline. Consumer motor vehicle financing increased $90 billion from 2010 to 2015. Leases contributed strongly to this increase, with 57 percent growth in leases compared to 9 percent growth in motor vehicle loans. Consumer motor vehicle and business equipment financing generally involves secured lending, which tends to reduce risk. Collateral makes defaults costly for borrowers because they lose the asset, and it reduces lenders' losses when borrowers default.[15] Thus, these forms of financing tend to be less risky for the lender than many other types of credit. Finance companies may have increased their reliance on secured lending as a result of a recession that prompted lenders to reduce exposure to riskier types of credit.

The loan and lease share of total assets was just 1 percentage point lower in 2015 compared with 2010.

Regarding their financing, finance companies relied heavily on nonrecourse debt associated with structured financing activities ($648 billion) and notes, bonds, and debentures ($242 billion) to fund their lending activities in 2015 (table 3).[16] Together these sources

[13] See Durkin and others, "State Regulation of Consumer Credit," in note 4.

[14] For evidence on credit card and small consumer finance lending between the second quarter of 2007 and the second quarter of 2012, see Gregory Elliehausen and Simona M. Hannon (2018), "The Credit Card Act and Consumer Finance Company Lending," *Journal of Financial Intermediation*, vol. 34 (April), pp. 109–19.

[15] See Robert J. Barro (1976) "The Loan Market, Collateral, and Rates of Interest," *Journal of Money, Credit and Banking,* vol. 8 (November), pp. 439–56; and Daniel K. Benjamin (1978), "The Use of Collateral to Enforce Debt Contracts," *Economic Inquiry,* vol. 16 (July), pp. 333–59.

[16] Nonrecourse debt associated with structured financing activities is debt that is repaid solely from cash flows on underlying loans or securities. This type of debt arises from asset securitization, loan participation, and other structured financing activities, including liabilities that were brought on balance sheet as a result of Financial Accounting Standard 166 or Financial Accounting Standard 167.

Table 3. Liabilities and net worth of finance companies, 2005, 2010, and 2015

Liability category or net worth	Level ($billion)			Percent change		Share of total assets (percent)		
	2005	2010	2015	2005–2010	2010–2015	2005	2010	2015
Commercial paper	182	99	67	–46	–32	8	5	4
Bank loans	71	92	156	30	70	3	5	9
Nonrecourse debt	n.a.	471	648	n.a.	38	n.a.	25	39
Notes, bonds, and debentures	n.a.	608	242	n.a.	–60	n.a.	32	14
Combined total of nonrecourse debt and notes, bonds, and debentures	*892*	*1,078*	*890*	*21*	*–17*	*42*	*57*	*53*
Debt due to parent company	221	181	157	–18	–13	10	10	9
Other liabilities	512	192	190	–63	–1	24	10	11
Total liabilities	1,878	1,642	1,460	–13	–11	88	88	87
Net worth	264	233	220	–12	–6	12	12	13
Total liabilities and net worth	2,142	1,875	1,680	–12	–10	100	100	100

Note: Components may not sum to totals because of rounding.

n.a. Not available.

Source: Board of Governors of the Federal Reserve System (2005, 2010, and 2015), Survey of Finance Companies (Washington: Board of Governors).

accounted for more than one-half of total liabilities and net worth. Equity (net worth) was $220 billion, which was 13 percent of total liabilities and net worth in 2015.

Nonrecourse debt increased 38 percent between 2010 and 2015. The increase reflects recovery in capital markets from steep declines following the financial crisis and recession. Bank loans also increased, up 70 percent from 2010. The equity share of liabilities and net worth in 2015 was not much different from its share in 2010 or 2005.

Although still an important large source of funds, traditional sorts of borrowing through notes, bonds, and debentures (14 percent of total liabilities and net equity in 2015) declined 60 percent between 2010 and 2015. Short-term commercial paper, a relatively small source of funds following the financial crisis and recession (4 percent of total liabilities and net worth in 2015), fell 32 percent between 2010 and 2015.

Financial Characteristics of Different Specialized Types of Finance Companies

The finance company industry provides a wide variety of credit and lease products, which tend to be offered by specialized firms: Nearly all finance companies hold most of their assets in one specific type of credit.[17] Consumer lenders were the most numerous specialist finance company. In 2015, 68 percent of finance companies were consumer lending specialists, 17 percent were real estate lending specialists, and 13 percent were business lending specialists (numbers not shown in tables). Only a very small percentage (2 percent) of finance companies can be characterized as diversified broadly across different types of financing. In the tables that follow, diversified firms are not included because statistics derived from such a small sample are not reliable.

[17] Respondents self-defined their specialization in the 2005 Census of Finance Companies. The 2010 and 2015 censuses defined specialization as having 50 percent or more of assets in consumer, real estate, or business loans and leases. All three censuses also provided respondents with a "no specialization" choice.

Table 4. Asset shares by type of financing and specialization of lender, 2005, 2010, and 2015

Type of financing	Share of total assets (percent)		
	2005	2010	2015
Consumer lender			
Consumer	84	79	79
Real estate	1	4	1
Business	5	8	10
Total loans and leases	90	90	90
Real estate lender			
Consumer	1	16	2
Real estate	71	59	74
Business	2	7	2
Total loans and leases	73	82	78
Business lender			
Consumer	2	8	2
Real estate	<0.5	9	1
Business	73	49	84
Total loans and leases	75	66	86

Note: Components may not sum to totals because of rounding.
Source: Board of Governors of the Federal Reserve System (2005, 2010, and 2015), Survey of Finance Companies (Washington: Board of Governors).

Overall, specialist finance companies held far more than one-half of their assets in their specialty type of financing. Consumer lenders held 79 percent of assets in consumer loans and leases in 2015 (table 4). Their share of consumer loans and leases is unchanged from 2010 and only a bit smaller than in 2005. Consumer lenders' real estate lending share in 2015 was small and not much different from previous years. Their business loans and leases share was 10 percent of assets in 2015, up from 5 percent of assets in 2005.

Real estate lenders held 74 percent of their assets in real estate loans in 2015. This share is higher than the share of real estate lending in 2010, but not much different from the share of real estate lending in 2005. The lower real estate share in 2010 may be a reflection of the slow recovery of real estate lending following the 2007–09 recession. Consumer lending accounted for a much larger share of assets in 2010 (16 percent of assets) than in 2005 (1 percent) and 2015 (2 percent).

Business loans and leases made up 84 percent of business lenders' assets in 2015, which accounted for nearly all of business lenders' loans and leases. Consumer loans and leases and real estate loans were a negligible share of business lenders' assets.

The remainder of this section discusses financial characteristics (firm size, balance sheets, and income statements) of consumer, real estate, and business lenders in 2015.

Distribution of Firms

For each type of specialization, most lenders had less than $10 million of assets. Consumer lenders had the largest share of small firms: 61 percent of consumer lenders had less than $1 million of assets, and another 32 percent had between $1 million and $10 million of assets (table 5). By contrast, 27 percent of business lenders had less than $1 million of assets, and 33 percent had between $1 million and $10 million of assets. For real estate lenders, a little more than one-half had $10 million or less of assets (37 percent had less than $1 million of assets, and 17 percent had

Table 5. Percentage distribution of finance companies by asset size and specialization of lender, 2015

Asset size (dollars)	Type of finance company		
	Consumer	Real estate	Business
Less than 1 million	61	37	27
1–10 million	32	17	33
10–100 million	5	36	18
100 million–1 billion	1	8	17
1–20 billion	<0.5	2	4
20 billion or greater	<0.5	<0.5	1
Total	100	100	100

Note: Components may not sum to totals because of rounding.
Source: Board of Governors of the Federal Reserve System (2015), Census of Finance Companies (Washington: Board of Governors).

Table 6. Asset shares by type of finance company, 2015
(Percent of total assets)

Asset category	Type of finance company		
	Consumer	Real estate	Business
Consumer			
Motor vehicle loans	31	2	<0.5
Motor vehicle leases	20	<0.5	<0.5
Revolving	3	<0.5	1
Other	26	<0.5	1
Subtotal	79	2	2
Real estate			
1–4 family	1	63	<0.5
Other	1	12	<0.5
Subtotal	1	74	1
Business			
Motor vehicles	9	<0.5	6
Retail loans	1	<0.5	2
Wholesale loans	8	<0.5	3
Leases	<0.5	<0.5	2
Equipment	<0.5	<0.5	58
Loans	<0.5	<0.5	34
Leases	<0.5	<0.5	24
Other	1	1	19
Subtotal	10	2	84
Total loans and leases	**90**	**78**	**86**

Note: Components may not sum to totals because of rounding.
Source: Board of Governors of the Federal Reserve System (2015), Survey of Finance Companies (Washington: Board of Governors).

between $1 million and $10 million of assets).

Regardless of type, relatively few finance companies were large. Among the types of specialist companies, business lenders had the greatest percentage of large firms, with 5 percent of firms having assets of $1 billion or more.

Balance Sheets for Specialized Lenders

As previously mentioned, almost all finance companies are specialized lenders. Table 6 provides more detailed information on the extent of specialization in 2015. The most common forms of financing provided by consumer lenders were motor vehicle loans and leases (31 percent and 20 percent of assets, respectively). Other consumer credit accounted for 26 percent of assets and consists of various types of closed-end credit. This category includes installment cash loans, some nonvehicle sales credit, and small, single-payment loans (principally pawn, payday, and auto title lenders). Consumer lenders' nonconsumer lending consists largely of business wholesale loans (8 percent of assets) financing dealers' inventories of motor vehicles. Consumer finance companies did not provide much revolving credit. Revolving consumer credit amounted to just 3 percent of assets. All other types of business financing and mortgage loans collectively were only a very small percentage of assets.

Real estate lenders held mostly household real estate loans on their balance sheets (63 percent of assets). Commercial real estate holdings accounted for a small percentage of assets of real estate lenders (12 percent of assets). Asset shares of consumer loans and business loans at real estate lenders were inconsiderable.

Business lenders' financing activities consisted mostly of business equipment loans and leases (58 percent of assets). Their other business offerings—wholesale loans and retail motor vehicle loans and leases—were a small share of assets (6 percent).[18] Shares of consumer loans and leases and real estate loans were inconsiderable.

Table 7 shows that finance companies' funding of lending activities varies by specialization. Consumer lenders rely heavily on debt capital markets. Nonrecourse loans associated with structured financing activities provided nearly one-half of their funding (44 percent of total

[18] This percentage does not include wholesale loans or retail business vehicle loans and leases of most vehicle manufacturers' captive finance companies. Vehicle manufacturers' captive finance companies are typically classified as consumer finance companies, as the majority of their assets are consumer loans and leases.

liabilities and net worth) in 2015. Notes, bonds, and debentures—the second-largest source of funds—accounted for 21 percent of total liabilities and net worth. Banks were a small source of funds for consumer lenders (7 percent). Equity was 10 percent of total liabilities and net worth.

Real estate lenders also relied on debt markets for financing but obtained substantial funding from banks as well. Twenty percent of their funds was from nonrecourse loans, and 19 percent was from notes, bonds, and debentures. The bank loan share was 20 percent. Owners' equity was 19 percent of total liabilities and net worth.

Table 7. Liability and net worth shares by type of finance company, 2015
(Percent of total assets)

Liability category or net worth	Type of finance company		
	Consumer	Real estate	Business
Commercial paper	5	1	6
Bank loans	7	20	17
Nonrecourse debt	44	20	20
Notes, bonds, and debentures	21	19	7
Debt due to parent company	7	13	18
Other liabilities	6	9	18
Total liabilities	90	81	85
Net worth	10	19	15
Total liabilities and net worth	100	100	100

Note: Components may not sum to totals because of rounding.
Source: Board of Governors of the Federal Reserve System (2015), Survey of Finance Companies (Washington: Board of Governors).

Business lenders relied less on debt markets than consumer or real estate lenders. They obtained 20 percent of their funds from nonrecourse debt and 7 percent from notes, bonds, and debentures. Loans from banks and from parent companies accounted for large shares of their funding (17 percent and 18 percent, respectively). Owners' equity accounted for 15 percent of total liabilities and net worth.

Income Statements for Specialized Lenders

Finance Charges and Operating Expenses

Finance charges differ widely across the different specialized finance companies. Finance charges of mortgage lenders, at $20 per $100 of outstanding credit, were nearly 60 percent larger than those of consumer lenders and just under 2¼ times greater than those of business lenders (table 8). The large variation in finance charges among consumer, real estate, and business lenders in large part reflects their differences in operating costs.[19] For example, real estate lenders' operating costs were 83 percent of gross revenue compared with about 50 percent of revenue for consumer and business lenders. Salary and wages ($8.65 per $100 of outstanding credit) accounted for 43 percent of gross revenue. The relatively high salary and wage share of real estate lenders' finance charges may be attributed at least in part to a labor-intensive, comprehensive underwriting process and extensive documentation requirements for mortgage loans.[20]

[19] As this article is concerned with coverage of costs by revenue, the term "finance charge" as used here includes charges for ancillary products such as credit insurance sold in conjunction with the credit. This treatment of ancillary products differs from that in disclosure regulation, which is concerned with the price of credit and includes in the finance charge only those costs associated with the credit.

[20] Comparisons of finance companies with banks are difficult because banks are multiproduct firms and do not account for costs separately for each product. Cost accounting data for consumer lending at banks are available from the Federal Reserve System's Functional Cost Analysis Program through 1999, when it was discontinued. Data for 1999 indicate that gross revenue per $100 of outstanding credit for consumer lending at banks was about one-half that of finance companies. The difference can be attributed largely to differences in risk. Operating expenses for consumer lending at banks were 45 percent of gross revenue. For further discussion, see Thomas A. Durkin, Gregory Elliehausen, Michael E. Staten, and Todd J. Zywicki (2014), "The Supply of Consumer Credit," chapter 5 in *Consumer Credit and the American Economy* (New York: Oxford University Press), pp. 173–240.

Strict credit standards and comprehensive underwriting produced relatively low loan losses and additions to loss reserves for real estate lenders, at $0.82 per $100 of outstanding credit (4 percent of finance charges). Business lenders specialize in business equipment loans and leases, which are generally secured by the equipment being financed. Thus, their loan losses and additions to loss reserves were relatively small.

Table 8. Revenue, costs, and profitability by type of finance company, 2015

Item	Type of finance company		
	Consumer	Real estate	Business
Dollars per $100 of outstanding credit			
Gross revenue (finance charges)	12.56	20.00	8.92
Total operating costs	6.54	16.60	4.42
Salaries and wages	1.62	8.65	1.16
Losses/additions to loss reserves	1.60	0.82	0.42
Other operating costs	3.33	7.14	2.85
Operating income	6.01	3.40	4.49
Cost of borrowed funds	2.26	2.69	1.58
Before-tax income	3.76	0.71	2.92
Percent of gross revenue			
Gross revenue (finance charges)	100	100	100
Total operating costs	52	83	50
Salaries and wages	13	43	13
Losses/additions to loss reserves	13	4	5
Other operating costs	27	36	32
Operating income	48	17	50
Cost of borrowed funds	18	13	18
Before-tax income	30	4	33
Rate of return			
Operating return on assets	5	3	4
Before-tax return on assets	3	1	3

Note: Components may not sum to totals because of rounding.
Source: Board of Governors of the Federal Reserve System (2015), Survey of Finance Companies (Washington: Board of Governors).

Consumer lenders provide both secured and unsecured financing. Motor vehicle loans generally are secured by assets that have effective markets for used vehicles. Personal finance and other nonvehicle closed-end installment loans may be unsecured or secured by collateral that does not have a well-developed secondary market. Lenders that provide single-payment loans (pawn, payday, and auto title loans) provide short-term credit to consumers who otherwise might not be able to obtain additional credit. Because of the presence of risky personal loan companies and single-payment lenders, loan losses and additions to loss reserves of consumer lenders were relatively high. The next section provides further evidence of operating costs and risks in consumer lending, focusing on two types of consumer lenders—lenders that specialize in motor vehicle loans and leases, and lenders that specialize in personal loans.

Funding Costs

Among the specialized finance companies, real estate lenders had the highest funding costs, $2.69 per $100 of outstanding credit, compared with $2.26 for consumer lenders and $1.58 for business lenders. However, because they had relatively high gross revenue and operating costs, real estate lenders' funding costs were a smaller percentage of gross revenue (13 percent) than those of consumer lenders (18 percent) or business lenders (18 percent).

Profitability

Despite considerable differences in gross revenue, operating return on assets, an indicator of the efficiency in generating income from assets, did not differ much across the three types of lenders. Before-tax return on assets did not vary either.

Major Types of Consumer Lenders: Auto Lenders and Personal Loan Companies

This section compares income statements of two different types of consumer lenders—auto lenders and personal loan companies—that historically have been and continue to be major

participants in the finance company industry. The revenue and costs of these two types of consumer lenders reflect the product differences in auto and personal lending.

Auto lenders, defined here as consumer lenders having more than 50 percent of assets in consumer motor vehicle loans and leases, include not only the captive finance companies of vehicle manufacturers, but also many independent finance companies. The captive finance companies primarily purchase paper originated by dealers and account for about one-half of new vehicle financings. Independent finance companies finance a large share of used vehicle acquisitions.[21] As mentioned earlier, vehicle loans typically are secured by the vehicle being acquired.

Personal loans are closed-end installment cash loans, which are often extended by companies that operate under state small-loan laws. Personal loan companies are defined here as consumer lenders that have more than 50 percent of assets in other (nonvehicle) consumer credit and do not make pawn, payday, or auto title loans.[22] Personal loan companies ordinarily do not offer single-payment loans. Lenders specializing in student loans or mobile-home loans also are not included. Some firms in the personal loan company category may have significant nonvehicle sales finance shares. Such firms have for a long time also made direct cash loans, however. Their presence has declined as revolving credit has increasingly substituted for closed-end credit for financing consumers' nonvehicle durables acquisitions.[23] Personal loans are often unsecured.

Finance charges for auto lenders, $14.65 per $100 of outstanding credit, were about one-half of the finance charges for personal loan companies, $29.20 (table 9). Low operating costs at auto lenders can be attributed at least in part to the prevalence of sales finance in auto lending. Some auto lenders—notably the large captive finance companies of vehicle manufacturers but also many independent finance companies—purchase loans originated by auto dealers. The dealers handle many of the activities neces-

Table 9. Revenue, costs, and profitability of auto lenders and personal loan companies, 2015

Item	Type of consumer installment lender	
	Auto lender	Personal loan company
Dollars per $100 of outstanding credit		
Gross revenue (finance charges)	14.65	29.20
Total operating costs	6.96	20.82
Salaries and wages	1.47	8.81
Losses/additions to loss reserves	1.49	5.88
Other operating costs	4.00	6.13
Operating income	7.69	8.38
Cost of borrowed funds	2.79	2.28
Before-tax income	4.90	6.10
Percent of gross revenue		
Gross revenue (finance charges)	100	100
Total operating costs	47	71
Salaries and wages	10	30
Losses/additions to loss reserves	10	20
Other operating costs	27	21
Operating income	53	29
Cost of borrowed funds	19	8
Before-tax income	33	21
Rate of return		
Operating return on assets	7	8
Before-tax return on assets	4	6

Note: Components may not sum to totals because of rounding.
Source: Board of Governors of the Federal Reserve System (2015), Survey of Finance Companies (Washington: Board of Governors).

[21] See Zabritski, "State of the Automotive Finance Market," in note 12.

[22] Payday lenders in several states are required to offer installment loans under specified circumstances (usually after a specified number of loans or renewals), and in the face of regulatory pressure some payday lenders have begun to offer installment loans. A few auto-title lenders offer fully amortizing auto-title loans as well as typical single-payment loans.

[23] See Thomas A. Durkin, Gregory Elliehausen, Michael E. Staten, and Todd J. Zywicki (2014), "Introduction and Overview of Consumer Credit: Development, Uses, Kinds, and Policy Issues," chapter 1 in *Consumer Credit and the American Economy* (New York: Oxford University Press), pp. 1–33.

sary to originate loans or leases.[24] Dealers' employees respond to questions about financing, take applications, and prepare loan documents. Low salary and wage expenses ($1.47 per $100 of outstanding credit, or 10 percent of revenue) are consistent with auto finance companies avoiding much of the origination cost on purchased auto contracts. Finance companies operating in this manner also do not incur the expense of maintaining large numbers of retail branches to acquire loans and leases. In addition, taking security interest may also contribute to auto finance companies' willingness to accept relatively low finance charges. Auto loans are typically secured by liens on financed vehicles. Lenders' security interest offsets losses on defaulted loans, and the prospect of losing the vehicle in the event of default reinforces borrowers' incentive to repay as promised.[25] These considerations help explain relatively low losses and additions to loss reserves for these companies ($1.49 per $100 of outstanding credit, or 10 percent of finance charges).

Personal loan companies' relatively high finance charges can largely be attributed to their loans' high risk and small dollar amount. Many loans made by these lenders are unsecured (small cash loans, for example). Others are secured by household durables being financed that have little resale value and therefore do little to offset losses (sales finance). Borrowers from firms that make small cash loans often have had previous credit problems. Instead of relying on collateral, these companies work with borrowers to arrange loans with relatively low monthly payments, which borrowers can afford to pay with ease. Yet despite such arrangements, delinquencies are common in this market segment.[26] Origination and collections are labor intensive, giving rise to relatively high salary and wage expenses (30 percent of finance charges). Losses and additions to loss reserves, $5.88 per $100 of credit outstanding (20 percent of finance charges), are markedly higher for personal loan companies than for auto lenders, suggesting the higher risk in this segment. Finally, many of the activities performed to originate loans, process payments, and collect delinquent accounts occur because an application is taken or credit is granted and do not vary much by loan size. Consequently, finance charges must be large relative to loan size to cover lenders' costs and provide a return on investors' funds.

Trends in Revenue, Cost, and Performance at Personal Finance Companies

Statistics in the previous sections indicated that revenues and costs differ by the type of finance company. In this section, we examine revenues and costs for finance companies that specialize in personal loans (that is, non-auto closed-end consumer installment lending). This type of finance company likely is similar to consumer finance companies examined in earlier studies. In both categories, cash loans are the primary type of loan, but these firms also held some sales finance contracts.

As previously mentioned, historical income statement data are available from studies by Paul Smith and the AFSA. Smith examined costs at nine large, nationwide consumer finance companies in the 1940s and 1950s. These companies held about 70 percent of the Federal Reserve's estimate of the loans outstanding at consumer finance companies at the end of 1959. The companies operated primarily under state small-loan laws, but most also purchased sales finance contracts or made loans under other state laws.

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[24] To compensate dealers for these activities, dealers receive a share of finance charges. Dealers' share of finance charges is not included in finance companies' gross revenue in table 8.

[25] See Barro, "The Loan Market, Collateral, and Rates of Interest," in note 15 or Benjamin, "The Use of Collateral to Enforce Debt Contracts," in note 15.

[26] For further discussion of personal loan companies' operations, see Durkin and others, "The Supply of Consumer Credit," in note 20.

The AFSA surveyed member companies in the 1960s, 1970s, and 1980s. Member companies included both sales finance and consumer finance companies. At the end of the 1980s, the AFSA survey accounted for about 90 percent of the Federal Reserve's estimate of outstanding credit at finance companies. Because asset diversification had increasingly blurred distinctions between sales finance and consumer finance, by the 1980s the AFSA no longer distinguished between the two types of finance companies in its reports. However, the reports did produce separate statistics for firms with 50 percent or more of receivables in personal loans. As previously noted, personal loans at finance companies typically are cash loans made under state small-loan laws. In selecting data for firms that have 50 percent or more of receivables in personal loans, we have a category that is roughly comparable with Smith's consumer finance and our non-auto closed-end consumer installment categories. Nevertheless, the possibility that AFSA members in the sample are not representative of the population of finance companies cannot be ruled out.

Revenue in 2015, $29.20 per $100 of outstanding credit, was noticeably higher than in previous years (table 10). Operating cost in 2015, $20.82 per $100 of outstanding credit, was also higher than in previous years. However, operating income in 2015, $8.38 per $100 of outstanding credit, was lower than in previous years. Operating return on assets, a measure of profitability relating operating income to a firm's assets, was about the same as in previous years.

Salaries and wages as well as losses and additions to loss reserves contributed to the higher operating costs in 2015. Losses and additions to loss reserves in 2015, $5.88 per $100 of outstanding credit, were several times the $1 or $2 per $100 for losses and additions to loss reserves in previous years. Salaries and wages in 2015 were a little more than one-third higher than in 1959 but nearly three times higher than in 1983 and 1987.

Greater risk may at least in part explain greater finance charges and losses and additions to loss reserves in 2015. Rapid inflation in the late 1970s and 1980s pushed interest rates to rate ceilings and severely restricted the supply of credit, especially for higher-risk consumers.[27]

Table 10. Trends in revenue, costs, and profitability of personal loan companies, 1959, 1983, 1987, and 2015

Item	Year			
	1959	1983	1987	2015
Dollars per $100 of outstanding credit				
Gross revenue (finance charges)	23.87	23.31	18.88	29.20
Total operating costs	14.25	11.40	8.69	20.82
Salaries and wages	6.45	3.35	2.97	8.81
Losses/additions to loss reserves	1.98	1.37	2.12	5.88
Other operating costs	5.82	6.67	3.61	6.13
Operating income	9.62	11.92	10.18	8.38
Cost of borrowed funds	3.97	7.65	6.90	2.28
Before-tax income	5.65	4.27	3.28	6.10
Percent of gross revenue				
Gross revenue (finance charges)	100	100	100	100
Total operating costs	60	49	46	71
Salaries and wages	27	14	16	30
Losses/additions to loss reserves	8	6	11	20
Other operating costs	24	29	19	21
Operating income	40	51	54	29
Cost of borrowed funds	17	33	37	8
Before-tax income	24	18	17	21
Rate of return				
Operating return on assets	9	9	10	8
Before-tax return on assets	5	3	3	6

Note: Components may not sum to totals because of rounding.

Source: For 1959 data, Paul F. Smith (1964), *Consumer Credit Costs, 1949–59,* National Bureau of Economic Research, Studies in Consumer Instalment Financing No. 11 (Princeton, N.J.: Princeton University Press); for 1983 data, Thomas A. Durkin and Ysabel M. Burns (1984), *Finance Companies in 1983: American Financial Services Association Research Report and Second Mortgage Lending Report* (Washington: AFSA); for 1987 data, Ysabel Burns McAleer (1988), *Finance Companies in 1987: American Financial Services Association Research Report and Second Mortgage Lending Report* (Washington: AFSA); for 2015 data, Board of Governors of the Federal Reserve System (2015), Survey of Finance Companies (Washington: Board of Governors).

[27] See Donna C. Vandenbrink (1982), "The Effects of Usury Ceilings," Federal Reserve Bank of Chicago,

This development reduced risky lending in the short run, but eventually some states relaxed ceilings to make credit more broadly available. As inflation subsided and interest rates fell to lower levels, higher-rate ceilings in those states that raised ceilings would enable greater lending to risky consumers.

Regardless of year, salaries and wages were a major component of costs, accounting for about 15 percent of gross revenue per $100 of outstanding credit in 1983 and 1987 and around 30 percent of gross revenue in 1959 and 2015. Greater risk might help explain the higher salaries and wages in 2015. The tasks of evaluating applications, arranging loan terms that fit risky applicants' budgets, collecting late payments, and negotiating refinancing of existing loans would be especially labor intensive and costly relative to the size of the loan.

High rates of inflation had a sizable effect on funding costs in the 1980s. The cost of borrowed funds was 17 percent of gross revenue in 1959, 33 percent of gross revenue in 1983, and 37 percent of gross revenue in 1987. In contrast, funding costs did not account for much of gross revenue in the recent low-rate environment. The cost of borrowed funds was just 8 percent of gross revenue in 2015.

Operating return on assets did not differ much in these years. Reflecting higher cost of funds in the 1980s, before-tax income to assets was lower in 1983 and 1987 than in 1959 or 2015.

Appendix: Historical Survey Practices, Recent Innovations, and Current Procedures

Through 1975, the known universe of finance companies was surveyed. In 1980, to reduce reporting burden, the survey was split into two parts. The first part was a brief screening census used to identify the known universe of finance companies. The second part was a longer follow-up survey used to obtain balance sheet data from companies identified in the census stage.

In 1983, the Federal Reserve created the monthly Domestic Finance Company Report of Consolidated Assets and Liabilities (DFCR). The DFCR collects data from a smaller sample of companies but does so more frequently to better follow emerging trends. As with many surveys based on a fixed sample, estimation errors tend to increase over time and require periodic calibration. These errors reflect the evolution of the financial markets as new companies enter the market and market shares change as well as the deterioration of the monthly sample panel as respondents close, merge, or otherwise leave the panel. The Federal Reserve has used the quinquennial survey data to benchmark the monthly sample data.

In 2005, the definition of a finance company was revised to encompass companies whose largest portion of assets was made up of real estate loans. This change effectively brought mortgage companies into the universe. Furthermore, the survey was revised to instruct finance companies to include the assets and liabilities of their mortgage company subsidiaries.

Economic Perspectives, vol. 6 (Midyear), pp. 44–55, https://fraser.stlouisfed.org/files/docs/historical/frbchi/economicperspectives/frbchi_econper_1982midyear.pdf; Donna C. Vandenbrink (1985), "Usury Ceilings and DIDMCA," Federal Reserve Bank of Chicago, *Economic Perspectives,* vol. 9 (September/October), pp. 25–30, https://www.chicagofed.org/publications/economic-perspectives/1985/september-october-vandenbrink.

Survey Methodology Modernization in 2010

In 2010, the quinquennial survey underwent a major revision. The survey sampling procedures and instruments were redesigned to improve coverage of the population, increase survey participation, develop systematic means of addressing nonresponse, and reduce reporting errors.[28]

For the purposes of this survey, the target population is the set of domestically operated finance companies, defined as entities that have at least 50 percent of total assets in loans or leases to consumers or businesses. However, entities cannot be a government agency, a nonprofit organization, a cooperative, a bank, a bank holding company, a credit union, part of the farm credit system, or a real estate investment trust. Structurally, they can be a subsidiary of a bank holding company but not a subsidiary of a bank or a finance company.

In the past, the absence of a comprehensive list of finance companies was a key challenge to the survey. The regulation of finance companies is fragmented at the federal and state levels, and no administrative or comprehensive data are publicly available to serve as a sample frame for finance companies. Therefore, the Federal Reserve developed a procedure for identifying eligible finance companies within a list frame obtained primarily from commercial vendors and, to a lesser degree, from other internally available sources. The list was broad and comprehensive, with the intention of including all nondepository companies that provided credit to households or businesses.

The survey instruments were redesigned in 2010 following modern form design principles.[29] The intention of the redesign was to provide more visual appeal via the use of color and an attractive font. Embedded instructions and the grouping of related questions were added to make the survey easier to follow.

The titles of the two stages of the quinquennial survey were changed to "Census of Finance Companies" and "Survey of Finance Companies" to clearly define the nature of each stage. To mirror the flow of identifying a finance company, several questions on the census were restructured as a decision tree rather than asking respondents to self-identify. Revisions to the second stage of the survey were composed of the following: reordering assets and liability data items from most liquid to least liquid; asking for additional detail on assets and liabilities; and creating a clearer distinction among the broad balance sheet data items, detailed loan and lease data items, and off-balance-sheet securitization data items. In an attempt to improve participation, an online response option was offered in addition to the traditional choice of mailing the paper form.

Responses to the first stage of the survey revealed that the sample frame contained a complex tangle of often interrelated companies. As a result, a new statistical methodology was developed for the nonresponse follow-up study to better characterize and account for the patterns observed as well as the substantial nonresponse that did not appear to be missing at random. Results of the study showed that the size of the universe of finance companies was smaller than what would have been estimated from the original respondents if it was assumed that missing observations were distributed in the same way as the initial respondents.

[28] Arthur Kennickell was instrumental in the work of modernizing the survey methodology.

[29] See Don A. Dillman, Arina Gertseva, and Taj Mahon-Haft (2005), "Achieving Usability in Establishment Surveys through the Application of Visual Design Principles," *Journal of Official Statistics,* vol. 21 (June), pp. 183–214.

Updates in 2015

The 2015 quinquennial survey is the most recent of the five-year benchmark surveys. We introduced new questions in the Census of Finance Companies for finding detailed types of credit offered by finance companies. Questions about the income statement, scale of company operations, and small business credit were added to the Survey of Finance Companies. Postcard reminders were sent after each of the two paper form mailings. In contrast to historical practices, to further encourage participation, preliminary results from the Census of Finance Companies were mailed along with the Survey of Finance Companies to survey recipients.

Assembling a sample frame that best suits the complex definition of a finance company remains challenging. Following the method for constructing the sample frame adopted in 2010, we included five Standard Industrial Classification (SIC) codes to capture companies with at least some financing operation as follows: 5932, 6099, 6141, 6153, and 6159. This approach reflected the further expansion of the sample frame to incorporate pawnbrokers and check-cashing services for the 2015 quinquennial survey. Data collected under the Home Mortgage Disclosure Act were used to supplement the list of mortgage lenders. Overall, the Census of Finance Companies was mailed to approximately 37,000 companies in June 2015 to capture basic financial information as of March 31, 2015. The Survey of Finance Companies was sent to more than 2,300 eligible finance companies in March 2016 to obtain detailed balance sheet and income statement data as of December 31, 2015. About 41 percent of these finance companies responded, and attempts were made to contact and collect data from all nonrespondents.

Similar to survey activities in previous years, the 2015 quinquennial survey faced multiple challenges. These challenges were partly due to the unique nature of this survey, partly due to the imperfect sample frame, and partly due to the reluctance of many companies surveyed. The quinquennial survey aimed to collect data from business entities, but its voluntary nature further compounded the difficulty of improving survey participation. Maintaining and improving the existing participation rate remains a high priority for future surveys.

Taking into account the complex and interrelated nature of the finance company universe, we continued to utilize the statistical methodology developed in 2010 for the nonresponse follow-up to the Census of Finance Companies. We split the follow-up sample of approximately 4,000 observations into two major parts: one part focused on a sample of observations in candidate cluster arrangements primarily based on very similar or identical company names, and the other part focused on the remaining unclustered cases. Outreach and contacts were attempted by Federal Reserve Bank staff members to collect enough information to determine whether any of these observations were in-scope finance companies.

Analysis weights were created for companies included in the nonresponse follow-up sample to represent the nonrespondents. We started with a base weight that is the inverse of a company's inclusion probability in the sample. We then adjusted the base weight in a multistage process to account for the following: the probability that some of the nonrespondents to the follow-up were still in business; the probability that the company had at least 50 percent of its assets in loans or leases, given that it was in business; and, finally, the probability that it was an independent finance company, not a subsidiary or a branch of a related finance company. Each follow-up respondent's weight not only constitutes its directly estimated share in the population, but also the share of the nonrespondents to the follow-up that were most similar to the follow-up respondent.

We thoroughly reviewed the data that were collected in both the Census of Finance Companies and the Survey of Finance Companies. More data editing was needed for the latter survey, which included a greater number of, and more complex, questions. Many respondents reported responses in dollars instead of in thousands of dollars as requested. Less than one-half of the responses (42 percent) did not report balanced balance sheet or income statements, and some required follow-up to clarify and correct reporting errors.

One last step before estimating the universe of finance companies was addressing the issue of missing items. We used a type of randomized hot deck multiple imputation. This method involves creating classes of respondents based on data that are available for all respondents and randomly matching a "donor" respondent who has complete information with a "recipient" respondent. The process was repeated five times to enable estimation of the uncertainty surrounding this imputation.[30]

[30] See Donald B. Rubin (1987), *Multiple Imputation for Nonresponse in Surveys* (New York: Wiley).

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Legal Developments: Second Quarter, 2018

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Independent Bank Group, Inc.
McKinney, Texas

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2018-11 (May 02, 2018)

Independent Bank Group, Inc. ("IBG"), McKinney, 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 Integrity Bancshares, Inc. ("Integrity"), and thereby indirectly acquire Integrity Bank SSB ("Integrity Bank"), both of Houston, Texas. Following the proposed acquisition, Integrity Bank would be merged into IBG's subsidiary bank, Independent Bank, McKinney, Texas.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 2988 (January 22, 2018)).[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.

IBG, with consolidated assets of approximately $8.7 billion, is the 147th largest insured depository organization in the United States.[5] IBG controls approximately $6.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. IBG controls Independent Bank, which has operations in Texas and Colorado. IBG is the 17th largest insured depository organization in Texas, controlling deposits of approximately $6.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[6]

Integrity, with consolidated assets of approximately $759.3 million, is the 978th largest insured depository organization in the United States. Integrity controls approximately $639.7 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Integrity

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Integrity Bank into Independent Bank, which is expected to occur immediately after IBG's acquisition of Integrity, is subject to approval of the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act. *See* 12 U.S.C. § 1828(c).

4 12 CFR 262.3(b).

5 National deposit, market share, asset, and ranking data are as of December 31, 2017, unless otherwise noted.

6 State deposit, market share, and ranking data are as of June 30, 2017. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

controls Integrity Bank, which operates only in Texas. Integrity is the 95th largest insured depository organization in Texas, controlling deposits of approximately $648.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, IBG would become the 138th largest insured depository organization in the United States, with consolidated assets of approximately $9.5 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. IBG would control consolidated deposits of approximately $7.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. IBG would become the 15th largest insured depository organization in Texas, controlling deposits of approximately $6.9 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]

IBG and Integrity have subsidiary depository institutions that compete directly in the Houston, Texas banking market ("Houston market").[9] 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 of insured depository institutions in the market ("market deposits") that IBG would control;[10] the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index ("HHI") under the U.S. Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[11] and other characteristics of the market.

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7 12 U.S.C. § 1842(c)(1).

8 12 U.S.C. § 1842(c)(1)(B).

9 The Houston market is defined as the Houston-Sugarland-Baytown Metropolitan Statistical Area ("MSA"), which includes Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller Counties, all in Texas.

10 Local deposit and market share data are as of June 30, 2017, and, unless otherwise indicated, 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).

11 Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19,2010), 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 Houston market. On consummation of the proposal, the Houston market would remain highly concentrated, as measured by the HHI. The change in the HHI in this market would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in the market.[12]

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 Houston market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Houston 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.[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 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.

IBG and Independent Bank 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 funded primarily through an exchange of shares, with a subsequent merger of the subsidiary depository institutions.[14] The asset quality, earnings, and liquidity of both Independent Bank and Integrity Bank are consistent with approval, and IBG appears to have adequate resources to absorb the related costs of the proposal

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[12] IBG operates the 24th largest depository institution in the Houston market, controlling approximately $1.0 billion in deposits, which represent less than 1 percent of market deposits. Integrity operates the 29th largest depository institution in the same market, controlling approximately $648.4 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBG would become the 16th largest depository organization in the market, controlling deposits of approximately $1.7 billion, which represent less than 1 percent of market deposits. There would be no increase in the HHI, and 94 competitors would remain in the market.

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

[14] At the time of the merger, each share of Integrity common stock would be converted into a right to receive IBG common stock and cash, based on an exchange ratio. IBG would fund the cash portion of the exchange through available cash. IBG has the financial resources to effect the proposed transaction.

and to complete the integration of the institutions' operations. In addition, 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 IBG, Integrity, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by IBG; 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.

IBG, Integrity, and their subsidiary depository institutions are each considered to be well managed. IBG has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of IBG have substantial knowledge of and experience in the banking and financial services sectors, and IBG's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered IBG's plans for implementing the proposal. IBG 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. IBG would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, IBG's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all of the facts of record, including IBG'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 IBG and Integrity 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 they serve, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, 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").[16] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' 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

[15] 12 U.S.C. § 1842(c)(2).
[16] 12 U.S.C. § 2901 *et seq*.
[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 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 of the facts of record, including reports of examination of the CRA performance of Independent Bank and Integrity Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by IBG; and the public comment received on the proposal.

Public Comment on the Proposal

In this case, a commenter objected to the proposal, alleging that Independent Bank has engaged in redlining in Dallas and Houston, Texas.[19] Specifically, the commenter alleged that Independent Bank disfavors certain African American neighborhoods in Dallas and Houston and has limited its lending, marketing activities, community development activities, and branching in those areas.

Business of the Involved Institutions and Response to the Public Comment

IBG and Independent Bank offer a range of financial products and services to individual customers and businesses. Through its network of 70 branches, Independent Bank offers various deposit products and lending services to consumers and businesses, including certificates of deposits, money market accounts, commercial checking accounts, commercial and consumer loans, residential mortgages, home equity loans, and commercial real estate lending. Integrity Bank provides a range of banking services through its four branches, with a focus on commercial banking. Integrity Bank offers its customers deposit products and lending services and also conducts residential mortgage operations.

In response to the comment, IBG and Independent Bank deny the commenter's allegations. They represent that Independent Bank's branch network was not structured to avoid serving any potential geographic areas, but instead is largely based upon the locations of the banks that IBG has acquired. They note that all of the banks IBG has acquired over the past five years have had a "Satisfactory" CRA rating, indicating that the banks had a proven record of serving the credit needs of their communities. In addition, IBG represents that it is preparing a strategic branching policy to help monitor Independent Bank's branch network and ensure that Independent Bank has locations that serve all of the communities within its assessment areas ("AAs"). IBG and Independent Bank further represent that they have implemented delivery systems that allow Independent Bank to make its products and services available regardless of the geographic location of its branches. These systems

[18] 12 U.S.C. § 2903.

[19] 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.

include electronic banking products, such as online banking, telephonic and text messaging, debit cards and automated teller machines ("ATMs"), and mobile banking applications. In addition, Independent Bank represents that it has marketed its banking services through established relationships with community leaders and groups, including participating in a program advanced by a consumer advocacy group to establish a low-cost checking account that would alleviate check cashing and money order fees and be marketed toward 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 considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.[20] In this case, the Board considered the supervisory views of the FDIC with respect to both institutions.

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 a lending test to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. This 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"),[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 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. Large institutions also are subject to an investment test that evaluates the number and amounts of qualified investments that benefit their AAs and a service test that evaluates the

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

[21] 12 U.S.C. § 2906.

[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 $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).

availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[24] Intermediate small banks, such as Integrity Bank, are subject to the lending test, as well as a community development test that evaluates the number and amounts 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.[25]

CRA Performance of Independent Bank

Independent Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation, as of August 21, 2017 ("Independent Bank Evaluation").[26] The bank received a "High Satisfactory" rating for the Investment Test and "Low Satisfactory" ratings for the Lending Test and the Service Test.[27] Independent Bank's performance in the Dallas and Houston AAs was weighted most heavily by examiners due to the bank's volume of lending and deposit activity in these areas.

Examiners found that Independent Bank demonstrated good performance regarding its lending activities for home mortgage and small business loans, originated a high percentage of its loans inside its AAs, and demonstrated an overall adequate record regarding its distribution of loans based on geography and the borrower's income level or revenue size. Further, examiners found that Independent Bank was a leader in granting community development loans and demonstrated excellent responsiveness to community needs.

In the Dallas AA, an area of concern to the commenter, examiners found that the bank's geographic distribution of small business loans in low-income census tracts was adequate. With respect to home purchase and home improvement loans, examiners provided limited weight to lending in low-income census tracts given the limited lending opportunities within LMI geographies in the AA. Examiners found, with respect to loan distribution based on business revenue size, that the bank's distribution of small business loans in the Dallas AA reflected good performance. Examiners found that the bank's distribution of loans based on borrower income level was adequate for home purchase mortgages and excellent for home improvement loans. Examiners noted the limited lending opportunities to low-income borrowers relating to the bank's distribution of home purchase loans in the Dallas AA, but examiners found that the bank's distribution of home improvement loans to low-income borrowers reflected excellent performance.

In the Houston AA, the other area of concern to the commenter, examiners found that the geographic distribution of the bank's small business and home mortgage loans reflected adequate performance. Independent Bank's distribution of small business loans based on business revenue size in the AA reflected good performance. Further, while performance relating to home mortgage lending to LMI borrowers in the Houston AA did not reflect

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[24] *See* 12 CFR 228.21 *et seq*.

[25] *See* 12 CFR 228.26(c).

[26] The Independent Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA-reportable and small business loans originated from January 1, 2015, through June 30, 2017. The evaluation period for community development investments was from the date each investment was purchased to August 21, 2017, and the evaluation period for community development loans and services was from September 8, 2014, through August 21, 2017. Independent Bank acquired Carlile Bancshares, Inc., and its subsidiary, Northstar Bank, both of Denton, Texas, on April 1, 2017. Examiners did not consider the newly acquired locations and loans associated with this acquisition as part of their review.

[27] The Independent Bank Evaluation included full-scope evaluations of the Dallas-Plano-Irving, Texas Metropolitan Division AA ("Dallas AA") and the Houston-Baytown-Sugarland, Texas MSA AA ("Houston AA"). Limited-scope evaluations were performed of the Austin-Round Rock-San Marcos, Texas MSA AA, the Sherman-Denison, Texas MSA AA, and the Waco, Texas MSA AA.

adequate performance, examiners noted that the bank did show improvement with respect to its home purchase loans in 2016.

Examiners found that Independent Bank was a leader in granting community development loans and demonstrated excellent responsiveness to community development needs. In particular, examiners noted that bank management made extensive efforts to identify and locate these types of loans. The bank's community loans primarily addressed revitalization and stabilization and benefitted businesses that supported permanent job creation or retention in LMI geographies. Finally, examiners found that the bank made occasional use of innovative or flexible lending practices, such as through Small Business Administration lending as well as Federal Housing Administration and Veterans Affairs residential mortgage lending, to reach LMI borrowers and neighborhoods.

Examiners found that Independent Bank's investments demonstrated a significant level of qualified investment activity, and these investments were responsive to needs of LMI individuals. In addition, examiners found that the bank's delivery systems were reasonably accessible and that the bank maintained some branches in LMI census tracts. Examiners further noted that the bank's delivery systems, such as services through the internet, by phone, via text messaging, through debit cards, and at ATMs, increased the accessibility of banking services.

CRA Performance of Integrity Bank

Integrity Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation, as of September 8, 2015 ("Integrity Bank Evaluation").[28] The bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test."[29]

Examiners concluded that Integrity Bank had a satisfactory record of helping to meet the credit needs of its AA. In particular, examiners found that the bank had a more than reasonable record regarding its loan-to-deposit ratio. In addition, examiners found that the bank originated a majority of its loans, including small business and home mortgage loans, inside its AA. Examiners noted that Integrity Bank had a reasonable record regarding its distribution of loans based on geography and the borrower's income level or revenue size. Finally, examiners noted that the bank had not received any CRA-related complaints since the previous evaluation.

Examiners noted that Integrity Bank's community development performance demonstrated excellent responsiveness to the community development needs of its AA through community development loans, investments, and services.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Independent 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. The Board also has considered the results of the most

[28] The Integrity Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed HMDA-reportable loans and commercial loans originated from January 1, 2013, through June 30, 2015. The evaluation period for community development lending, investments, and services was from December 3, 2012, to September 8, 2015.

[29] The Integrity Bank evaluation included a full-scope evaluation of the Houston-The Woodlands-Sugarland, Texas MSA AA.

recent consumer compliance examination of Integrity Bank conducted by the FDIC, which included a review of the bank's consumer compliance function.

The Board has taken this information, as well as the CRA performance records of Independent Bank and Integrity Bank, into account in evaluating the proposed transaction, including in considering whether IBG has the experience and resources to ensure that Independent Bank helps to meet the credit needs of the communities within its AAs.

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. IBG represents that existing customers of Integrity Bank would benefit from access to larger branch and ATM networks. In particular, banking offices in the Houston AA available to Integrity Bank customers would expand from four to 14 locations. Finally, the combined organization would have additional capital to support a larger legal lending limit and, because the transaction should provide opportunities for IBG to achieve cost savings, IBG represents that it would be able to provide its customers with more efficient and cost-effective bank services.

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, confidential supervisory information, information provided by IBG, 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 a proposal's "risk to the stability of the United States banking or financial system."[30]

To assess the likely effect of a proposed transaction on the stability of the 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.[31] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the

[30] Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. § 1842(c)(7).

[31] Many of the metrics considered by the Board measure an institution's activities relative to the United States 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.[32]

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.[33]

In this case, the Board has considered information relevant to risks to the stability of the United States 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 and commercial banking activities.[34] 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 United States 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.[35] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by IBG with all of the conditions imposed in this order, including receipt of all

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

[33] *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.

[34] As noted, IBG and Integrity offer a range of retail and commercial banking products and services. IBG has and, as a result of the transaction, would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

[35] 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 acquiring bank or the bank to be acquired make a timely written recommendation of disapproval 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 present their views. The Board has considered the commenter's request in light of all of the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for public hearing on the proposal is denied.

required regulatory approvals, and on the commitments made to the Board in connection with the application. 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 Dallas, acting under delegated authority.

By order of the Board of Governors, effective May 2, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Ameris Bancorp
Moultrie, Georgia

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2018-12 (May 9, 2018)

Ameris Bancorp ("Ameris"), Moultrie, Georgia, 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 Atlantic Coast Financial Corporation ("Atlantic"), and thereby indirectly acquire Atlantic Coast Bank, both of Jacksonville, Florida. Atlantic Coast Bank would be merged into Ameris's subsidiary bank, Ameris Bank, Moultrie, Georgia.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 813 (January 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.

Ameris, with consolidated assets of approximately $7.6 billion, is the 159th largest insured depository organization in the United States. Ameris controls approximately $5.9 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] Ameris controls Ameris Bank, which operates in Georgia, Florida, Alabama, and South Carolina. Ameris is the 14th largest insured depository organization in Georgia, controlling deposits of approximately $2.8 billion, which represent 1.2 percent of the total deposits of insured depository institutions in that state.[6] Ameris is the 32nd largest insured depository organization in Florida, controlling deposits of approximately $2.3 billion, which represent 0.4 percent of the total deposits of insured depository institutions in that state.

Atlantic, with consolidated assets of approximately $913.9 million, is the 800th largest insured depository organization in the United States. Atlantic controls approximately $678.9 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Atlantic controls Atlantic Coast Bank, which operates in Florida and Georgia. Atlantic is the 77th largest insured depository organization in Florida, controlling deposits of approximately $453.6 million, which represent 0.1 percent of the total deposits of insured depository institutions in that state. Atlantic is the 72nd largest insured depository organization in Georgia, controlling deposits of approximately $236.6 million, which represent 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Ameris would become the 152nd largest insured depository organization in the United States, with consolidated assets of approximately $8.6 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Ameris would control total deposits of approximately

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Atlantic Coast Bank into Ameris Bank is subject to approval by the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on April 24, 2018.

4 12 CFR 262.3(b).

5 National asset and deposit data are as of September 30, 2017, unless otherwise noted.

6 State deposit data are as of June 30, 2017, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

$6.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Georgia, Ameris would become the 13th largest insured depository organization, controlling deposits of approximately $3.1 billion, which represent 1.3 percent of the total deposits of insured depository institutions in the state. In Florida, Ameris would become the 29th largest insured depository organization, controlling deposits of approximately $2.7 billion, which represent 0.5 percent of the total deposits of insured depository institutions in the 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] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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, under section 3(d) of the BHC Act, 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, if 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 Ameris is Georgia, and Atlantic Coast Bank is located in Florida and Georgia.[10] Ameris and Ameris Bank are well capitalized and well managed under applicable law, and Ameris Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[11] There are no minimum age requirements under the laws of Florida that would apply to Ameris's acquisition of Atlantic, and Atlantic Coast Bank has been in existence for more than five years.[12]

On consummation of the proposed transaction, Ameris would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Neither Florida nor Georgia imposes a limit on the total amount of in-state deposits that a single banking organization may control. These are the only states in which Ameris and Atlantic have overlapping operations. The Board has considered all other requirements of section 3(d) of the BHC Act, including Ameris Bank'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.

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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). For purposes of section 3(d) of the BHC Act, 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. 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.

[11] 12 U.S.C. § 2901 *et seq*.

[12] *See* Fla. Stat. § 658.2953.

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]

Ameris Bank and Atlantic Coast Bank compete directly in the Jacksonville Area, Florida, banking market ("Jacksonville market"); the Douglas Area, Georgia, banking market ("Douglas market"); and the Waycross Area, Georgia, banking market ("Waycross market").[15] 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 ("market deposits") that Ameris 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 in the Jacksonville, Douglas, and Waycross markets. On consummation of the proposal, the Jacksonville market would remain highly concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines; however, the change in HHI would be small and numerous competitors would remain in the market.[18] The Douglas and Waycross markets would remain moderately concentrated

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[13] 12 U.S.C. § 1842(c)(1).

[14] 12 U.S.C. § 1842(c)(1)(B).

[15] The Jacksonville market is defined as Baker, Clay, Duval, and Nassau Counties, Florida; the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, and Switzerland in St. Johns County, Florida; and the city of Folkston in Charlton County, Georgia. The Douglas market is defined as Atkinson and Coffee Counties, Georgia. The Waycross market is defined as Pierce and Ware Counties, Georgia.

[16] Local deposit and market share data are as of June 30, 2017, 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] Ameris operates the 7th largest depository institution in the Jacksonville market, controlling approximately $741.5 million in deposits, which represent 1.5 percent of market deposits. Atlantic operates the 11th largest depository institution in the same market, controlling deposits of approximately $453.6 million, which represent approximately 0.9 percent of market deposits. On consummation of the proposed transaction, Ameris would become the 6th largest depository organization in the market, controlling deposits of approximately $1.2 billion, which represent approximately 2.5 percent of market deposits. The HHI for the Jacksonville market would increase by 3 points to 2840, and 32 other banking organizations would remain in the market.

as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in the Douglas market would be small, and nine competitors would remain in the market.[19] Seven competitors would remain in the Waycross market.[20]

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 Jacksonville, Douglas, or Waycross 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.[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, 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.

Ameris and Ameris Bank are 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-share exchange, with a subsequent merger of

[19] Ameris operates the 4th largest depository institution in the Douglas market, controlling approximately $92.5 million in deposits, which represent 11.6 percent of market deposits. Atlantic operates the 9th largest depository institution in the same market, controlling deposits of approximately $37.9 million, which represent approximately 4.8 percent of market deposits. On consummation of the proposed transaction, Ameris would become the 2nd largest depository organization in the market, controlling deposits of approximately $130.4 million, which represent approximately 16.4 percent of market deposits. The HHI for the Douglas market would increase by 110 points to 1295.

[20] Ameris operates the 8th largest depository institution in the Waycross market, controlling approximately $42.0 million in deposits, which represent 4.7 percent of market deposits. Atlantic operates the 2nd largest depository institution in the same market, controlling deposits of approximately $198.7 million, which represent approximately 22.2 percent of market deposits. On consummation of the proposed transaction, Ameris would become the largest depository organization in the market, controlling deposits of approximately $240.7 million, which represent approximately 26.8 percent of market deposits. The HHI for the Waycross market would increase by 208 points to 1777.

[21] 12 U.S.C. § 1842(c)(2), (5), and (6).

the subsidiary depository institutions.[22] The asset quality, earnings, and liquidity of both Ameris Bank and Atlantic Coast Bank are consistent with approval, and Ameris appears to have adequate resources to absorb the related 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 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 Ameris, Atlantic, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Ameris; 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, anti-money-laundering laws; and information provided by the commenter.

Ameris, Atlantic, and their subsidiary depository institutions are each considered to be well managed. Ameris has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Ameris's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and Ameris's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Ameris's plans for implementing the proposal. Ameris 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. Ameris would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Ameris's management has the experience and resources to operate the combined organization in a safe and sound manner, and Ameris represents that there are no anticipated changes with respect to the executive officers and directors of Ameris or Ameris Bank as a result of the proposal.

Based on all of the facts of record, including Ameris'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 Ameris and Atlantic 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

[22] As part of the proposed transaction, each share of Atlantic common stock would be converted into the right to receive (i) 0.17 shares of Ameris common stock together with cash in lieu of any fractional shares and (ii) $1.39 in cash. Ameris has the financial resources to effect the proposed transaction.

[23] 12 U.S.C. § 1842(c)(2).

CRA.[24] 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,[25] 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.[26]

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 Ameris Bank and Atlantic Coast Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Ameris, and the public comment received on the proposal.

Public Comment on the Proposal

In this case, a commenter objected to the proposal on the basis of alleged disparities in the number of home mortgage loans to and/or in the rate of denials for home mortgage applications from African Americans and/or Hispanics, as compared to whites, in Atlanta, Georgia; Jacksonville, Florida; and Tallahassee, Florida, based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").[27] The commenter also alleged that Ameris Bank engaged in predatory collection of overdraft fees and expressed concern over Ameris's recent record of mergers and acquisitions and planned branch closures.

Businesses of the Involved Institutions and Response to the Public Comment

Through its network of branches in Georgia, Florida, Alabama, and South Carolina, Ameris Bank offers a variety of products and services, including real estate loans, auto-secured and recreational-vehicle-secured loans, and home equity lines of credit. Ameris Bank also offers various deposit products for both businesses and consumers.

Atlantic Coast Bank offers a variety of loan and deposit products, with a focus on residential reals estate loans and commercial real estate loans and, to a lesser extent, commercial business loans and consumer loans through its branches in Florida and Georgia. Atlantic Coast Bank's products and services also include checking and savings accounts and an alternative to payday lending.

In response to the commenter's allegations, Ameris asserts that approval of the proposed transaction is warranted based on Ameris Bank's CRA performance evaluation and Ameris Bank's involvement in other programs tailored to assist LMI individuals and first-time homebuyers in pursuing or maintaining home ownership. Ameris notes that HMDA

[24] 12 U.S.C. § 2901 *et seq.*
[25] 12 U.S.C. § 2901(b).
[26] 12 U.S.C. § 2903.
[27] 12 U.S.C. § 2801 *et seq.*

data do not take into consideration other critical inputs, such as borrower creditworthiness, collateral value, credit scores, and other factors relevant to credit decisions. Ameris also asserts that HMDA data do not reflect the range of Ameris Bank's lending activities and efforts within the communities it serves. Ameris argues that the commenter's allegation of predatory overdraft fees is based on an isolated call report error for which a correction was filed by Ameris Bank after receiving clarification from the FDIC. Ameris also asserts that Ameris Bank's proposed branch closures are limited to those markets in which Ameris Bank and Atlantic Coast Bank overlap and that Ameris Bank is committed to providing reasonable access to its delivery systems throughout its 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 response to comments by the applicant. In particular, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.[28] In this case, the Board considered the supervisory views of the FDIC with respect to both institutions.

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 a lending test to evaluate the performance of a large insured depository institution, such as Ameris Bank, in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's 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 CRA 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;[30] (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

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

[29] 12 U.S.C. § 2906.

[30] 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).

needs of LMI individuals and geographies.[31] Large institutions also are subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[32] Intermediate small banks, such as Atlantic Coast Bank, are subject to the lending test, as well as a community development test that evaluates the number and amounts 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.[33]

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

CRA Performance of Ameris Bank

Ameris Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of October 3, 2016 ("Ameris Bank Evaluation").[35] The bank received "High Satisfactory" ratings for the Lending Test and the Service Test and a "Low Satisfactory" rating for the Investment Test.[36]

Examiners found that the bank's lending levels reflected good responsiveness to the bank's AA needs and that the bank made a majority of its loans within its AAs. Examiners determined that the bank's borrower profile revealed good penetration among retail customers of different income levels and businesses of different sizes. Examiners further found that the geographic distribution of the bank's loans reflected good penetration throughout the bank's AAs. Examiners noted that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its AAs, LMI individuals, and very small businesses, consistent with safe and sound banking practices. Examiners found that Ameris Bank made a high level of community development loans and that it used flexible lending practices in order to serve its AAs. With respect to the Atlanta market, examiners found that lending levels reflected good responsiveness to credit needs and that HMDA data reflected excellent penetration throughout the AA. With respect to the Tallahassee market, examiners found that lending levels reflected good responsiveness to credit needs and that HMDA data reflected good penetration throughout the AA. With respect to the Jacksonville market, examiners found that lending levels

[31] *See* 12 CFR 228.22(b).

[32] *See* 12 CFR 228.21 *et seq*.

[33] *See* 12 CFR 228.26(c).

[34] Other information 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.

[35] The Ameris Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed residential mortgage, small business, and small farm loans from January 1, 2014, through June 30, 2016. In addition, examiners considered the community development loans originated by Ameris Bank between January 21, 2014, and October 3, 2016, as well as all qualified investments either purchased prior to but still outstanding as of the evaluation date or purchased during the evaluation period and all community development services performed during the evaluation period.

[36] The Ameris Bank Evaluation reviewed the bank's activities in each of its 22 AAs throughout Georgia, Florida, Alabama, and South Carolina.

reflected adequate responsiveness to credit needs and that HMDA data reflected good penetration throughout the AA.

Examiners found that Ameris Bank had an adequate level of qualified community development investments and donations and that the bank exhibited adequate responsiveness to credit and community economic development needs. Examiners noted that the bank occasionally used innovative or complex investments to support its community development initiatives.

Examiners found that Ameris Bank's delivery systems were reasonably accessible to essentially all portions of its AAs and that, to the extent changes have been made, the bank's opening and closing of branches throughout its AAs have not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Examiners further found that services and business hours do not vary in a way that inconveniences certain portions of its AAs, particularly LMI geographies and individuals, and that the bank provides a relatively high level of community development services within its AAs.

Ameris Bank's Efforts since the Ameris Bank Evaluation

Ameris represents that, since the Ameris Bank Evaluation, Ameris Bank has continued to meet the credit needs of its communities. Specifically, Ameris represents that Ameris Bank reported a significant volume of loans to first-time homebuyers in 2017. Ameris also represents that Ameris Bank participates in federal loan programs tailored to assist LMI individuals and first-time homebuyers.

CRA Performance of Atlantic Coast Bank

Atlantic Coast Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of March 31, 2014 ("Atlantic Coast Bank Evaluation").[37] The bank received a "Satisfactory" rating for the Lending Test and the Community Development Test.[38]

Examiners concluded that Atlantic Coast Bank's loan-to-deposit ratio was more than reasonable and that the bank's lending to borrowers of different incomes demonstrated a reasonable distribution. Examiners further found that a majority of the bank's loan originations and purchases was within the bank's AAs and that the bank had a reasonable geographic distribution of loans to LMI census tracts. Examiners also found that the bank's overall level and responsiveness of community development lending, investments, and services met the standards of satisfactory performance.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding Ameris Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed the bank merger underlying this proposal and, in so doing, considered the comment received by the Board. The Board has considered the results of the FDIC's most recent consumer compliance examination of Ameris Bank, which included an evaluation of the bank's compliance management system, with an emphasis on areas exhibiting the potential risk of consumer

[37] The Atlantic Coast Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. Examiners reviewed home mortgage and small business loans from January 1, 2009, through December 31, 2013, and community development activities from February 23, 2009, to March 31, 2014.

[38] The Atlantic Coast Bank Evaluation included full-scope evaluations of the Jacksonville MSA AA and the Georgia Non-MSA AA and a limited-scope review of the Savannah MSA AA.

harm. As a part of the examination, the fair lending review included an analysis of the bank's residential lending.

The Board also has considered the results of the FDIC's visitation of Atlantic Coast Bank in connection with the bank's conversion from a federal savings bank to a Florida non-member commercial bank.[39] The FDIC's visitation included an assessment of Atlantic Coast Bank's compliance management system, which included areas exhibiting potential consumer risk, and a limited review of the bank's CRA performance factors.

The Board has taken the consultations with the FDIC and the information discussed above into account in evaluating the proposal, including in considering whether Ameris has the experience and resources to ensure that Ameris Bank helps to meet the credit needs of the communities within its AAs.

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. Ameris represents that, following consummation of the proposal, existing customers of Atlantic Coast Bank would benefit from the technical expertise and resources that Ameris Bank has developed. Ameris further represents that Ameris Bank would provide a comparable suite of mortgage and consumer loan products to those provided by Atlantic Coast Bank prior to the merger. Ameris asserts that Ameris Bank would maintain Atlantic Coast Bank's involvement in community activities through memberships in community service, educational, and civic organizations and that Ameris Bank would use all available media, including community publications, to market its credit services to the entire community. Ameris represents that Ameris Bank's board of directors would continue to review and approve all CRA programs and that local officers would routinely analyze demographic data and loan activity to ensure that lending services are accessible to all areas of the community, including LMI neighborhoods.

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 consumer protection laws, supervisory views of the FDIC, confidential supervisory information, information provided by Ameris, 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."[40]

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

[39] Atlantic Coast Bank converted from a federal savings bank to a Florida non-member commercial bank on December 27, 2016.

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

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.[41] 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 on the broader economy.[42]

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.[43]

In this case, the Board has considered information relevant to risks to the stability of the United States 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 consumer and commercial banking activities.[44] 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 United States 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 Ameris 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

[41] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[43] *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.

[44] Ameris and Atlantic offer a range of retail and commercial banking products and services. Ameris has and, as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

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 Atlanta, acting under delegated authority.

By order of the Board of Governors, effective May 9, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

TriCo Bancshares
Chico, California

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2018-13 (June 6, 2018)

TriCo Bancshares ("TriCo"), Chico, 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 to merge with FNB Bancorp and thereby indirectly acquire FNB Bancorp's subsidiary bank, First National Bank of Northern California ("FN Bank"), both of South San Francisco, California. Following the proposed acquisition, FN Bank would be merged into TriCo's subsidiary bank, Tri Counties Bank ("TriCo Bank"), Chico, California.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 8,084 (February 23, 2018)).[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.

TriCo, with consolidated assets of approximately $4.8 billion, is the 214th largest insured depository organization in the United States. TriCo controls approximately $4.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[4] TriCo controls TriCo Bank, which operates only in California.[5] TriCo is the 31st largest insured depository organization in California, controlling deposits of approximately $3.9 billion, which represent 0.3 percent of the total deposits of insured depository institutions in that state.[6]

FNB Bancorp, with consolidated assets of approximately $1.3 billion, is the 582nd largest insured depository organization in the United States. FNB Bancorp 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. FNB Bancorp controls FN Bank, which operates only in California. FN Bank is the 68th largest insured depository organization in California, controlling deposits of approximately $1 billion, which represent less than 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, TriCo would become the 183rd largest depository organization in the United States, with consolidated assets of approximately $6.2 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. TriCo would control consolidated deposits of approximately $5.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In California, TriCo would become the 28th largest

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1 12 U.S.C. § 1841 *et seq*.

2 The merger of FN Bank into TriCo Bank, which is expected to occur immediately after TriCo's acquisition of FNB Bancorp, is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on May 29, 2018.

3 12 CFR 262.3(b).

4 National deposit, market share, and ranking data are as of December 31, 2017, and asset data is as of March 31, 2018, unless otherwise noted.

5 The proposal does not raise interstate issues under section 3(d) of the BHC Act because California is the home state of TriCo, and FN Bank is located only in California. *See* 12 U.S.C.§ 1842(d).

6 State deposit, market share, and ranking data are as of June 30, 2017. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

depository organization, controlling deposits of approximately $4.9 billion, which represent 0.4 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]

TriCo and FNB Bancorp have subsidiary depository institutions that compete directly in the San Francisco-Oakland-San Jose combined statistical area market ("shared market").[9] 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 share of total deposits in insured depository institutions in the market ("market deposits") that TriCo would control;[10] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[11] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the shared market. On consummation of the proposal, the shared market would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines, and there would be only a small change in the HHI. In addition, numerous competitors would remain in the shared market.[12]

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[7] 12 U.S.C. § 1842(c)(1).

[8] 12 U.S.C. § 1842(c)(1)(B).

[9] The shared market is defined as the San Francisco-Oakland-San Jose combined statistical area in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara Counties; the southern portions of Sonoma and Solano Counties; the northern portion of San Benito County; and the southern edge of Napa County; all of California.

[10] Local deposit and market share data are as of June 30, 2017, 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).

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

[12] TriCo operates the 70th largest depository institution in the shared market, controlling approximately $19.8 million in deposits, which represent less than 0.05 percent of market deposits. FNB Bancorp operates the 23rd largest depository institution in the same market, controlling approximately $1.04 billion in deposits, which represent approximately 0.21 percent of market deposits. On consummation of the proposal, TriCo would become the 23rd largest depository organization in the market, controlling deposits of approximately $1.04 billion, which represent approximately 0.26 percent of market deposits. Seventy-eight banking organizations 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. 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 shared 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.[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 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.

TriCo and TriCo Bank are both well capitalized, and the combined organization would remain so on consummation of the proposal. The proposal is a bank holding company merger that is funded primarily through an exchange of shares, with a subsequent merger of the subsidiary depository institutions.[14] The asset quality, earnings, and liquidity of both TriCo Bank and FN Bank are consistent with approval, and TriCo appears to have adequate resources to absorb the related 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 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 TriCo, FNB 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 TriCo; 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.

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

[14] To effect the transaction, each share of FNB Bancorp common stock would be converted into a right to receive TriCo common stock, based on an exchange ratio. Certain stock options granted by FNB Bancorp would be canceled and converted into the right to receive a cash amount. TriCo has the financial resources to effect the proposal.

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

The Board also has considered TriCo's plans for implementing the proposal. TriCo 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. TriCo would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, TriCo's management has the experience and resources to operate the combined organization in a safe and sound manner, and TriCo plans to integrate FNB Bancorp's existing management and personnel in a manner that augments TriCo's management.[15]

Based on all the facts of record, including TriCo'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 TriCo and FNB Bancorp 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, 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 these communities, as well as other potential effects of the proposal on the convenience and needs of these communities. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[17] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[18] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[19]

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers 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

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[15] Following consummation of the proposal, TriCo's board of directors would consist of thirteen directors, including eleven members that are currently on TriCo's board of directors and two members chosen by TriCo that are currently on FNB Bancorp's board of directors. TriCo also would hire three executive officers of FNB Bancorp as employees.

[16] 12 U.S.C. § 1842(c)(2).

[17] 12 U.S.C. § 2901 *et seq*.

[18] 12 U.S.C. § 2901(b).

[19] 12 U.S.C. § 2903.

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 TriCo Bank and FN Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC and Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, information provided by TriCo, and the public comments received on the proposal.

Public Comments on the Proposal

The Board received seven letters objecting to the proposal. All seven commenters requested that approval of the proposal be conditioned on TriCo Bank adopting a revised CRA plan developed in collaboration with community organizations representing minority and LMI borrowers. The commenters requested that the CRA plan include commitments to increase lending to minority and LMI borrowers and small businesses, increase the number of TriCo Bank employees and directors that are minorities, disclose demographic information about the bank's workforce, partner with community organizations to identify and provide loans and technical assistance to minority-owned small businesses, develop a supplier diversity program, market bank products in multiple languages and in partnership with minority-owned media outlets, and accept tax identification numbers from customers to open accounts.[20] These commenters stated that, without a revised CRA plan, the proposal would not provide public benefits. One commenter also alleged that TriCo Bank has a poor record of lending to minority borrowers compared to its peer institutions, including in Butte County and Shasta County, both of California. Another commenter suggested that TriCo Bank should offer services designed specifically for minority and LMI borrowers, including participating in the California Small Business Loan Guarantee Program and offering more consumer lending products that compete with but are more affordable than payday loans.

Businesses of the Involved Institutions and Response to the Public Comment

TriCo operates primarily through TriCo Bank and the bank's network of branches in California. TriCo Bank offers a broad range of financial products and services to consumers and businesses, including checking, savings, money market, individual retirement, education savings, health savings, and certificate of deposit accounts; commercial, residential, small business, and consumer loans; credit card and merchant card services, treasury management, and simplified employee pension plans; and investment advisory services.

FNB Bancorp operates primarily through FN Bank and the bank's network of branches in California. FN Bank offers a broad range of financial products to consumers and businesses, including checking, savings, money market, health savings, and certificate of deposit accounts; commercial, residential, small business, and consumer loans; merchant card services and treasury management; and investment advisory services.

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[20] 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., Howard Bancorp, Inc.*, FRB Order No. 2018-05 at 9 fn. 21 (February 12, 2018); *Sandy Spring Bancorp, Inc.*, FRB Order No. 2017-32 at 12 fn 31 (November 22, 2017); 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); *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.

TriCo asserts that approval of the proposal is warranted based on the banks' CRA performance evaluations and compliance with statutory and regulatory requirements related to CRA and fair lending and on TriCo Bank's history of engaging members of the community about their banking needs. TriCo asserts that TriCo Bank and FN Bank have consistently met the requirements of the CRA and that TriCo Bank is committed to continuing to meet its obligations under the CRA after consummation of the transaction.

With respect to the commenters' request for a CRA plan and related assertions, TriCo notes that TriCo Bank has a public CRA plan that was created in consultation with community organizations and includes goals for the bank related to lending to LMI borrowers. TriCo states that TriCo Bank has a strong history of lending to small businesses and would continue to prioritize lending to small businesses upon consummation of the proposal. TriCo maintains that TriCo Bank has complied with all legal requirements concerning hiring, reporting workforce demographic information, and collaborating with diversity suppliers. TriCo asserts that it employs multilingual employees and has collaborated with nonprofit organizations in its existing banking markets. TriCo also states that it is forming an advisory panel of community leaders in the market currently served by FN Bank to learn about and address the market's banking needs.

TriCo disputes the allegation of one commenter that TriCo Bank's record of lending to minority borrowers is poor. TriCo states that the commenter's analysis is flawed because the analysis relied on a small sample, and TriCo notes that the commenter did not fully disclose the methodology for the analysis.

TriCo also maintains that it currently offers the products and services requested by some of the commenters. For example, TriCo states that TriCo Bank has invested in community development financial institutions that provide small dollar loans to consumers as an alternative to payday loans and opens bank accounts using individual tax identification numbers. TriCo also states that it has existing programs to assist small business borrowers in obtaining loans, including programs that involve loans guaranteed by the Small Business Administration.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers a substantial amount of information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board considers 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.[21] In this case, the Board considered the supervisory views of the FDIC with respect to TriCo Bank and of the OCC with respect to FN 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.[22] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

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

[22] 12 U.S.C. § 2906.

In general, federal financial supervisors apply a lending test to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. This 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"),[23] 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 CRA 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;[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.[25] Large institutions, such as TriCo Bank, are also subject to an investment test that evaluates the number and amounts of qualified investments that benefit their AAs and 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.[26] Intermediate small banks, such as FN Bank, are subject to the lending test, as well as a community development test that evaluates the number and amounts 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.[27]

CRA Performance of TriCo Bank

TriCo Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of April 20, 2015 ("TriCo Bank Evaluation").[28] The bank received a "High Satisfactory" rating for the Investment Test and "Low Satisfactory" ratings for the Lending Test and Service Test.[29] TriCo Bank's performance in the Chico MSA was weighted most heavily by examiners due to the bank's volume of lending and deposit activity in this area.

[23] 12 U.S.C. § 2801 *et seq*.

[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] *See* 12 CFR 228.22(b).

[26] *See* 12 CFR 228.21 *et seq*.

[27] 12 CFR 228.26(c).

[28] The TriCo Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA, and small loans made to businesses and farms as reported under CRA data collection requirements, from 2013 and 2014. The evaluation period for community development loans, investments, and services was January 7, 2013, through April 20, 2015.

[29] The TriCo Bank Evaluation included full-scope evaluations of the Chico Metropolitan Statistical Area ("MSA"), Redding MSA, and Yuba City MSA, all in California. Limited-scope evaluations were performed for the bank's other AAs.

Examiners found that the bank made a majority of its loans within its 23 AAs and that the bank's lending levels reflected adequate responsiveness to the credit needs of the AAs. Examiners found that the distribution of borrowers reflected adequate penetration among retail customers of different income levels and businesses and farm customers of various revenue sizes. Examiners found that the geographic distribution of loans reflected good penetration throughout the bank's AAs. Examiners also found that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and very small businesses.

In the Chico MSA, which includes an area of concern to one commenter, examiners found that TriCo Bank's lending levels reflected adequate responsiveness to credit needs. Examiners found that TriCo Bank had the highest market share of small business and small farm originations of all lenders reporting CRA lending data in the Chico MSA during the examination review period. Examiners found that the geographic distribution of loans reflected good penetration throughout the Chico MSA, noting good penetration for small business loans, adequate penetration for home mortgage loans, and poor penetration for small farm loans. Examiners found that the distribution of borrowers reflected overall adequate penetration among retail customers of different income levels and among business and farm borrowers of different revenue sizes, including adequate penetration for small business loans and home mortgage loans and good penetration for small farm loans.

In the Redding MSA, which includes another area of concern to the same commenter, examiners found that TriCo Bank's lending levels reflected adequate responsiveness to credit needs. Examiners found that TriCo Bank had the highest market share of small business and small farm originations of all lenders reporting CRA lending data in the Redding MSA during the examination review period. Examiners found that the geographic distribution of loans reflected good penetration throughout the Redding MSA, including overall good penetration for small business loans, good penetration for mortgage loans, and excellent penetration for small farm loans. Examiners found that the

distribution of borrowers reflected overall good penetration among retail customers of different income levels and business and among farm borrowers of different revenue sizes, including adequate penetration for small business loans and good penetration for home mortgage and small farm loans.

In all of its AAs, examiners found that TriCo Bank had a significant level of community development investments that reflected good responsiveness to credit and community economic development needs. Examiners found that the bank made significant use of innovative and complex investments to support community development initiatives, including for affordable housing and economic development.

Examiners found that TriCo Bank's delivery systems were accessible to all portions of the bank's AAs. Examiners found that the bank's branches were reasonably distributed and that the bank's services and hours of operation did not vary in a way that inconvenienced any portion of the bank's AAs, including in LMI geographies. Examiners found that TriCo Bank provided an adequate level of community development services.

TriCo Bank's Efforts Since the TriCo Bank Evaluation

TriCo states that, since the TriCo Bank Evaluation, TriCo Bank has engaged in significant activities to continue and improve its CRA performance. Specifically, TriCo Bank has made commercial loans to develop affordable housing and continued to invest in projects receiving Federal Low Income Housing Tax Credits. TriCo Bank has invested in community development financial institutions that invest in affordable housing and small busi-

nesses. TriCo Bank has also assisted various nonprofit organizations in obtaining grants from the Federal Home Loan Bank of San Francisco to develop affordable housing. TriCo Bank's employees also have provided technical support to nonprofit organizations that focus on developing affordable housing and to small businesses and teaching financial literacy. TriCo further states that TriCo Bank has entered into a public CRA plan to, among other things, obtain an overall "Outstanding" CRA rating; meet or exceed lending by its competitors to LMI borrowers, small businesses, and small farms; and achieve specific levels of community development lending and CRA investments.

CRA Performance of FN Bank

FN Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of March 14, 2016 ("FN Bank Evaluation").[30] The bank received "Satisfactory" ratings for the Lending Test and Community Development Test.[31]

Examiners found that FN Bank achieved reasonable penetration in its lending to borrowers of different income levels and that the geographic distribution of the bank's loans throughout census tracts represented excellent dispersion. Examiners found that FN Bank's loan-to-deposit ratio was reasonable and that the majority of the bank's loans are made within its AAs.

Examiners found that FN Bank's community development activities demonstrated adequate responsiveness to the community development needs of its AAs. Examiners found that FN Bank's community development lending and investments demonstrated adequate and excellent responsiveness, respectively, to community development needs in the bank's AAs.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of TriCo Bank conducted by FDIC examiners, which included a review of the bank's compliance management program and the bank's compliance with consumer protection laws and regulations. The Board has also considered the results of the most recent consumer compliance examination of FN Bank conducted by the OCC, which included a review of the bank's consumer compliance function.

The Board has taken this information, as well as the CRA performance records of TriCo Bank and FN Bank, into account in evaluating the proposal, including in considering whether TriCo has the experience and resources to ensure that TriCo Bank helps to meet the credit needs of the communities within its AAs.

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. TriCo represents that, following consummation of the proposal, existing customers of TriCo Bank and FN Bank would benefit from an expanded branch and ATM network and a broader range of financial products and services.

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[30] The FN Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed home mortgage and small business loans originated or purchased from January 1, 2013, through December 31, 2015. The evaluation period for community development lending, investments, and services was from January 7, 2013, to March 14, 2016.

[31] The FN Bank Evaluation included a full-scope evaluation of the San Francisco-Redwood City-South San Francisco Metropolitan District. A limited- scope evaluation was conducted in the bank's other AA.

TriCo maintains that existing customers of FN Bank would benefit from participation in TriCo Bank's program that offers customers access to a large network of ATMs for no fee. TriCo represents that the combined organization would achieve greater economies of scale that would result in expanded services at more affordable prices. TriCo also notes that the combined organization would have additional capital to support a larger legal lending limit.

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 OCC, confidential supervisory information, information provided by TriCo, 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 and the Bank Merger Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[32]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, 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.[33] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[34]

The Board'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

[32] Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. § 1842(c)(7).

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

[34] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 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.[35]

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 retail and commercial banking activities.[36] The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress. In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.[37] 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 TriCo with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the proposal. The conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

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[35] *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.

[36] As noted, TriCo and FNB Bancorp offer a range of retail and commercial banking products and services. TriCo has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

[37] The Board construes the comments received on the proposal to include requests 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 proposal unless the appropriate supervisory authorities for the acquiring bank or the bank to be acquired make a timely written recommendation of disapproval of the proposal. 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 present their views. The Board has considered the commenters' requests in light of all of the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for public hearing on the proposal are denied.

By order of the Board of Governors, effective June 6, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Ameris Bancorp
Moultrie, Georgia

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2018-14 (June 13, 2018)

Ameris Bancorp ("Ameris"), Moultrie, Georgia, 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 Hamilton State Bancshares, Inc. ("Hamilton"), and thereby indirectly acquire Hamilton State Bank, both of Hoschton, Georgia. Hamilton State Bank would be merged into Ameris's subsidiary bank, Ameris Bank, Moultrie, Georgia.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 10,852 (March 13, 2018)).[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.

Ameris, with consolidated assets of approximately $7.9 billion, is the 158th largest insured depository organization in the United States. Ameris controls approximately $6.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] Ameris controls Ameris Bank, which operates in Georgia, Florida, Alabama, and South Carolina. Ameris is the 14th largest insured depository organization in Georgia, controlling deposits of approximately $2.8 billion, which represent 1.2 percent of the total deposits of insured depository institutions in that state.[6]

Hamilton, with consolidated assets of approximately $1.8 billion, is the 430th largest insured depository organization in the United States. Hamilton 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. Hamilton controls Hamilton State Bank, which operates only in Georgia. Hamilton is the 19th largest insured depository organization in Georgia, controlling deposits of approximately $1.5 billion, which represent 0.6 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Ameris would become the 136th largest insured depository organization in the United States, with consolidated assets of approximately $9.6 billion,[7] which represent less than 1 percent of the total assets of insured depository organizations in the United States. Ameris would control total deposits of approximately $8.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Georgia, Ameris would become the 9th largest insured depository organization, controlling deposits of approximately

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Hamilton State Bank into Ameris Bank is subject to approval by 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 National asset and deposit data are as of December 31, 2017, unless otherwise noted.

6 State deposit data are as of June 30, 2017, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

7 Consolidated assets are as of March 31, 2018, and do not reflect Ameris's recent acquisition of Atlantic Coast Financial Corporation. *See Ameris Bancorp*, FRB Order No. 2018-12 (May 9, 2018).

$4.4 billion, which represent 1.8 percent of the total deposits of insured depository institutions in the 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]

Ameris Bank and Hamilton State Bank compete directly in the Atlanta, Georgia, banking market ("Atlanta market").[10] 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 share of total deposits in insured depository institutions in the market ("market deposits") that Ameris would control;[11] the concentration level of market deposits and the increase in this level, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[12] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Atlanta market. On consummation of the proposal, the Atlanta market would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The HHI would not change, and numerous competitors would remain in the 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 Atlanta market is defined as Bartow, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton Counties, Hall County minus the town of Clermont, the towns of Auburn and Winder in Barrow County, and Luthersville in Meriwether County, all in Georgia.

[11] Local deposit and market share data are as of June 30, 2017, 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] Ameris operates the 57th largest depository institution in the Atlanta market, controlling approximately $81.1 million in deposits, which represent 0.05 percent of market deposits. Hamilton operates the 17th largest depository institution in the same market, controlling deposits of approximately $1.2 billion, which represent approximately 0.72 percent of market deposits. On consummation of the proposed transaction, Ameris would become the 17th largest depository organization in the market, controlling deposits of approximately $1.3 billion, which represent approximately 0.77 percent of market deposits. The HHI for the Atlanta market would remain unchanged at 1616, and 81 other banking organizations 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. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC 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 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.

Ameris and Ameris Bank are 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-share exchange, with a subsequent merger of the subsidiary depository institutions.[15] The asset quality, earnings, and liquidity of both Ameris Bank and Hamilton State Bank are consistent with approval, and Ameris appears to have adequate resources to absorb the related 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 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 Ameris, Hamilton, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Ameris; 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 commenter.

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

[15] As part of the proposed transaction, each share of Hamilton common stock would be converted into the right to receive (i) 0.16 shares of Ameris common stock together with cash in lieu of any fractional shares and (ii) $0.93 in cash. Ameris has the financial resources to effect the proposed transaction.

Ameris, Hamilton, and their subsidiary depository institutions are each considered to be well managed. Ameris has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Ameris's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and Ameris's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Ameris's plans for implementing the proposal. Ameris 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. Ameris would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Ameris's management has the experience and resources to operate the combined organization in a safe and sound manner, and Ameris represents that there are no anticipated changes with respect to the executive officers and directors of Ameris or Ameris Bank as a result of the proposal.

Based on all of the facts of record, including Ameris'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 Ameris and Hamilton 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 served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[17] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' 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 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 institu-

[16] 12 U.S.C. § 1842(c)(2).
[17] 12 U.S.C. § 2901 *et seq*.
[18] 12 U.S.C. § 2901(b).
[19] 12 U.S.C. § 2903.

tion'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 Ameris Bank and Hamilton State Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Ameris, and the public comment received on the proposal.

Public Comment on the Proposal

In this case, a commenter objected to the proposal on the basis of alleged disparities in the number of home mortgage loans made by Ameris Bank to, and/or in the rate of denials for home mortgage applications from, African Americans and/or Hispanics, as compared to whites, in Atlanta, Georgia; Jacksonville, Florida; and Tallahassee, Florida, based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").[20] The commenter also alleged that Ameris Bank engaged in predatory collection of overdraft fees and expressed concern over Ameris's recent record of mergers and acquisitions. The allegations against Ameris were considered by the Board in its May 9, 2018, approval of Ameris's application to acquire Atlantic Coast Financial Corporation[21] and by the FDIC in its April 24, 2018, approval of the related bank merger application.

In addition, the commenter alleged, based on HMDA data, disparities in Hamilton State Bank's rate of denials to African Americans in Atlanta, Georgia. The commenter also alleged disparities in the level of applications from African Americans in Atlanta, which it attributed to disparate marketing by Hamilton State Bank.

Businesses of the Involved Institutions and Response to the Public Comment

Through its network of branches in Georgia, Florida, Alabama, and South Carolina, Ameris Bank offers a variety of products and services, including real estate loans, auto-secured and recreational-vehicle-secured loans, and home equity lines of credit. Ameris Bank also offers various deposit products for both businesses and consumers.

Hamilton State Bank offers a full line of consumer and business loan and deposit products, as well as related financial services, through its branches in Georgia. Hamilton State Bank's products and services include commercial and residential real estate loans, equipment financing, checking and savings accounts, certificates of deposit, and retirement accounts.

In response to the commenter's allegations, Ameris asserts that approval of the proposed transaction is warranted based on Ameris Bank's CRA performance evaluation and Ameris Bank's involvement in other programs tailored to assist LMI individuals and first-time homebuyers in pursuing or maintaining homeownership. Ameris notes that HMDA data do not take into consideration other critical inputs, such as borrower creditworthiness, collateral value, credit scores, and other factors relevant to credit decisions. Ameris also asserts that HMDA data do not reflect the range of Ameris Bank's lending activities and efforts within the communities it serves. Ameris argues that the commenter's allegation of predatory overdraft fees is based on an isolated call report error for which a correction was filed by Ameris Bank after receiving clarification from the FDIC.

[20] 12 U.S.C. § 2801 *et seq*.

[21] *See Ameris Bancorp*, FRB Order No. 2018-12 at 11 (May 9, 2018).

In response to the commenter's allegations regarding Hamilton State Bank, Ameris asserts that Hamilton State Bank has traditionally focused on commercial banking and that its mortgage products are limited to qualified mortgages that include conventional fixed-rate and ARM loans and are not actively pursued by Hamilton State Bank. Ameris also asserts that Hamilton State Bank's CRA performance is consistent with approval and that Hamilton State Bank has not received any fair lending complaints.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers a substantial amount of information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.[22] In this case, the Board considered the supervisory views of the FDIC with respect to both institutions.

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 a lending test to evaluate the performance of large insured depository institutions, such as Ameris Bank and Hamilton State Bank, in helping to meet the credit needs of the communities they serve. The lending test specifically evaluates the institution's 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 CRA 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;[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.[25] Large institutions also are subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and

[22] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48,506, 48,548 (July 25, 2016).

[23] 12 U.S.C. § 2906.

[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] *See* 12 CFR 228.22(b).

effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[26]

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 Ameris Bank

Ameris Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of October 3, 2016 ("Ameris Bank Evaluation").[28] The bank received "High Satisfactory" ratings for the Lending Test and the Service Test and a "Low Satisfactory" rating for the Investment Test.[29]

Examiners found that the bank's lending levels reflected good responsiveness to the bank's AA needs and that the bank made a majority of its loans within its AAs. Examiners determined that the bank's borrower profile revealed good penetration among retail customers of different income levels and businesses of different sizes. Examiners further found that the geographic distribution of the bank's loans reflected good penetration throughout the bank's AAs. Examiners noted that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its AAs, LMI individuals, and very small businesses, consistent with safe and sound banking practices. Examiners found that Ameris Bank made a high level of community development loans and that it used flexible lending practices in order to serve its AAs. With respect to the Atlanta market, examiners found that lending levels reflected good responsiveness to credit needs and that HMDA data reflected excellent penetration throughout the AA. With respect to the Tallahassee market, examiners found that lending levels reflected good responsiveness to credit needs and that HMDA data reflected good penetration throughout the AA. With respect to the Jacksonville market, examiners found that lending levels reflected adequate responsiveness to credit needs and that HMDA data reflected good penetration throughout the AA.

Examiners found that Ameris Bank had an adequate level of qualified community development investments and donations and that the bank exhibited adequate responsiveness to credit and community economic development needs. Examiners noted that the bank occasionally used innovative or complex investments to support its community development initiatives.

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[26] *See* 12 CFR 228.21 *et seq*.

[27] Other information 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 Ameris Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed residential mortgage, small business, and small farm loans from January 1, 2014, through June 30, 2016. In addition, examiners considered the community development loans originated by Ameris Bank between January 21, 2014, and October 3, 2016, as well as all qualified investments either purchased prior to but still outstanding as of the evaluation date or purchased during the evaluation period and all community development services performed during the evaluation period.

[29] The Ameris Bank Evaluation reviewed the bank's activities in each of its 22 AAs throughout Georgia, Florida, Alabama, and South Carolina.

Examiners found that Ameris Bank's delivery systems were reasonably accessible to essentially all portions of its AAs and that, to the extent changes had been made, the bank's opening and closing of branches throughout its AAs had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Examiners further found that services and business hours did not vary in a way that inconvenienced certain portions of its AAs, particularly LMI geographies and individuals, and that the bank provided a relatively high level of community development services within its AAs.

Ameris Bank's Efforts since the Ameris Bank Evaluation

Ameris represents that, since the Ameris Bank Evaluation, Ameris Bank has continued to meet the credit needs of its communities. Specifically, Ameris represents that Ameris Bank reported a significant volume of loans to first-time homebuyers in 2017. Ameris also represents that Ameris Bank participates in federal loan programs tailored to assist LMI individuals and first-time homebuyers.

CRA Performance of Hamilton State Bank

Hamilton State Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of October 19, 2015 ("Hamilton State Bank Evaluation").[30] The bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and the Service Test.[31]

Examiners concluded that Hamilton State Bank's lending performance reflected good responsiveness to the credit needs in its AAs and that a high percentage of the bank's loans were originated in its AAs. Examiners found that the geographic distribution of the bank's home mortgage and small business loans reflected an excellent dispersion throughout its AAs. Examiners also found that the bank's distribution of loans among individuals of different income levels and businesses of different sizes was good. Examiners noted that the bank had an adequate level of qualified community development investments and donations and that the bank showed adequate responsiveness to credit and community economic development needs. Finally, examiners found the bank's delivery systems to be reasonably accessible to essentially all portions of the bank's AAs, including in LMI areas and to LMI individuals.

Views of the FDIC

The Board has consulted with the FDIC regarding Ameris Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed the bank merger application underlying this proposal and, in so doing, considered the comment received by the Board. The Board has considered the results of the FDIC's most recent consumer compliance examination of Ameris Bank, which included an evaluation of the bank's compliance management system, with an emphasis on areas exhibiting the potential risk of consumer harm. As a part of the examination, the fair lending review included an analysis of the bank's residential lending.

The Board also has considered the results of the FDIC's most recent consumer compliance examination of Hamilton State Bank, which included a risk-focused review of the bank's

[30] The Hamilton State Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed small business loans from January 1, 2014, through June 30, 2015, and home mortgage loans reported on the bank's 2013, 2014, and year-to-date 2015 HMDA Loan Application Registers.

[31] The Hamilton State Bank Evaluation included full-scope evaluations of the Atlanta Metropolitan Statistical Area (MSA) AA and the Gainesville MSA AA.

compliance management system, with an emphasis on areas exhibiting greater potential risk of consumer harm, and a fair lending review.

The Board has taken the consultations with the FDIC and the information discussed above into account in evaluating the proposal, including in considering whether Ameris has the experience and resources to ensure that Ameris Bank helps to meet the credit needs of the communities within its AAs.

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. Ameris represents that, following consummation of the proposal, existing customers of Hamilton State Bank would benefit from the technical expertise and resources that Ameris Bank has developed. Ameris further represents that Ameris Bank would provide a substantially similar suite of retail and commercial banking services and products to those provided by Hamilton State Bank prior to the merger. Ameris asserts that Ameris Bank would strive to maintain a strong working relationship with city and county governments in the former Hamilton State Bank markets and that Ameris Bank would use all available media, including community publications, to market its credit services to the entire community. Ameris represents that Ameris Bank's board of directors would continue to review and approve all CRA programs and that local officers would routinely analyze demographic data and loan activity to ensure that lending services are accessible to all areas of the community, including LMI neighborhoods. Ameris indicated that Ameris Bank's CRA and consumer compliance programs and policies would be implemented at the combined institution.

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 consumer protection laws, supervisory views of the FDIC, confidential supervisory information, information provided by Ameris, 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."[32]

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

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

resulting firm.[33] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.[34]

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.[35]

In this case, the Board has considered information relevant to risks to the stability of the United States 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 consumer and commercial banking activities.[36] The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States 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 Ameris with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the 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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[33] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[35] *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.

[36] Ameris and Hamilton offer a range of retail and commercial banking products and services. Ameris has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

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 Atlanta, acting under delegated authority.

By order of the Board of Governors, effective June 13, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under International Banking Act

JN Bank Limited
Kingston, Jamaica

Order Approving the Establishment of a Representative Office
FRB Order No. 2018-10 (April 13, 2018)

JN Bank Limited ("JN Bank"), Kingston, Jamaica, a foreign bank within the meaning of the International Banking Act of 1978 ("IBA"), has applied under section 10(a) of the IBA[1] to establish a representative office in Tamarac, Florida (the "Florida Representative Office"), in connection with a corporate reorganization. The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Tamarac, Florida (*Sun-Sentinel*, January 14, 2018). The time for submitting comments has expired, and no comments were received.

JN Bank, with assets of approximately $1.2 billion, is the third largest deposit-taking financial institution in Jamaica.[2] JN Bank is a licensed commercial bank that offers banking services across 35 locations in Jamaica and has additional representative offices in the United Kingdom and Canada. JN Bank is an indirect subsidiary of The Jamaica National Group Limited ("JN Group"), Kingston, Jamaica.[3] JN Group, with consolidated assets of approximately $1.6 billion, is a mutual holding company that offers a variety of products and services through its subsidiaries.[4] JN Bank was formed as part of a corporate reorganization that involved its predecessor institution, Jamaica National Building Society ("JNBS").[5] As part of the reorganization, on February 1, 2017, JNBS converted from a building society to a commercial bank under Jamaican law and was renamed JN Bank Limited. JN Bank has filed this application to establish the Florida Representative Office under the IBA.[6]

The Florida Representative Office would continue to engage in representational and administrative activities, including marketing and promotional activities; loan solicitation activities; providing technical assistance, such as aiding customers in completing loan applications, transmitting completed loan applications to JN Bank's headquarters in Jamaica for approval, and answering customer inquiries; and research and consulting activities. JN

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1 12 U.S.C. § 3107(a).

2 Asset data are as of October 2017. Ranking data are as of June 2017.

3 JN Bank is a wholly owned subsidiary of JN Financial Group Limited ("JN Financial"), which is responsible for oversight of the financial activities of JN Group. JN Financial is a wholly owned subsidiary of JN Group.

4 JN Group is owned by its members, which are customers of JN Bank. Each member of JN Group has one vote on matters subject to membership approval. JN Group's subsidiaries offer a variety of products and services, including banking and financial services, remittance services, life insurance, advertisement services, information technology services, and vehicle management services. JN Group has one nonbank subsidiary in the United States, JN Money Services (USA) Incorporated, which is a money transmitter licensed in seven states and the District of Columbia.

5 The Board approved JNBS to establish the representative office in Tamarac, Florida, in 2002. *Jamaica National Building Society*, 88 *Federal Reserve Bulletin* 59 (2002).

6 JN Bank is licensed by the Florida Office of Financial Regulation to operate the Florida Representative Office.

Bank proposes to expand the activities of the Florida Representative Office to include the solicitation of deposits.[7]

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.[8] The Board also considers additional standards set forth in the IBA and Regulation K.[9]

In the case of an application to establish a representative office, the Board has by rule determined that the supervision standard may be met if the Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities and the operating record of the applicant bank.[10] This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities. This application has been considered under the lesser standard.

In connection with this application, JN Bank has provided certain commitments that limit the activities of the Florida Representative Office. It has committed to engage only in activities permissible for a representative office under Regulation K. In particular, JN Bank has committed that the Florida Representative Office would not make credit decisions or any other decisions that bind JN Bank (except for local administrative matters), or engage in activities related to securities trading, foreign exchange, or money transmission. The

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

[8] 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervisory standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings 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.

[9] *See* 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank, including the bank's experience and capacity to engage in international banking; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. In the case of a foreign bank that presents a risk to the stability of the United States, the Board also may take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

[10] *See* 12 CFR 211.24(d)(2). In adopting the regulations governing applications to establish representative offices, the Board noted that "[a] lesser standard applies because representative offices do not conduct a banking business, such as taking deposits or making loans, and therefore present less risk to U.S. customers and markets than do branches or agencies." 66 *Fed. Reg.* 54346, 54365 (October 26, 2001).

Florida Representative Office also would not share office space or premises with JN Money Services (USA) Incorporated, JN Group's money transmitter subsidiary in the United States. The Florida Representative Office would engage only in the activities indicated in its application to the Board, and it is planned that the office would not be staffed by more than three employees.

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

With respect to supervision by home country authorities, the Board has considered that JN Bank is supervised by the Bank of Jamaica (the "BOJ"). Under Jamaican law, a financial group that includes a deposit-taking institution is required to form a financial holding company ("FHC") parent, which is supervised by the BOJ. JN Bank is wholly owned by its FHC parent, JN Financial.

The BOJ supervises banking organizations through a combination of on-site examinations and off-site monitoring. On-site examinations are risk-based and focus on credit administration and credit risk management; capital management; liquidity risk management; corporate governance; and internal controls, including to ensure compliance with anti-money-laundering and counter-terrorist-financing laws. Off-site monitoring includes a review of periodic reports submitted by supervised entities. JN Group and its subsidiaries are required to submit consolidated financial statements, which are reviewed by the BOJ. In addition, JN Group and JN Bank are subject to an annual review by external auditors. The BOJ has the authority to request information from the relevant external auditors in connection with its supervisory authority. When there is evidence of unsafe and unsound practices by deposit-taking institutions, the BOJ has the authority to impose sanctions.

The Board has previously considered the supervisory regime in Jamaica for financial institutions in connection with applications involving Jamaican building societies.[11] JN Bank, as a licensed commercial bank, is subject to supervision on substantially similar terms as those applicable to Jamaican building societies. Based on all the facts of record, including the commitments provided by JN Bank limiting the activities of the Florida Representative Office, it has been determined that JN Bank is subject to a supervisory framework that is consistent with the current and proposed activities of the Florida Representative Office, taking into account the nature of such activities.

The Board also has considered the following additional standards set forth in the IBA and Regulation K: (1) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (2) the financial and managerial resources of the bank; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.[12]

Jamaica is a member of the Caribbean Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, Jamaica has created legislative and regulatory

[11] *See* Board letter to Charles L. Stutts, Esq., dated February 8, 2018. *See also* Victoria Mutual Building Society, 93 *Federal Reserve Bulletin* C106 (2007); *Jamaica National Building Society*, 88 *Federal Reserve Bulletin* 59 (2002).

[12] *See* 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2).

standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offence in Jamaica, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering. The BOJ enforces these requirements with respect to Jamaican banks, including JN Bank. JN Bank has policies and procedures to comply with these laws and regulations, which are monitored by government entities responsible for anti-money-laundering compliance.

JN Bank appears to have the experience and capacity to support the Florida Representative Office. In addition, JN Bank has established controls and procedures for the representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Given JN Bank's record of operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of JN Bank's application to establish the Florida Representative Office.

JN Bank has committed to make available to the Board such information on the operations of JN Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended,[13] and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, JN Bank has committed to cooperate with the Board to obtain any necessary waivers or exemptions that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the BOJ may share information on JN Bank'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 JN Bank has provided adequate assurances of access to any necessary information that the Board may request. In addition, the BOJ has no objection to the establishment of the Florida Representative Office.

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

On the basis of all the facts of record and subject to commitments made by JN Bank, JN Bank's application to establish the Florida Representative Office 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.[14] Should any restrictions on access to information on the operations or activities of JN Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by JN Bank or its affiliates with applicable federal statutes, the Board may require termination of any of JN Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by JN Bank with the conditions imposed in this order and the commitments made to the Board in

[13] 12 U.S.C. § 1841 *et seq*.
[14] 12 CFR 265.7(d)(12).

connection with this application.[15] For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective April 13, 2018.

Ann E. Misback
Secretary of the Board

[15] The Board's authority to approve the establishment of the Florida Representative Office parallels the continuing authority of the State of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Florida or its agent, the Florida Office of Financial Regulation, to license the Florida Representative Office in accordance with any terms or conditions that they may impose.

Order Issued Under Section 3 of the Bank Holding Company Act, Bank Merger Act, & Federal Reserve Act

Arvest Bank Group, Inc.
Bentonville, Arkansas

Arvest Holdings, Inc.
Bentonville, Arkansas

Arvest Bank
Fayetteville, Arkansas

Order Approving the Acquisition of a Bank Holding Company, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2018-09 (April 2, 2018)

Arvest Bank, Fayetteville, Arkansas, a state member bank, and its parent companies, Arvest Bank Group, Inc., and Arvest Holdings, Inc. (together, with Arvest Bank, "Arvest"), both of Bentonville, Arkansas, and 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 Bear State Financial, Inc. ("Bear State"), a bank holding company, and thereby indirectly acquire Bear State Bank, a state member bank, both of Little Rock, Arkansas.

In addition, Arvest Bank has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Bear State Bank, with Arvest Bank as the surviving entity.[3] Arvest 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 Bear State Bank.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 50426 (October 31, 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.

Arvest, with consolidated assets of approximately $16.8 billion, is the 93rd largest depository organization in the United States. Arvest controls approximately $14.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] Arvest controls Arvest Bank, which operates in Arkansas, Kansas, Missouri, and Oklahoma. Arvest is the largest insured depository organization in Arkansas, controlling approximately $8.5 billion in deposits, which represent approximately 13.2 percent of the total deposits of insured depository

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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 Appendix A.
5 12 CFR 262.3(b).
6 National deposit, market share, and ranking data are as of September 30, 2017, and asset data is as of December 31, 2017, unless otherwise noted.

institutions in the state.[7] Arvest is the 19th largest insured depository organization in Missouri, controlling approximately $1.3 billion in deposits, which represent approximately 0.7 percent of the total deposits of insured depository institutions in the state. Arvest is the 4th largest insured depository organization in Oklahoma, controlling approximately $4.9 billion in deposits, which represent approximately 5.7 percent of the total deposits of insured depository institutions in the state.

Bear State, with consolidated assets of approximately $2.2 billion, is the 368th largest insured depository organization in the United States. Bear State controls approximately $1.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Bear State controls Bear State Bank, which operates in Arkansas, Missouri, and Oklahoma. Bear State is the 10th largest insured depository organization in Arkansas, controlling approximately $1.3 billion in deposits, which represent approximately 2.0 percent of the total deposits of insured depository institutions in the state. Bear State is the 66th largest insured depository organization in Missouri, controlling approximately $358.3 million in deposits, which represent approximately 0.2 percent of the total deposits of insured depository institutions in the state. Bear State is the 167th largest insured depository organization in Oklahoma, controlling approximately $55.5 million in deposits, which represent approximately 0.1 percent of the total deposits of insured depository institutions in the state.

On consummation of the proposal, Arvest would become the 89th largest insured depository organization in the United States, with consolidated assets of approximately $18.8 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Arvest would control consolidated deposits of approximately $16.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Arkansas, Arvest would remain the largest insured depository organization, controlling deposits of approximately $9.7 billion, which represent approximately 15.2 percent of the total deposits of insured depository institutions in the state. In Missouri, Arvest would become the 15th largest insured depository organization, controlling deposits of approximately $1.7 billion, which represent approximately 0.9 percent of the total deposits of insured depository institutions in the state. In Oklahoma, Arvest would remain the 4th largest insured depository organization, controlling deposits of approximately 5.0 billion, which represent approximately 5.7 percent of total deposits of insured depository institutions in the state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[8] Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[9] In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the

[7] State deposit, market share, and ranking data are as of June 30, 2017, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[8] 12 U.S.C. § 1842(d)(1)(A).

[9] 12 U.S.C. § 1842(d)(1)(B).

total deposits of insured depository institutions in the United States[10] or, in certain circumstances, if 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.[11]

For purposes of the BHC Act, the home state of Arvest is Arkansas, and Bear State Bank is located in Arkansas, Missouri, and Oklahoma.[12] Arvest is well capitalized and well managed under applicable law, and Arvest Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[13] Missouri has a five-year minimum age requirement,[14] and Oklahoma has no minimum age requirement. Bear State Bank has been in existence for more than five years.

On consummation of the proposed transaction, Arvest would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Arkansas imposes a 25 percent limit,[15] Missouri imposes a 13 percent limit,[16] and Oklahoma imposes a 20 percent limit,[17] on the total amount of in-state deposits that a single banking organization may control. In each of these states, the only states in which Arvest and Bear State have overlapping operations, the combined organization would control less than the total amount of in-state deposits that a single banking organization may control. The Board has considered all other requirements under section 3(d) of the BHC Act, including Arvest's record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all of 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 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.[18] 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.[19]

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[10] 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 Arvest Bank and Bear State Bank is Arkansas. 12 U.S.C. § 1828(c)(13)(ii)(II). Accordingly, the deposit cap requirement of the Bank Merger Act does not apply to the proposed bank merger.

[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 state in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7).

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

[13] 12 U.S.C. § 2901 *et seq*.

[14] *See* Mo. Rev. Stat. § 362.077(1).

[15] Ark. Code Ann. § 23-48-406.

[16] Mo. Rev. Stat. § 362.915.

[17] 6 Okl. St. Ann. § 501.1.

[18] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[19] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

Arvest and Bear State have subsidiary depository institutions that compete directly in the Mountain Home, Arkansas, banking market ("Mountain Home market"); the Fayetteville/Rogers, Arkansas, banking market ("Fayetteville/Rogers market"); the Hot Springs, Arkansas, banking market ("Hot Springs market"); the Harrison, Arkansas, banking market ("Harrison market"); the Little Rock, Arkansas, banking market ("Little Rock market"); the Mena, Arkansas, banking market ("Mena market"); the Springfield, Missouri, banking market ("Springfield market"); and the Branson, Missouri, banking market ("Branson market").[20] 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 market; the relative shares of total deposits of insured depository institutions in the market ("market deposits") that Arvest would control;[21] the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index ("HHI") under the U.S. Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[22] other characteristics of the markets; and, as discussed below, commitments made by Arvest to divest one branch in the Mena market.

Banking Markets Within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Mountain Home, Hot Springs, Little Rock, Springfield, and Branson markets. On consummation of the proposal, the Springfield market would remain unconcentrated, the Branson market would become moderately concentrated, and the Mountain Home, Hot Springs, and Little Rock markets would remain moderately concentrated. In each of these banking markets, numerous competitors would remain.

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Fayetteville/Rogers, Harrison, and Mena markets warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines or would result in the market deposit share of Arvest exceeding 35 percent when using initial competitive screening data.

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[20] All of these banking markets are defined in Appendix B, except for the Fayetteville/Rogers, Harrison, and Mena markets, which are defined in the discussion below.

[21] Local deposit and market share data are as of June30,2017, and, unless otherwise indicated, 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).

[22] 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.

Fayetteville/Rogers market

Using initial screening data, Arvest is the largest competitor in the Fayetteville/Rogers market, controlling approximately $5.3 billion in deposits, which represent approximately 49.2 percent of market deposits.[23] Bear State is the 20th largest depository organization in the Fayetteville/Rogers market, controlling approximately $109.9 million in deposits, which represent approximately 1.0 percent of market deposits. On consummation of the proposal, Arvest would remain the largest depository organization in the Fayetteville/Rogers market, controlling approximately $5.4 billion in market deposits, which would represent approximately 50.2 percent of market deposits. The HHI in this market would increase by 100 points, from 2571 to 2671.

The Board has considered whether 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 Fayetteville/Rogers market.[24] Factors indicate that the increase in concentration in the Fayetteville/Rogers market, as measured by the above market share, overstates the potential competitive effects of the proposal in the market. In particular, one credit union exerts a competitive influence in the Fayetteville/Rogers 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 market.[25] The Board finds that these circumstances warrant including the deposits of this credit union at a 50 percent weight in estimating market influence. This weighting takes into account the limited lending done by this credit union to small businesses relative to commercial banks' lending levels.

After reweighting the deposits of the credit union at 50 percent, Arvest would control approximately 49.0 percent of market deposits, and the HHI would increase by 100 points, from 2556 to 2656. Although the adjusted market share and market concentration levels still exceed the DOJ Bank Merger Guidelines, an additional factor indicates that the competitive effects of the proposal would not likely be significantly adverse. After consummation of the proposal, 40 depository institutions would compete with Arvest in the Fayetteville/Rogers market. The presence of these viable competitors suggests that Arvest would have limited ability unilaterally to offer less attractive terms to consumers, and these competitors would be able to exert competitive pressure on Arvest in the market.

Harrison market

Using initial screening data, Arvest is the 4th largest competitor in the Harrison market, controlling approximately $116.5 million in deposits, which represent approximately 11.8 percent of market deposits.[26] Bear State is the 3rd largest depository organization in

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[23] The Fayetteville/Rogers market is defined as Benton, Madison, and Washington counties, all of Arkansas; McDonald County, Missouri; and the town of West Siloam Springs in Delaware County, Oklahoma.

[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 Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

[25] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g. , KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.,* 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

[26] The Harrison market is defined as Boone, Newton, and Searcy Counties, all of Arkansas; and the western half of Marion County, Arkansas (excluding the cities of Yellville and Summit).

the Harrison market, controlling approximately $168.9 million in deposits, which represent approximately 17.1 percent of market deposits. On consummation of the proposal, Arvest would become the largest depository organization in the Harrison market, controlling approximately $285.4 million in market deposits, which would represent approximately 28.9 percent of market deposits. The HHI in this market would increase by 404 points, from 1562 to 1966.

Factors indicate that the increase in concentration in the Harrison market, as measured by the above market share and change in HHI, overstates the potential competitive effects of the proposal in the market. In particular, after consummation of the proposal, 10 depository institutions would compete with Arvest in the Harrison market. These include two depository institutions each with more than a 20 percent share of market deposits, one depository institution with a more than 10 percent share of market deposits, and one depository institution with a more than five percent share of market deposits. The presence of these viable competitors suggests that Arvest would have limited ability unilaterally to offer less attractive terms to consumers, and these competitors would be able to exert competitive pressure on Arvest in the Harrison market. Moreover, recent entry and expansionary activity suggests that the market is attractive to potential competitors. Two depository institutions have established de novo branches in the Harrison market since 2016.

Mena market

Using initial screening data, Arvest is the 3rd largest competitor in the Mena market, controlling approximately $27.7 million in deposits, which represent approximately 7.6 percent of market deposits.[27] Bear State is the second largest depository organization in the Mena market, controlling approximately $66.4 million in deposits, which represent approximately 18.2 percent of market deposits. On consummation of the proposal, Arvest would become the second largest depository organization in the Harrison market, controlling approximately $94.1 million in market deposits, which would represent approximately 25.8 percent of market deposits. The HHI in this market would increase by 277 points, from 4149 to 4426.[28]

To mitigate the potentially adverse competitive effects of the proposal in the Mena market, Arvest has committed to divest one of Bear State Bank's two branches in the market to a competitively suitable out-of-market purchaser.[29] After accounting for the branch divestiture and following consummation of the proposal, Arvest would control approximately 8.2 percent of market deposits, and the HHI would decrease by 12 points, from 4149 to 4137. Accordingly, consummation of the proposal would be within the thresholds in the DOJ Bank Merger Guidelines.

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[27] The Mena market is defined as Polk County, Arkansas.

[28] The high degree of concentration in the market is attributable to the presence of a large competitor, which controls approximately 60.6 percent of market deposits.

[29] As a condition of consummating the proposal, Arvest has committed that it will execute, before consummation of the proposal, an agreement to sell the branch to a purchaser or purchasers determined by the Board to be competitively suitable. Arvest also has committed to complete the divestiture within 180days after consummation of the proposed merger. In addition, Arvest has committed that, if the proposed divestiture is not completed within the 180-day period, Arvest would transfer the unsold branch to an independent trustee, who would be instructed to sell the branch to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. *See, e.g., Bank America Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

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, with the proposed divestiture of a branch in the Mena market, 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 Arvest's commitment to divest a branch in the Mena market, 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 of the eight banking markets in which Arvest Bank and Bear State Bank compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[30] 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. 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.

Arvest and Bear State are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a merger of Bear State with Arvest Bank's wholly owned acquisition subsidiary[31] with a subsequent merger of Bear State Bank into Arvest Bank.[32] The asset quality, earnings, and liquidity of both Arvest Bank and Bear State Bank are consistent with approval, and Arvest 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 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 Arvest, Bear State, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Arvest; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; and the organiza-

[30] 12 U.S.C. §§ 1842(c)(2), (5), & (6), and 1828(c)(5) & (11).

[31] As a result, Arvest Bank will become a bank holding company for a moment in time before Bear State is dissolved and Bear State Bank is merged with and into Arvest Bank.

[32] As part of the proposed transaction, each share of Bear State's common stock would be converted into a right to receive cash. Arvest has the financial resources to effect the proposed transaction.

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

Arvest, Bear State, and their subsidiary depository institutions are each considered to be well managed. Arvest has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of Arvest have substantial knowledge of and experience in the banking and financial services sectors, and Arvest's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Arvest's plans for implementing the proposal. Arvest 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. Arvest would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Arvest's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all of the facts of record, including Arvest'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 Arvest and Bear State 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.[33] 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.[34] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,[35] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[36]

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 the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicants. The Board also may consider the institution's business model, its

[33] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).
[34] 12 U.S.C. § 2901 *et seq*.
[35] 12 U.S.C. § 2901(b).
[36] 12 U.S.C. § 2903.

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 Arvest Bank and Bear State Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of St. Louis ("Reserve Bank") and the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; and information provided by Arvest.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.[37] In this case, the Board considered the supervisory views of the Reserve Bank and the CFPB.

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.[38] 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 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"),[39] 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 distributions 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;[40] (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. Large institutions also are subject to an investment test that evaluates the number and amounts of qualified investments that

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

[38] 12 U.S.C. § 2906.

[39] 12 U.S.C. § 2801 *et seq*.

[40] 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).

benefit their assessment areas and 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.[41] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts 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.[42]

CRA Performance of Arvest Bank

Arvest Bank was assigned an overall "Satisfactory" rating by the Reserve Bank at its most recent CRA performance evaluation, as of September 21, 2015 ("Arvest Bank Evaluation").[43] The bank received a "Low Satisfactory" rating for the Lending Test and "High Satisfactory" ratings for the Investment Test and the Service Test.[44]

Examiners found that Arvest Bank originated a majority of its loans inside its AAs and that the bank's overall lending activity reflected good responsiveness to AA credit needs. Examiners also noted that the bank's small loans to businesses reflected adequate geographic penetration through the AAs. In addition, examiners found the bank's distribution of product lines by income level of the borrower and the bank's distribution of loans to businesses with different revenue sizes to be good.

Examiners determined that Arvest Bank's level of qualified community development investments was adequate and responsive to community needs. Examiners found that the bank's service delivery systems were accessible to geographies and individuals of different income levels within the bank's AAs. Examiners also noted that in the states of Arkansas and Missouri, the bank's branches were accessible and that, in the state of Oklahoma, the bank's branches were reasonably accessible.

CRA Performance of Bear State Bank

Bear State Bank was assigned an overall "Satisfactory" rating by the Reserve Bank at its most recent CRA performance evaluation, as of June 12, 2017 ("Bear State Bank Evaluation").[45] The bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test."[46] Greater weight was given

[41] 12 CFR 228.21 *et seq*.

[42] 12 CFR 228.26(c).

[43] The Arvest Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated from January 1, 2013, through December 31, 2014. The evaluation for community development loans, investments, and services was from April 15, 2013, through September 21, 2015.

[44] The Arvest Bank Evaluation included full-scope evaluations of the Fayetteville-Springdale-Rogers, Arkansas-Missouri Metropolitan Statistical Area ("MSA"); Fort Smith, Arkansas-Oklahoma MSA; Kansas City, Missouri-Kansas MSA, Little Rock-North Little Rock-Conway, Arkansas MSA; Joplin, Missouri MSA; Oklahoma City, Oklahoma MSA; Tulsa, Oklahoma MSA; the Arkansas Non-MSA AA; and the Oklahoma Non-MSA AA. Limited-scope evaluations were performed of the Hot Springs, Arkansas MSA; Springfield, Missouri MSA; Lawton, Oklahoma MSA; and the Missouri Non-MSA AA.

[45] The Bear State Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed HMDA-reportable loans and commercial loans originated from January 1, 2015, through December 31, 2015. The evaluation period for community development lending, investments, and services was from June 3, 2013, to June 11,2017.

[46] The Bear State Bank Evaluation included full-scope evaluations of the Fayetteville, Arkansas MSA; Jonesboro, Arkansas MSA; Springfield, Missouri MSA; the Southwest, Arkansas Non-MSA AA; the North Central, Arkansas Non-MSA AA; and the Oklahoma Non-MSA AA. Limited Scope evaluations were performed of the Hot Springs, Arkansas MSA; Little Rock, Arkansas MSA; Texarkana, Arkansas MSA; Barton County, Missouri MSA; and the Mississippi County, Arkansas Non-MSA AA.

to the bank's performance in Arkansas because of the higher percentage of bank deposits, branches, and loans in the state.

Examiners concluded that Bear State Bank was responding to the credit needs of its AAs. In particular, examiners found that the loan-to-deposit ratio was more than reasonable given the bank's size, financial condition, and AA credit needs. Examiners noted that the geographic distribution of loans reflected reasonable dispersion throughout the AAs and that the distribution of loans reflected reasonable penetration among individuals of different income levels and businesses of different sizes.

Examiners noted that the bank's community development performance, which included loans, investments, and services, demonstrated excellent responsiveness to community development needs throughout the bank's AAs.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Arvest Bank 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. The Board also has considered the results of the most recent consumer compliance examination of Bear State Bank conducted by Reserve Bank examiners, which included a review of the bank's consumer compliance function. In addition, the Board has taken into consideration the supervisory views of the CFPB regarding Arvest Bank.

The Board has taken this information, as well as the CRA performance records of Arvest Bank and Bear State Bank, into account in evaluating the proposed transaction, including in considering whether Arvest has the experience and resources to ensure that Arvest Bank helps to meet the credit needs of the communities within its AAs.

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. Arvest represents that existing customers of Bear State Bank will benefit from Arvest Bank's expansive branch network with longer hours, broader digital services offerings, and a wider variety of products and customer service. In particular, Arvest represents that existing customers of Bear State will gain access to Arvest Bank's network of more than 250 branch locations and 350 ATMs. Further, existing customers of Bear State Bank will have access to increased offerings in the areas of personal account services, business account services, and advanced digital banking services.

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 Reserve Bank and the CFPB, confidential supervisory information, information provided by Arvest, 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."[47]

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.[48] 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.[49]

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.[50]

In this case, the Board has considered information relevant to risks to the stability of the United States 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 and commercial banking activities.[51] 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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[47] Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

[48] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

[50] *See People's United Financial, Inc.,* FRB Order No. 2017-08 at 25-26 (March16,2017). 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.

[51] Arvest Bank offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Bear State Bank also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, Arvest has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and 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 United States 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

Arvest Bank has applied under section 9 of the FRA to establish branches at the current locations of Bear State Bank.[52] The Board has assessed the factors it is required to consider when reviewing an application under that section.[53] Specifically, the Board has considered Arvest 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.[54] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Arvest 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 applications. The conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective April 2, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

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[52] *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. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also 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), (c). In addition, under section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, Arvest Bank's branches would be permissible under applicable state law. *See* Ark. Code Ann. § 23-48-702; Mo. Rev. Stat. § 362.107; 6 Okl. St. Ann. § 501.1.

[53] 12 U.S.C. § 322; 12 CFR 208.6.

[54] Upon consummation of the proposed transaction, Arvest Bank's investment in bank premises would remain within legal requirements, under 12 CFR 208.21.

Appendix A

Branches to Be Established by Arvest Bank

Arkansas

1. 2009 Browns Lane, Jonesboro, Arkansas 72401
2. 5205 East Johnson Avenue, Jonesboro, Arkansas 72401
3. 3101 Southwest Drive, Jonesboro, Arkansas 72404
4. 110 West Main Street, Ashdown, Arkansas 71822
5. 307 North Walton Boulevard, Bentonville, Arkansas 72712
6. 2885 Prince Street, Conway, Arkansas 72034
7. 504 West Collin Raye Drive, De Queen, Arkansas 71832
8. 103 West Third Street, Dierks, Arkansas 71833
9. 3460 North College Avenue, Fayetteville, Arkansas 72703
10. 214 North First Street, Glenwood, Arkansas 71943
11. 324 South Highway 62 65 Bypass, Harrison, Arkansas 72601
12. 1401 Highway 62 65 N, Harrison, Arkansas 72601
13. 2223 Albert Pike Road, Hot Springs, Arkansas 71913
14. 135 Section Line Road, Hot Springs, Arkansas 71913
15. 3835 North Highway 7, Hot Springs Village, Arkansas 71909
16. 5315 Highland Drive, Little Rock, Arkansas 72223
17. 709 West Fleeman, Manila, Arkansas 72442
18. 600 Highway 71 South, Mena, Arkansas 71953
19. 600 Highway 71 North, Mena, Arkansas 71953
20. 301 East Drew Avenue, Monette, Arkansas 72447
21. 742 Highway 270 East, Mount Ida, Arkansas 71957
22. 221 South George Street, Mount Ida, Arkansas 71957
23. 1337 Highway 62 West, Mountain Home, Arkansas 72653
24. 3027 Highway 62 East, Mountain Home, Arkansas 72653
25. 668 Highway 62 East, Mountain Home, Arkansas 72653
26. 420 South Main Street, Nashville, Arkansas 71852
27. 2000 South Promenade Boulevard, Rogers, Arkansas 72758
28. 3300 West Sunset Avenue, Springdale, Arkansas 72762
29. 181 Highway 71 Bypass, Waldron, Arkansas 72958
30. 301 Highway 62 W, Yellville, Arkansas 72687

Missouri

1. 9863 State Highway 76, Branson West, Missouri 65737
2. 403 Main Street, Golden City, Missouri 64748
3. 150 South Town Boulevard, Hollister, Missouri 65672
4. 12661 State Highway 13, Kimberling City, Missouri 65686
5. 1105 Gulf Street, Lamar, Missouri 64759
6. 1101 Spur Drive, Marshfield, Missouri 65706
7. 716 West Mount Vernon Street, Nixa, Missouri 65714
8. 2835 East Battlefield Street, Springfield, Missouri 65804
9. 3340 East Cherry Street, Springfield, Missouri 65802
10. 600 South Glenstone Avenue, Springfield, Missouri 65802
11. 3550 South National Avenue, Springfield, Missouri 65807

Oklahoma

1. 409 South Park Drive, Broken Bow, Oklahoma 74728
2. 702 Southeast Washington Street, Idabel, Oklahoma 74745

Appendix B

Arvest/Bear State 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
Mountain Home, Arkansas ("Mountain Home") – Baxter County, Arkansas; the western third of Fulton County, Arkansas, including Big Creek, Cleveland, Fulton, Mount Calm and Vidette townships; the eastern half of Marion County, Arkansas, including the cities of Yellville and Summit; and Ozark County, Missouri.						
Arvest Pre-Consummation	2	$225.7M	16.81			
Bear State	4	$118.4M	8.82			
Arvest Post-Consummation	1	$444.1M	25.6	1558	296	9
Hot Springs, Arkansas ("Hot Springs") – Garland and Hot Springs Counties, AR; and the portion of Hot Springs Village located in Saline County, Arkansas						
Arvest Pre-Consummation	3	$299.5M	12.16			
Bear State	7	$140M	5.68			
Arvest Post-Consummation	1	$439.5	17.8	1205	138	9
Little Rock, Arkansas ("Little Rock") – Conway, Faulkner, Grant, Perry and Pulaski counties, Arkansas; Saline County, Arkansas (minus the city of Hot Springs Village); Prairie County, Arkansas (minus Belcher, Roc Roe, and Tyler townships); the extreme southern portion of White County, Arkansas, that includes El Paso, Royal, and Union townships; and the southeastern portion of Van Buren County, Arkansas, that includes Barnett, Bradley, Cadron, and Cargile townships, the southwestern part of Davis township, and the cities of Bee Branch and Morganton.						
Arvest Pre-Consummation	6	$1.45B	7.1			
Bear State	13	$227.7M	1.1			
Arvest Post-Consummation	5	$1.68B	8.2	1166	16	37
Springfield, Missouri ("Springfield") – Christian, Dade, Dallas, Greene, Polk, and Webster counties, Missouri; and the northern half of Lawrence County, Missouri, that includes Red Oak, Green, Lincoln, Ozark, Turnback, Mount Vernon, and Vineyard townships and the city of Mount Vernon.						
Arvest Pre-Consummation	18	$152M	1.51			
Bear State	15	$208M	2.07			
Arvest Post-Consummation	10	$360M	3.58	681	6	35
Branson, Missouri ("Branson") – Stone and Taney counties, Missouri.						
Arvest Pre-Consummation	3	$131.8M	9.81			
Bear State	4	$110.0M	8.18			
Arvest Post-Consummation	2	$231.8M	18	1155	161	16

Data and rankings are as of June 30, 2017. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

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Legal Developments: Third Quarter, 2018

Order Issued Under Bank Holding Company Act

Order Issued Under Section 3 of the Bank Holding Company Act

HarborOne Mutual Bancshares
Brockton, Massachusetts

HarborOne Bancorp, Inc.
Brockton, Massachusetts

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2018-18

HarborOne Bancorp, Inc., and its parent company, HarborOne Mutual Bancshares, both of Brockton, Massachusetts (collectively, "HarborOne"), 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] for HarborOne Bancorp, Inc. to acquire and merge with Coastway Bancorp, Inc. ("Coastway"), and thereby indirectly acquire Coastway Community Bank, both of Warwick, Rhode Island. Following the proposed acquisition, Coastway Community Bank would be merged into HarborOne's subsidiary bank, HarborOne Bank, Brockton, Massachusetts.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 17661 (April 23, 2018)).[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.

HarborOne, with consolidated assets of approximately $2.9 billion, is the 325th largest insured depository organization in the United States.[5] HarborOne controls approximately $2.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. HarborOne controls HarborOne Bank, which operates branches only in Massachusetts.

Coastway is the 1,022nd largest insured depository organization in the United States. Coastway controls approximately $494.9 million in deposits, which represent less than

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Coastway Community Bank into HarborOne Bank is subject to approval by 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 August 31, 2018.

4 12 CFR 262.3(b).

5 National asset data are as of June 30, 2018. National deposit, ranking, and market-share data are as of March 31, 2018, unless otherwise noted.

1 percent of the total amount of deposits of insured depository institutions in the United States. Coastway controls Coastway Community Bank, with assets of $837 million, which operates only in Rhode Island.

On consummation of the proposal, HarborOne would become the 274th largest insured depository organization in the United States, with consolidated assets of approximately $3.7 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. HarborOne would control consolidated deposits of approximately $2.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6]

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] 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, if 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 HarborOne is Massachusetts, and Coastway Community Bank is located only in Rhode Island.[10] HarborOne and HarborOne Bank are well capitalized and well managed under applicable law, and HarborOne Bank has an "Outstanding" rating under the Community Reinvestment Act of 1977 ("CRA").[11] Rhode Island has no statutory minimum age requirement,[12] and Coastway Community Bank has been in existence for more than five years.

On consummation of the proposed transaction, HarborOne would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. In addition, there are no states in which HarborOne and Coastway have overlapping banking operations; thus, there is no applicable state deposit cap. The Board has considered all other requirements under section 3(d) of the BHC Act, including HarborOne Bank's record of meeting the convenience and needs of the communities it

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

[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). For purposes of section 3(d) of the BHC Act, 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. The Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch. *See*12U.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.

[11] 12 U.S.C. § 2901 *et seq*.

[12] *See* R.I. Gen. Laws § 19-7-1 *et seq*.

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.[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 communities to be served.[14]

HarborOne Bank and Coastway Community Bank compete directly in the Providence, Rhode Island, banking market ("Providence market").[15] 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 share of total deposits in insured depository institutions in the market ("market deposits") that HarborOne would control;[16] the concentration levels of market deposits and the increase in this level, 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 in the Providence market. On consummation of the proposal, the Providence market would remain highly concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines; however, the change in HHI would be small, and numerous competitors would remain in the market.[18]

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[13] 12 U.S.C. § 1842(c)(1).

[14] 12 U.S.C. § 1842(c)(1)(B).

[15] The Providence market is defined as Bristol, Kent, Newport, and Providence counties, all of Rhode Island; the townships of Charlestown, Exeter, Narragansett, New Shoreham, North Kingstown, Richmond, and South Kingstown, all in Washington County, Rhode Island; the city of Attleboro and the townships of Fall River, Rehoboth, Seekonk, Somerset, Swansea, and Westport, all in Bristol County, Massachusetts. HarborOne Bank has a branch located in the Massachusetts portion of this market and does not have a branch presence in the portion of the market located in Rhode Island. Coastway Community Bank has a branch presence only in the portion of the market located in Rhode Island. Nevertheless, the banks are considered to compete in the entire market.

[16] State deposit and market share data are as of June 30, 2017, 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] HarborOne operates the 18th largest depository institution in the Providence market, controlling approximately $93.2 million in deposits, which represent approximately 0.3 percent of market deposits. Coastway operates the 11th largest depository institution in the same market, controlling deposits of approximately $479.8 million, which represent approximately 1.5 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. 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 Providence 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.[19] 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.

HarborOne and HarborOne Bank are 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-share exchange, with a subsequent merger of the subsidiary depository institutions.[20] The asset quality, earnings, and liquidity of both HarborOne Bank and Coastway Community Bank are consistent with approval, and HarborOne appears to have adequate resources to absorb the related 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 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 HarborOne, Coastway, and their subsidiary depository institutions, including assess-

HarborOne would become the 9th largest depository organization in the market, controlling deposits of approximately $573.0 million, which represent approximately 1.8 percent of market deposits. The HHI for the Providence market would increase by 1 point to 2111, and 23 competitors would remain in the market.

[19] 12 U.S.C. § 1842(c)(2), (5), and (6).

[20] To effect the holding company merger, a wholly owned subsidiary of HarborOne Bancorp, Inc., which was formed to facilitate the transaction, would merge with Coastway, with Coastway as the surviving entity ("First-Step Merger"). At the effective time of the First-Step Merger, each share of Coastway common stock that is issued and outstanding would be converted into a right to receive an amount of cash. Immediately thereafter, Coastway would merge with HarborOne Bancorp, Inc., with HarborOne Bancorp, Inc. as the surviving entity. HarborOne has the financial resources to effect the proposed transaction.

ments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by HarborOne; 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.

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

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

Based on all the facts of record, including HarborOne'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 HarborOne and Coastway 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 these communities, 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 bank 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 operations,[23] and requires the appropriate federal bank 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 the assessments of other relevant supervisors, the

[21] Following consummation of the proposal, Coastway's president and chief executive officer would become the Director of Banking, Rhode Island, at HarborOne Bank.

[22] 12 U.S.C. § 1842(c)(2).

[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the acquiring institution's business model and 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 HarborOne Bank and Coastway Community Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by HarborOne, and the public comment on the proposal.[25] The commenter requested that HarborOne's proposed acquisition of Coastway include a forward-looking community benefits plan.[26]

Records of Performance under the CRA

The CRA requires that the appropriate federal bank 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 bank supervisors apply a lending test to evaluate the performance of a large insured depository institution, such as HarborOne Bank, in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's 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"),[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 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-,

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

[26] 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 private party. *See , e.g. , TriCo Bancshares ,* FRB Order No. 2018-13 at 9 n.20 (June 6, 2018); *Howard Bancorp, Inc*., FRB Order No. 2018-05 at 9 n. 21 (February 12, 2018); *Sandy Spring Bancorp, Inc*., FRB Order No. 2017-32 at 12 n.31 (November 22, 2017); *First Midwest Bancorp, Inc.*, FRB Order No. 2016-18 at 11 n.28 (November 10, 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.

[27] 12 U.S.C. § 2906.

[28] 12 U.S.C. § 2801 *et seq*.

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.[30] Large institutions also are subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[31] Intermediate small banks, such as Coastway Community Bank, are subject to the lending test, as well as a community development test that evaluates the number and amounts 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.[32]

CRA Performance of HarborOne Bank

HarborOne Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of December 18, 2017 ("HarborOne Bank Evaluation").[33] The bank received "Outstanding" ratings for the Lending Test, Investment Test, and Service Test.[34]

Examiners found that HarborOne Bank's overall lending levels reflected good responsiveness to the credit needs of its AA. Examiners noted that a high percentage of the bank's home mortgage and small business loans, as measured by number of loans and dollar volume, was originated within its AA. Examiners found that the geographic distribution of the bank's loans reflected good penetration throughout its AA and that the distribution of the bank's borrowers reflected excellent penetration among borrowers of different income levels and businesses of different sizes. Examiners determined that HarborOne Bank was a leader in making community development loans and noted that the bank made extensive use of innovate and flexible lending practices.

Examiners found that HarborOne Bank had an excellent level of qualified community development investments, grants, and donations. In addition, examiners determined that the bank was a leader in providing community development services in its AA. Examiners found that the bank's delivery systems were readily accessible to all portions of its AA, and the bank's branch hours and services were tailored to the convenience and needs of the bank's AA.

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[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.,* 12CFR228.22(b)(3).

[30] *See* 12 CFR 228.22(b).

[31] *See* 12 CFR 228.21 *et seq*.

[32] 12 CFR 228.26(c).

[33] The HarborOne Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business loans as reported under CRA data collection requirements, from January 1, 2015, through December 31, 2016. The evaluation period for community development loans, investments, and services was August 25, 2014, through December 18, 2017.

[34] The HarborOne Bank Evaluation included a full-scope evaluation of the bank's sole AA, which consists of parts of the Boston, Massachusetts Metropolitan Division and the Providence-Warwick, Rhode Island-Massachusetts Metropolitan Statistical Area ("MSA").

CRA Performance of Coastway Community Bank

Coastway Community Bank received an overall rating of "Outstanding" at its most recent CRA performance evaluation by the FDIC, as of May 30, 2017 ("Coastway Evaluation").[35] The bank received "Outstanding" ratings for the Lending Test and the Community Development Test.[36]

Examiners concluded that Coastway Community Bank was responsive to the credit needs of its AA. In particular, examiners found that the bank's loan-to-deposit ratio was reasonable given the bank's asset size, financial condition, and the credit needs of its AA. Examiners noted that the bank made a substantial majority of its home mortgage and small business loans within its AA. Examiners found that the geographic distribution of the bank's home mortgage and small business loans reflected excellent dispersion throughout its AA. Examiners also found that, given the demographics of the bank's AA, the distribution of the bank's borrowers reflected excellent penetration among individuals of different income levels and businesses of different sizes.

Examiners concluded that Coastway Community Bank demonstrated excellent responsiveness to the community development needs of its AA through community development loans, qualified investments, and community development services.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding HarborOne Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed and approved the Bank Merger Act application related to the proposal. The Board has considered the results of the most recent consumer compliance examinations of HarborOne Bank and Coastway Community Bank conducted by FDIC examiners, which included a review of the banks' compliance management programs and the banks' compliance with consumer protection laws and regulations. The Board has taken this information, as well as the CRA performance records of HarborOne Bank and Coastway Community Bank, into account in evaluating the proposal, including in considering whether HarborOne has the experience and resources to ensure that HarborOne Bank helps to meet the credit needs of the communities within its AA.

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. HarborOne represents that, following consummation of the proposal, existing customers of HarborOne Bank and Coastway Community Bank would benefit from an expanded branch and ATM network. In addition, HarborOne represents that the proposal would result in a combined organization with lower fixed costs and greater resources for lending and community investment activities.

HarborOne asserts that the combined organization would remain committed to fulfilling the needs of LMI communities. HarborOne states that it will continue to offer its existing products and services following consummation of the proposal. This includes products that are intended to increase affordable housing and the creation of small businesses, such as

[35] The Coastway Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business loans reported under CRA data collection requirements, from January 1, 2015, through December 31, 2016. The evaluation period for community development lending, investments, and services was July 1, 2014, through May 30, 2017.

[36] The Coastway Evaluation included an evaluation of the bank's sole AA, which consists of parts of the Providence-Warwick, Rhode Island-Massachusetts MSA.

first-time home buyer loans, MassHousing mortgages, Federal Home Loan Bank grants, and Small Business Administration loans.

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, confidential supervisory information, information provided by HarborOne, 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."[37]

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.[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 on the broader economy.[39]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in total 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.[40]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than

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

[38] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

[39] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 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.

$10 billion in total assets and a pro forma organization of less than $100 billion in total assets. Both the acquirer and the target are predominately engaged in retail and 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 United States 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 HarborOne with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the 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 Boston, acting under delegated authority.

By order of the Board of Governors, effective September 12, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

[41] HarborOne and Coastway offer a range of retail and commercial banking products and services. HarborOne has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

Orders Issued Under Federal Reserve Act

Origin Bank
Choudrant, Louisiana

Order Approving the Establishment of a Branch
FRB Order No. 2018-17 (September 4, 2018)

Origin Bank, Choudrant, Louisiana, a state member bank subsidiary of Origin Bancorp, Inc., Ruston, Louisiana, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[1] and the Board's Regulation H[2] to establish a branch on La Branch Street, Houston, 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.

Origin Bank, with total assets of $4.4 billion, is the 61st largest depository organization in Texas, with 17 branches throughout Texas, controlling approximately $1.1 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.[5] Origin Bank operates through 45 branches throughout Louisiana, Mississippi, and Texas, and the bank's main office is in Choudrant, Louisiana.

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 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.

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1 Section 9 of the FRA, 12U.S.C. § 321, which applies the interstate branching provisions of the National Bank Act, 12 U.S.C. § 36(c)(2), permits a state member bank with a branch in a state other than the bank's home state to establish additional branches in that state to the same extent as a bank chartered in that state. Origin Bank currently operates branches in Texas and is permitted under section 9 of the FRA and Texas state law to establish additional branches in Texas. *See* 12 U.S.C. § 36(c)(2); Texas. Fin. Code Ann. § 203.006 (permitting an out-of-state bank that has established or acquired a branch in Texas to establish or acquire additional branches in Texas to the same extent that a Texas state-chartered bank could under state or federal law).

2 12 CFR part 208.

3 The branch will be located on two adjacent parcels of land with a current address of 5515 & 5521 La Branch Street. These two parcels are in the process of being replatted into a single property. The City of Houston has designated a preliminary address of 1511 Binz Street to the replatted property, but the exact street address of the branch has not yet been determined. Origin Bank will provide the final street address to the Board as soon as it has been determined.

4 12CFR 262.3(b).

5 Asset data are as of June 30, 2018. State deposit data are as of March 31, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

6 12 CFR 208.6(b).

7 12 U.S.C. § 2901 *et seq.*

8 12 CFR 208.21(a).

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Origin Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Origin Bank, and the comment received on the proposal. Origin Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Origin Bank are consistent with approval, and Origin 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 Origin Bank's proposed investment in the branch and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.[9]

In considering Origin Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Origin Bank and the bank's record of compliance with applicable banking laws, including consumer protection and anti-money-laundering laws. Origin Bank is considered to be well managed. Origin 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 to be consistent with approval.

Based on this review and all the facts of record, the Board concludes that Origin Bank's management, financial history and condition, capital adequacy, and future earnings prospects, as well as the effectiveness of Origin 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 these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.[10] 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,[11] 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 a bank branching proposal.[12]

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

[9] 12 CFR 208.21(a).
[10] 12 CFR 208.6(b)(3).
[11] 12U.S.C. § 2901(b).
[12] 12U.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 Origin Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Origin Bank, and the public comment received on the proposal.

Public Comment on the Proposal

One commenter objects to the proposal, alleging that Origin Bank has engaged in redlining in Dallas and Houston, Texas.[13] Specifically, the commenter alleges that Origin Bank disfavors certain African American neighborhoods in Houston and Dallas and has limited its lending, market activities, community development activities, and branching in those areas.

Business of the Applicant and Response to the Comment

Through its network of branches in three states, Origin Bank offers a broad range of loan and deposit products and services to consumers and businesses, including commercial, residential, agricultural, and consumer loans, and personal checking and savings accounts. Origin Bank denies the commenter's allegations. The bank represents that the bank's compliance personnel regularly review information relating to loan volume and geographic penetration with the bank's market presidents, and community development loans, services, donations and investments are tracked and are routinely communicated to bank management. Origin Bank further asserts that it maintains policies, procedures, and practices to ensure compliance with the CRA and applicable fair lending laws and regulations. Additionally, Origin Bank asserts that it continually seeks meaningful partnerships with nonprofit organizations, schools, community organizations, and small businesses to foster community development.

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.[14] In this case, the Board considered the information collected by and the findings of examiners from the Federal Reserve Bank of Dallas ("Reserve Bank"), who conducted an on-site CRA performance evaluation of Origin 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 appli-

[13] 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.

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

[15] 12U.S.C. § 2906.

cations process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"),[16] in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending 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;[17] (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 Origin Bank

Origin Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of October 24, 2016 ("Origin Bank Evaluation").[18] Origin Bank received a "High Satisfactory" rating for each of the Lending Test and the Service Test and a "Low Satisfactory" rating for the Investment Test.[19]

Examiners found that Origin Bank's overall lending activity reflected good responsiveness to credit needs in its AAs. According to examiners, the bank made an adequate percentage of its loans inside its AAs. Examiners noted that, overall, the bank's distribution of borrowers reflected good penetration among individuals of different income levels and businesses of different revenue sizes. Examiners found that the bank's geographic distribution of loans reflected adequate penetration throughout the AAs. Examiners noted that the bank made a relatively high level of community development loans for a variety of

[16] 12 U.S.C. § 2801 *et seq*.

[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 $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*., 12CFR228.22(b)(3).

[18] The Origin Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business and small farm lending activities reported by the bank from January 1, 2013, through December 31, 2015. The evaluation period for community development lending, investments, and services was September 16, 2013, through October 24, 2016.

[19] The Origin Bank Evaluation included a full-scope review of the bank's AAs within the Monroe, Louisiana, Metropolitan Statistical Area ("MSA"); the Lincoln Parish, Louisiana, MSA; the Dallas-Fort Worth Metroplex, which is composed of counties in the Dallas-Fort Worth-Arlington MSA and the Dallas-Plano-Irving, Texas, Metropolitan Division ("Dallas AA"); and the North Central, Mississippi, MSA. A limited-scope review was conducted in the bank's AAs within the Houston-Sugar Land-Bayton, Texas, MSA ("Houston AA"); the Morehouse Parish, Louisiana, MSA; the Northwest, Louisiana, MSA; and the bank's Oxford, Mississippi non-MSA Mississippi AA.

purposes, including community services, economic development, and revitalization and stabilization, but the majority were for affordable housing.

Examiners found Origin Bank's lending performance in the Dallas AA, an area of concern for the commenter, to be adequate. Examiners found that the geographic distribution of the bank's loans in this AA reflected poor penetration, and the bank's distribution of lending to borrowers of different income levels and businesses of different revenue sizes reflected adequate penetration. Examiners found that the bank made a relatively high level of community development loans. In the Houston AA, another area of concern for the commenter, examiners found the bank's lending performance to be consistent with its overall lending performance in the Dallas AA.

Examiners found that the bank's investments demonstrated good responsiveness to credit and community development needs throughout its AAs. Examiners found that the bank had an adequate level of qualified community development investments and grants, particularly those not routinely provided by private investors. In the Dallas AA, examiners found that the bank had an adequate level of qualified community development investments and grants, with investments primarily focused on economic development initiatives. The bank's investment performance in the Houston AA was found to be consistent with the bank's overall investment performance in the Dallas AA.

Examiners found that Origin Bank provided a relatively high level of community development services throughout its AAs. Origin Bank's retail delivery systems were found to be accessible to geographies and individuals of different income levels located in its AAs. Examiners further noted that Origin Bank's opening and closing of branches did not adversely affect the accessibility of banking services, particularly to LMI geographies and/or individuals. Examiners found that the banking services did not vary in a way that inconvenienced the bank's AAs, particularly LMI geographies and individuals.

In the Dallas AA, examiners found that Origin Bank's performance under the Service Test was good. Examiners compared the distribution of the bank's delivery systems to households and businesses within the area and found that the bank's delivery systems were readily accessible to the bank's geographies and individuals of different income levels. Examiners also found that the bank's retail and community development services reflected good responsiveness to the needs of the AA. Moreover, examiners found that the bank's record of opening or closing branches in the Dallas AA generally had not affected the accessibility of its delivery systems. In the Houston AA, examiners concluded that Origin Bank's service performance was consistent with its overall service performance in the Dallas AA.

Origin Bank's Efforts since the 2016 CRA Evaluation

Origin Bank represents that since the Origin Bank Evaluation, it has continued to help meet the credit needs of its AAs, including the needs of LMI communities and individuals. Origin Bank represents that it has made community development loans that support economic development and revitalization, as well as loans to organizations providing community services to LMI individuals and families. The bank also asserts that it has continued to offer a broad range of products and banking services that are designed to address the needs of LMI individuals and geographies, including free online banking and mobile banking services and a low-cost checking account with no minimum deposit to open. The bank represents that it participates in a number of grant programs to facilitate its financing of affordable housing, grants to help LMI families, and economic development programs to promote economic growth activities in the bank's AAs, including in Houston. Additionally, Origin Bank asserts that it has continued to partner with nonprofit

organizations by having its employees serve on their boards, developing relationships with small business groups, promoting financial literacy, and sponsoring first-time homebuyers' events that are targeted to LMI consumers.

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 its compliance with consumer protection laws and regulations. As part of the consumer compliance examination, Reserve Bank examiners also evaluated Origin Bank's fair lending compliance management program, which included an evaluation of the bank's fair-lending-related policies, procedures, and internal controls.

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 proposed branch would be located less than one-half mile from a currently operating branch, which would be closed. The bank believes that the location of the proposed branch would provide more safety and convenience to the bank's customers because the drive-in facility would be part of the branch, whereas the existing branch's drive-in facility is located across the street from the existing branch.

Conclusion on Convenience and Needs Considerations

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.[20] The Board's approval is specifically conditioned on Origin Bank's compliance with all the commitments made to the Board in connection with the proposal, as well as all conditions imposed in this order. 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.

[20] The Board construes the comment received on the proposal to include a request that the Board hold a public hearing on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 262.3(e). The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in relevant newspapers of general circulation on June 12, 2018. The comment period ended on June 27, 2018. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

The branch must be established 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 September 4, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Compass Bank
Birmingham, Alabama

Order Approving the Establishment of a Branch
FRB Order No. 2018-19 (September 25, 2018)

Compass Bank, Birmingham, Alabama, a state member bank subsidiary of Banco Bilbao Vizcaya Argentaria, S.A., Bilbao, Spain, and BBVA Compass Bancshares, Inc., Houston, Texas ("BBVA Compass"), has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[1] and the Board's Regulation H[2] to establish a branch at 12525 Memorial Drive, Houston, 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.

BBVA Compass, with consolidated assets of $87.6 billion, is the 40th largest depository organization in the United States, controlling approximately $69.9 billion in deposits, which represent less than 1.0 percent of the total amount of deposits of insured depository institutions in the United States.[5] Compass Bank operates through 646 offices located in Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas, and the bank's main office is in Birmingham, Alabama. In Texas, Compass Bank is the fifth largest depository institution, with 342 offices, controlling approximately $36.2 billion in deposits, which represent approximately 4.4 percent of the total amount of deposits in that state.[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 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.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Compass Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Compass Bank, and the comment received on the proposal. Compass Bank is

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1 12 U.S.C. § 321.

2 12 CFR Part 208.

3 The proposed branch would replace an existing branch located only 0.4 miles away from and in the same census tract as the proposed branch.

4 12CFR 262.3(b).

5 Total assets are as of June 30, 2018. National asset ranking and deposit data are as of March31, 2018. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

6 State deposit data are as of June 30, 2017.

7 12 CFR 208.6(b).

8 12 U.S.C. § 2901 *et seq.*

9 12 CFR 208.21(a).

well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Compass Bank are consistent with approval, and Compass Bank appears to have adequate resources to absorb the costs of the proposal. In addition, future earnings prospects are consistent with approval. The Board also has reviewed Compass Bank's proposed investment in the branch and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.[10]

In considering Compass 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 Compass Bank and the bank's record of compliance with applicable banking laws, including anti-money-laundering laws. Compass 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 to be consistent with approval.

Based on this review and all the facts of record, the Board concludes that Compass Bank's management, financial history and condition, capital adequacy, and future earnings prospects, as well as the effectiveness of Compass Bank in combatting moneylaundering activities, are consistent with approval of the proposal.

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.[11] In this evaluation, the Board places particular emphasis on the record of the relevant depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[12] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating a 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 loan 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, marketing and outreach plans, and plans after consummation and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Compass Bank, the fair lending and compliance records of the bank, confidential supervisory infor-

[10] 12 CFR 208.21(a).
[11] 12CFR 208.6(b)(3).
[12] 12 U.S.C. § 2901(b).
[13] 12 U.S.C. § 2903.

mation, information provided by Compass Bank, and the public comment received on the proposal.

Public Comment on the Proposal

A commenter objected to the proposal, alleging that Compass Bank has engaged in redlining in Houston, Texas.[14] Specifically, the commenter alleged that Compass Bank disfavors certain African American neighborhoods in Houston in its lending, marketing, community development, and branching and in other respects.

Business of the Applicant and Response to Comment

Through its network of branches, Compass Bank offers a variety of loan and deposit products and services to consumers and businesses, including residential real estate, consumer, and commercial loan products. With respect to the comment, Compass Bank denies the commenter's allegations and represents that the bank treats all requests for credit equally and does not consider race when underwriting loans. Compass Bank further represents that it attempts to serve all segments of the population in its Houston assessment area ("AA"), including underserved, underbanked, and LMI consumers. Additionally, Compass Bank represents that it closely monitors its mortgage application and originations activity, paying particular attention to high-minority census tracts, and that it maintains and monitors marketing and outreach plans for areas that have statistically high redlining risk.

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 and views provided by the appropriate federal supervisors.[15] In this case, the Board considered information collected by and findings of examiners from the Federal Reserve Bank of Atlanta ("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.[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

[14] 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.

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

[16] 12 U.S.C. § 2906.

an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"),[17] 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 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 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;[18] (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 Compass Bank

Compass Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of December 7, 2015 ("Compass Bank Evaluation").[19] Compass Bank received "High Satisfactory" ratings for the Lending Test and the Investment Test and a "Low Satisfactory" rating for the Service Test.[20]

Examiners found that Compass Bank's overall lending activity in its AAs in Texas and in five other states was good.[21] According to examiners, the geographic distribution of loans throughout the bank's AAs was good. Examiners also found that the bank had a good distribution of loans among borrowers of different income levels and businesses of different sizes. Examiners noted that the bank made an adequate level of community development loans during the review period. Examiners found that Compass Bank's community development loans were made for a variety of purposes, including providing community services targeted to LMI individuals, promoting economic development by financing small businesses, supporting affordable housing, and revitalizing or stabilizing targeted LMI census tracts.

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[17] 12 U.S.C. § 2801 *et seq.*

[18] 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.,* 12CFR228.22(b)(3).

[19] The Compass Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA-reportable and CRA small business lending from January 1, 2014, through December 31, 2014, except for community development loans, which were evaluated from April 1, 2013, through March 31, 2015. The evaluation period for the bank's retail banking services was 2014, excepting its record of opening and closing branch offices, which was evaluated from January 1, 2013, through December 31, 2014. The evaluation period for community development loans, investments, and services was April 1, 2013, through March 31, 2015.

[20] The Compass Bank Evaluation included a full-scope review of the bank's AAs within the following areas: the Birmingham–Hoover, Alabama, Metropolitan Statistical Area ("MSA"); the Mobile, Alabama, MSA; the Phoenix–Mesa–Glendale, Arizona, MSA; the Riverside–San Bernardino–Ontario, California, MSA; the San Diego–Carlsbad–San Marcos, California, MSA; the Stockton, California, MSA; the Denver–Aurora–Broomfield, Colorado, MSA; the Jacksonville, Florida, MSA; the Albuquerque, New Mexico, MSA; the Dallas–Fort Worth–Arlington, Texas, MSA; the Houston–Sugar Land–Baytown, Texas, MSA ("Houston AA"); the San Antonio–New Braunfels, Texas, MSA; and the AA comprising Val Verde and Maverick counties, both in Texas. A limited-scope review was conducted in 65 other assessment areas in Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas.

[21] Compass Bank showed good lending performance in Alabama, Arizona, Colorado, Florida, New Mexico, and Texas. Compass Bank showed adequate lending performance in California.

In the Houston AA, the area of interest to the commenter, examiners determined that Compass Bank exhibited good lending performance. The bank's geographic distribution of loans was found to reflect good penetration throughout the AA. Examiners found that the bank's distribution of borrowers reflected good penetration among borrowers of different income levels and businesses of different revenue sizes. Compass Bank was found to have made a relatively high level of community development loans in the Houston AA.

Examiners found that Compass Bank's overall investment performance was good in Texas and Alabama and adequate in the other states in which it operates.[22] A majority of Compass Bank's investments supported affordable housing. Compass Bank purchased securities backed by government-guaranteed mortgages to qualified LMI borrowers, invested in Low Income Housing Tax Credit projects,[23] and invested in community development financial institutions that finance affordable housing for LMI borrowers and promote economic development via small business loan funds and microfinancing. Examiners found that the majority of the bank's qualified contributions supported organizations engaged in community services for LMI individuals or communities, including financial counseling, youth and family programs, home repairs, health services, and job training.

In the Houston AA, examiners found that Compass Bank made a significant level of qualified investments and was in a leadership position with respect to some of its investments. Examiners noted that Compass Bank's contributions were responsive to several identified community development needs in this AA, which included investments in projects that supported affordable housing, financial education and literacy, and small business development.

Compass Bank's Service Test performance in Alabama was good, and it was adequate in the other states in which the bank operates, including Texas. Examiners noted that, overall, Compass Bank's retail delivery systems were reasonably accessible to the geographies and individuals of different income levels. Examiners found that the bank's banking services and business hours did not vary in a way that inconvenienced the bank's AAs, including LMI geographies. Examiners also noted that Compass Bank offered no- or low-cost deposit accounts and various alternative delivery systems. However, examiners found that Compass Bank's closing of branches adversely affected the accessibility of banking services in some AAs, including the Houston AA. During the review period, the bank closed 39 branches, the majority in Texas, and 10 of these branches were located in LMI census tracts.[24]

Examiners indicated that the bank provided an adequate level of community development services throughout the bank's AAs. Examiners noted that the bank's employees were involved in organizations and activities that promoted or facilitated affordable housing for LMI individuals; provided community services for LMI individuals, such as financial literacy education; and promoted economic development and revitalization of LMI areas.

In the Houston AA, Compass Bank's performance on the Service Test was found to be adequate. Examiners noted that, during the review period, two branches were opened (both in upper-income census tracts) and three branches were closed (two in LMI tracts and one in an upper-income tract), and that the changes to branch distribution as a result of the closures adversely impacted the accessibility of retail banking services for some LMI geog-

[22] Compass Bank's performance in Texas had the greatest impact on its performance under the Investment Test due to the relatively high concentration of branches, deposits, and lending in the state.

[23] *See* 26 U.S.C. § 42.

[24] Compass Bank represents that it completes a full CRA and fair lending impact analysis prior to closing or consolidating any branches in accordance with its branch- closing policy.

raphies and individuals in the AA. Examiners found that Compass Bank provided a relatively high level of community development services in the AA and that these services were responsive to identified community development needs in the AA.

Compass Bank's Efforts since the Compass Bank Evaluation

Compass Bank represents that since the Compass Bank Evaluation, it has continued to help meet the credit needs in its AAs, including the needs of LMI communities and individuals. Compass Bank represents that it has developed new tools and programs to monitor and improve its CRA performance. In addition, the bank asserts that it has increased its levels of community development lending and investment and has developed new retail services and partnerships to better respond to the needs of LMI customers. In the Houston AA, Compass Bank represents that it has made loans and investments targeted toward the construction of affordable housing and has provided grants to organizations that support affordable housing, economic development, and disaster recovery efforts.

Additional Supervisory Views of the Reserve Bank

The Board has considered the results of a 2015 target examination of Compass Bank's Fair Housing Act ("FHA") fair lending program. The Board also has considered the preliminary findings of a more recent FHA examination, which included a redlining review of a number of markets, including the Houston AA. The redlining review included an evaluation of the bank's lending, marketing and outreach, assessment area, and branching. With respect to branching, the review in the Houston AA included a review of Compass Bank's branch distribution, branch openings and closures, branch products and services, and branch hours.[25]

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. As noted, the proposed branch would replace an existing branch located 0.4 miles away. The bank asserts that the proposed branch would allow the bank to continue to serve existing customers' banking needs. While the products and services offered at the proposed branch would be substantially the same as those offered at the existing branch, the bank represents that the new branch's design and features would enhance current services and allow the bank to serve additional customers in the community.

Conclusion on Convenience and Needs Considerations

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

[25] The Board also considered Compass Bank's supervisory record with the Bureau of Consumer Financial Protection.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.[26] The Board's approval is specifically conditioned on compliance by Compass Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the 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.

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

By order of the Board of Governors, effective September 25, 2018.

Voting for this action: Chairman Powell, Vice Chairman Clarida, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

[26] 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 May 18, 2018. The comment period ended on June 4, 2018. 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.

Orders Issued Under International Banking Act

Lloyds Bank Corporate Markets plc
London, England

Order Approving Establishment of a Branch
FRB Order No. 2018-15 (July 9, 2018)

Lloyds Bank Corporate Markets plc ("LBCM"), London, England, a foreign bank within the meaning of the International Banking Act of 1978 ("IBA"), has applied under section 7(d) of the IBA[1] to establish a state-licensed branch in New York, New York. The 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 (*The New York Times*, May 15, 2018). The time for submitting comments has expired, and the Board has considered all comments received.

LBCM is a subsidiary of Lloyds Banking Group plc ("LBG"), London, England.[2] LBG, with consolidated assets of approximately $1.1 trillion, is the parent company of the third largest banking group in the United Kingdom.[3] LBG operates through subsidiaries that provide a variety of retail, corporate, and investment banking services. Outside the United Kingdom, LBG has operations in continental Europe, the Channel Islands, the Isle of Man, Gibraltar, Singapore, and the United States. LBG primarily operates in the United States through a licensed broker-dealer, Lloyds Securities Inc. ("LSI"), and offices of LBG's bank subsidiaries, Lloyds Bank plc ("Lloyds Bank"), London, England, and Bank of Scotland plc ("BoS"), Edinburgh, Scotland. Currently, Lloyds Bank and BoS each have a state-licensed branch in New York, New York, and BoS operates a representative office in Houston, Texas. In 2008, LBG elected to be treated as a financial holding company within the meaning of the Bank Holding Company Act of 1956, as amended ("BHC Act").[4]

LBG is in the process of reorganizing its operations to comply with U.K. "ring-fencing" requirements, which generally go into full effect on January 1, 2019.[5] Under the applicable ring-fencing rules, U.K. banking groups with retail deposits and/or deposits from small and medium-sized enterprises in aggregate amounts above £25 billion must separate the banking entities holding those deposits from certain other operations. In response, LBG is reorganizing its core banking operations into a ring-fenced banking group ("RFB group") and a non-ring-fenced banking group ("NRFB group").[6] The RFB group would include Lloyds Bank and BoS, as well as the majority of their current U.K.based operations; the NRFB group would include LBCM and certain entities not permissible for ring-fenced banking entities ("RFBs") to own.[7] As part of this reorganization, LBG proposes

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1 12 U.S.C. § 3105(d).

2 LBG is a publicly traded company, and its shares are widely held. As of February 23, 2018, BlackRock Inc. and Harris Associates L.P. each owned approximately 5 percent of the issued ordinary shares of LBG, and no other shareholder owned more than 5 percent of LBG's shares.

3 Asset and ranking data are as of December 31, 2017.

4 12 U.S.C. § 1841 *et seq.*; *see also* 12 CFR 225.91.

5 *See* The Financial Service (Banking Reform) Act 2013.

6 In addition to the RFB group and NRFB group, LBG's post-ring-fence organizational structure would include insurance and equity-investment subgroups.

7 Under the U.K. ring-fencing rules, RFBs are subject to restrictions that include general prohibitions on establishing branches or subsidiaries outside of the European Economic Area ("EEA"), owning substantial equity

that the banking operations conducted by the New York branches of Lloyds Bank and BoS transition to become the operations that would be conducted by the New York branch of LBCM.[8] Following this migration of clients and assets to LBCM, Lloyds Bank and BoS would close their existing U.S. offices.

LBCM received its banking license from the Prudential Regulation Authority ("PRA") on July 25, 2017, and has commenced banking operations in the United Kingdom. Once it is fully operational, LBCM will engage in business generally prohibited for RFBs, such as transactions that result in financial exposure to credit institutions, investment firms, and structured finance vehicles. In addition, LBCM will operate in jurisdictions where RFBs are generally prohibited from booking transactions or owning substantial equity interests.

The proposed U.S. branch of LBCM would engage in wholesale banking activities, including lending and related extensions of credit, money market activities, and foreign exchange and derivatives activities.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank 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.[9] The Board also considers additional standards set forth in the IBA and Regulation K.[10]

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

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interests in entities organized outside of the EEA, dealing in investments as principal and in most derivative and other hedging products, and incurring financial exposure to certain financial companies such as credit institutions and investment firms.

[8] In connection with the reorganization of LBG, Lloyds America Securities Corporation, New York, New York, and its U.S. registered broker-dealer subsidiary, LSI, would become wholly owned subsidiaries of LBCM.

[9] 12 U.S.C. § 3105(d)(2); 12 CFR 211.24(c)(1). 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 supervisory standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings 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.

[10] *See* 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3). These standards include whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank, including the bank's experience and capacity to engage in international banking; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. In the case of a foreign bank that presents a risk to the stability of the United States, the Board also may take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

The Board previously has found that Lloyds Bank's predecessor was subject to comprehensive supervision on a consolidated basis by its home country supervisor.[11] LBCM is supervised by the PRA, which is part of the Bank of England. The PRA supervises U.K. banking groups on a consolidated basis, which includes a review of banking groups' management, governance, risk-management controls, compliance with capital and liquidity requirements, and resolvability. Under its supervisory authority, the PRA performs stress tests for certain banking groups, such as LBG, and regularly obtains information from the group in connection with those exercises. The Financial Conduct Authority ("FCA") regulates the market conduct of U.K. financial firms, including LBCM, and has supervisory responsibilities that include monitoring banks' compliance with anti-money-laundering ("AML") and counter-terrorism-financing ("CTF") requirements under U.K. law.

Based on all the facts of record, including the above information, it has been determined that LBCM is subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The Board has also considered the financial and managerial and other applicable factors in this case. The PRA has no objections to the establishment of the proposed branch. LBCM has provided the Board with information regarding its financial condition, management, proposed activities, policies and procedures, and other information relevant to its current and proposed operations. LBCM's capital is in excess of the minimum levels that would be required by the Basel Capital Accord and is considered equivalent to capital that would be required of a U.S. banking institution.

LBCM has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general. Specifically, the proposed branch would operate under the same regulatory compliance framework as LBG's existing U.S. operations and would retain members of the risk, credit, and compliance teams that currently manage the U.S. operations of LBG. Taking into consideration LBCM's overall financial and managerial resources, financial and managerial factors are considered consistent with approval.

The United Kingdom is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, the United Kingdom has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in the United Kingdom, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. The FCA enforces those requirements with respect to U.K. banks, including LBCM. LBCM adheres to the same group-level policies, procedures, and standards regarding AML and CTF that apply to LBG and LBG's other subsidiaries. LBCM's compliance with applicable laws and regulations is monitored by governmental entities responsible for AML compliance, including the FCA.

LBCM 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 BHC 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, LBCM has committed to cooperate with the Board to obtain any necessary

[11] *See Lloyds TSB Offshore Limited*, 92 *Federal Reserve Bulletin* C62 (2006).

exemptions or waivers that might be required from third parties for disclosure of such information. In light of these commitments and subject to the condition described below, it has been determined that LBCM 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.[12] 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 relative size of LBCM in its home country; (2) the scope of LBCM'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 (3) the framework in place for supervising LBCM in its home jurisdiction. Taking into account these considerations, it has been determined that the proposed reorganization of LBG would result in a banking organization that would not add any new activities or financial stability risk to the United States financial system. 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 LBCM as well as the terms and conditions set forth in this order, LBCM's application to establish a branch in New York, New York, 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.[13] Should any restrictions on access to information on the operations or activities of LBCM and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by LBCM and its affiliates with applicable federal statutes, the Board may require termination of any of LBCM's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by LBCM with the commitments made in connection with this application and with the conditions in this order.[14]

By order, approved pursuant to authority delegated by the Board, effective July 9, 2018.

Margaret McCloskey Shanks
Deputy Secretary of the Board

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

[13] 12 CFR 265.7(d)(12).

[14] The Board's authority to approve the establishment of branches parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York and its agent, the New York State Department of Financial Services ("NYDFS"), to license the proposed branch of LBCM in accordance with any terms and conditions that the NYDFS may impose.

Nordea Bank Abp
Helsinki, Finland

Order Approving Establishment of a Branch
FRB Order No. 2018-16 (August 3, 2018)

Nordea Bank Abp ("Nordea Finland"), Helsinki, Finland, 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 ("Existing NY Branch"), of Nordea Bank AB (publ) ("Nordea Bank Sweden"), Stockholm, Sweden, following consummation of the merger of Nordea Bank Sweden with and into Nordea Finland (the "Merger"), with Nordea Finland as the surviving entity. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Post*, January 22, 2018). The time for submitting comments has expired, and the Board has considered all comments received.

Nordea Finland will be the top-tier parent company of the Nordea Group, a banking organization that will be comprised of Nordea Finland and its consolidated subsidiaries, following consummation of the Merger. Nordea Finland was established by Nordea Bank Sweden for the purpose of changing the domicile of the Nordea Group's parent company from Sweden to Finland. Nordea Finland currently is wholly owned by Nordea Bank Sweden. Nordea Finland was granted a banking license by the European Central Bank ("ECB") on June 26, 2018. Nordea Finland plans to merge with Nordea Bank Sweden, with Nordea Finland as the surviving entity, in the fourth quarter of 2018.[2] Nordea Finland proposes to retain Nordea Bank Sweden's Existing NY Branch ("Proposed NY Branch") following consummation of the Merger.

Sampo plc ("Sampo"), Helsinki, Finland, owns 21.3 percent of Nordea Bank Sweden's outstanding shares and is the largest shareholder of Nordea Bank Sweden. No other shareholder owns more than 5 percent of the shares of Nordea Bank Sweden. Sampo will own a corresponding percentage of Nordea Finland's shares following consummation of the Merger.[3]

Nordea Bank Sweden has consolidated assets of approximately $698 billion.[4] It is an operating bank that engages directly in activities usual in connection with the business of banking in the countries in which it operates, including by offering retail and wholesale banking products to customers inside and outside of the Nordic region (Finland, Sweden, Norway, and Denmark). In the United States, Nordea Bank Sweden operates the Existing NY Branch and indirectly owns Nordea Investment Management North America, Inc., a

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1 12 U.S.C. § 3105(d).

2 The Merger will be structured as a transfer of all the assets and liabilities of Nordea Bank Sweden to Nordea Finland. Pursuant to Finnish law, upon consummation of the Merger, the current shareholders of Nordea Bank Sweden will become the shareholders of Nordea Finland without any change in their level of ownership.

3 Sampo has two director interlocks with Nordea Bank Sweden and, upon consummation of the Merger, would be considered to control Nordea Finland for purposes of the Bank Holding Company Act ("BHC Act"). 12U.S.C. § 1841 *et seq*. Nordea Finland and Sampo have each committed to notify the Board if Sampo's ownership interest in Nordea Finland increases to more than 21.3 percent. Sampo's holding of Nordea Finland would be consistent with section 4 of the BHC Act.

4 Asset data are as of December 31, 2017.

U.S. asset management company incorporated in Delaware and registered with the U.S. Securities and Exchange Commission. Nordea Bank Sweden is, and following the Merger, Nordea Finland will be, a qualifying foreign banking organization under Regulation K.[5] The Existing NY Branch services Nordea Bank Sweden's customers doing business in the United States. It also offers loans, other credit services, and cash management services, and it markets services including foreign exchange. Following the Merger, the Proposed NY Branch will carry on the business of the Existing NY Branch in the same manner as the business currently is conducted.

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 set forth in the IBA and Regulation K.[7]

In this case, Nordea Finland will be subject to supervision by the ECB and the Finanssivalvota ("Finnish FSA") acting through the Single Supervisory Mechanism ("SSM") because the total value of its assets will exceed €30 billion. The Board has previously determined that the ECB, acting through the SSM, exercises comprehensive supervision over certain European banks.[8] The SSM is a system of financial supervision composed of the ECB and the national competent authorities of the participating European Union Member States in which specific tasks are distributed between the ECB and the national competent authority. Under the SSM, the ECB has direct prudential supervisory responsibility for Nordea Finland, while the Finnish FSA, as the relevant national competent

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[5] 12 CFR 211.23(a). Sampo and Nordea Finland together also would meet the standards to be a qualifying foreign banking organization. Nordea Finland 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 section211.23(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 as defined in the Board's Regulation K.

[6] 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

[7] 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3). These standards include whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank, including the bank's experience and capacity to engage in international banking; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. In the case of a foreign bank that presents a risk to the stability of the United States, the Board also may take into account, to the extent appropriate, 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. 12U.S.C.§ 3105(d)(3)(E).

[8] *See, e.g., Deutsche Pfandbriefbank AG, FRB Order 2018-01 (January 3, 2018); ING Bank N.V.*, FRB Order 2017-27 (October 20, 2017); Board letter to Rita Milazzo dated August 1, 2017 (comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.); Board letter to Andrea Tokheim dated July 24, 2017 (comprehensive consolidated supervision for Bank of Ireland Group plc); and *Unione di Banche Italiane*, S.p.A., FRB Order 2016-01 (January 19, 2016).

authority for Nordea Finland, retains supervisory authority over all other areas, including consumer protection and the prevention of money laundering and terrorist financing. The methodologies and standards that underpin the day-to-day supervision of large European Union banking organizations by the ECB under the SSM regulatory framework are aimed at achieving a consistent supervisory approach across the European Union. The system of supervision applied to large banks within the European Union has not changed materially since it was last considered by the Board.

The Finnish FSA will remain the primary national competent authority for Nordea Finland and the primary supervisor of Sampo on a consolidated basis following consummation of the Merger. 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 European Economic Area, is considered a financial conglomerate under the EU's Financial Conglomerates Directive. The Board has previously determined that Sampo is subject to comprehensive supervision on a consolidated basis by the Finnish FSA.[9] Sampo remains subject to supervision by the Finnish FSA on substantially the same terms and conditions.

Based on all the facts of record, including the above information, it has been determined that Nordea Finland is subject to comprehensive supervision on a consolidated basis by the ECB and the Finnish FSA acting through the SSM and that Sampo is subject to comprehensive supervision on a consolidated basis by the Finnish FSA.

The Board has also considered the financial and managerial and other applicable factors in the case. The ECB has no objection to the establishment of the proposed branch. The ECB's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Basel Accord"). Nordea Bank Sweden's capital is, and following the Merger, Nordea Finland's will be, 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 Finland are considered consistent with approval, and Nordea Finland 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, and these will be continued at Nordea Finland following the Merger.

Finland 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 and European Union money laundering directives, Finland has enacted laws and regulations to deter money laundering, terrorist financing, and other illicit activities. Banks are subject to know-your-customer requirements and must consider whether a transaction is unusual for a customer. Banks report suspicious transactions to a special money laundering clearinghouse that is part of Finland's National Bureau of Investigation. Failure to report a suspicious transaction can result in a fine or imprisonment for up to six months. The Finnish FSA is responsible for enforcing compliance with Finland's anti-money-laundering laws and regulations, and Finnish banks are expected to have written anti-money-laundering policies and procedures. Nordea Bank Sweden has such policies and procedures to comply with applicable anti-money-laundering and counterterrorist financing laws and regulations, and these policies will remain in effect at Nordea Finland following consummation of the Merger. Nordea Finland's compliance

[9] *Nordea Bank AB (publ)*, FRB Order 2017-11 (April 13, 2017).

with applicable laws and regulations will be monitored by governmental entities responsible for anti-money-laundering compliance.

Nordea Finland 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 BHC 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, Nordea Finland 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 Finland 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.[10] 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 Finland'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 Finland in its home jurisdiction. Taking into account these considerations, it has been determined that the proposed Merger would result in a banking organization that would not add any new activities or financial stability risk to the United States financial system. 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 Finland as well as the terms and conditions set forth in this Order, Nordea Finland's application to establish a branch in New York 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.[11] Should any restrictions on access to information on the operations or activities of Nordea Finland and its affiliates, including Sampo, subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Nordea Finland and its affiliates, including Sampo, with applicable federal statutes, the Board may require termination of any of Nordea Finland's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Nordea Finland with the commitments made in connection with this application and with the conditions in this Order.[12] 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 August 3, 2018.

Ann E. Misback
Secretary of the Board

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[10] 12 U.S.C. § 3105(d)(3)(E).

[11] 12 CFR 265.7(d)(12).

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

Abanca Corporación Bancaria, S.A.
Betanzos, La Coruña, Spain

Order Approving Establishment of a Branch
FRB Order No. 2018-20 (September 28, 2018)

Abanca Corporación Bancaria, S.A. ("Abanca"), Betanzos, La Coruña, Spain, a foreign bank within the meaning of the International Banking Act of 1978 ("IBA"), has applied under section 7(d) of the IBA[1] to establish a state-licensed branch in Miami, Florida. The Foreign Bank Supervision Enhancement Act, 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 Miami, Florida (*The Miami Herald*, November 16, 2017). The time for submitting comments has expired, and the Board has considered all comments received.

Abanca, which is the 11th largest bank in Spain and has consolidated assets of approximately $58.2 billion, is a subsidiary of Abanca Holding Financiero, S.A. ("Abanca Holding," and, together with Abanca, the "Abanca Group"), Madrid, Spain, a financial holding company organized under the laws of Spain[2] with consolidated assets of approximately $58.6 billion.[3] Abanca Holding currently holds 86.8 percent of Abanca's voting stock. The principal shareholder of Abanca Holding is Mr. Juan Carlos Escotet, who owns 89.6 percent of Abanca Holding's voting stock and is thus indirectly the largest shareholder of Abanca.[4] In addition to controlling Abanca, Mr. Escotet is also a controlling shareholder of banks in various other countries.

Abanca offers a range of banking and financial products and services to individual and corporate customers. In addition to having a distribution network of branches throughout Spain, the bank provides insurance, pension management, and investment advisory services through several domestic subsidiaries. Abanca also operates branch offices in Portugal and Switzerland, as well as representative offices in Brazil, Venezuela, Panama, Mexico, France, the United Kingdom, Germany, and Switzerland. Currently, Abanca has no branches or other offices in the United States. Abanca also controls companies engaged in various commercial and industrial activities, including three subsidiaries in the United States. Upon establishment of the proposed branch of Abanca, the Abanca Group would be a qualifying foreign banking organization as defined in section 211.23 of Regulation K.[5]

The proposed U.S. branch of Abanca would engage in personal and commercial lending, remittance services, advisory services, trade finance, and wholesale deposit-taking activities permissible to a state-licensed entity.

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

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1 12 U.S.C. § 3105(d).

2 Abanca Holding has not elected to be treated as a financial holding company under U.S. law.

3 Asset data are as of June 30, 2018, and are based on the exchange rate on that date. Ranking data are as of November 15, 2017.

4 Other than Abanca's ownership of 8.8 percent of its stock in the form of treasury shares, no other shareholder owns more than 5 percent of the voting stock of Abanca or Abanca Holding.

5 12 CFR 211.23(a). As Abanca Group will be a qualifying foreign banking organization, the activities of Abanca's nonbanking subsidiaries, including those in the United States, would be permissible pursuant to section 211.23(f) of Regulation K. 12 CFR 211.23(f).

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 set forth in the IBA and Regulation K.[7]

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

The Abanca Group is subject to supervision by the European Central Bank ("ECB") and the Banco de España ("Bank of Spain") acting through the Single Supervisory Mechanism ("SSM") because the total value of its assets exceeds €30 billion. The Board has previously determined that the ECB, acting through the SSM, exercises comprehensive supervision over certain European banks.[8] The SSM is a system of financial supervision composed of the ECB and the national competent authorities of participating European Union Member states by which specific tasks are distributed between the ECB and the national competent authority. Under the SSM, the ECB has direct prudential supervisory responsibility for the Abanca Group, while the Bank of Spain, as the relevant national competent authority for the Abanca Group, retains supervisory authority over all other areas, including consumer protection and the prevention of money laundering and terrorist financing. The methodologies and standards that underpin the day-to-day supervision of large European Union banking organizations by the ECB under the SSM regulatory framework are aimed at achieving a consistent supervisory approach across the European Union. The system of supervision applied to large banks within the European Union has not changed materially since it was last considered by the Board.

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[6] 12 U.S.C. § 3105(d)(2); 12 CFR 211.24(c)(1). 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 supervisory standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii)obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings 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] *See* 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3). These standards include whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank, including the bank's experience and capacity to engage in international banking; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. In the case of a foreign bank that presents a risk to the stability of the United States, the Board also may take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

[8] *See, e.g., Nordea Bank Abp,* FRB Order 2018-16 (August 3, 2018); *Deutsche Pfandbriefbank AG*, FRB Order 2018-01 (January 3, 2018); ING Bank N.V., FRB Order 2017-27 (October 20, 2017); Board letter to Rita Milazzo dated August 1, 2017 (comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.); Board letter to Andrea Tokheim dated July 24, 2017 (comprehensive consolidated supervision for Bank of Ireland Group plc); and *Unione di Banche Italiane, S.p.A.*, FRBOrder 2017-11 (April 13, 2017).

Based on all the facts of record, including the above information, it has been determined that the Abanca Group is subject to comprehensive supervision on a consolidated basis by the ECB and the Bank of Spain acting through the SSM.

The Board has also considered the financial and managerial and other applicable factors in this case. The Abanca Group, Mr. Escotet, and Mr. Escotet's other controlled companies have provided commitments to the Board intended to address supervisory concerns.[9] The ECB has no objections to the establishment of the proposed branch. The ECB's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Basel Accord"). Abanca'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 institution. Managerial and other financial resources of Abanca are considered consistent with approval, and Abanca appears to have the experience and capacity to support the proposed branch. In addition, Abanca has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

Spain is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, Spain has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Spain, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their operations, including foreign branches. The Bank of Spain enforces those requirements with respect to Spanish banks, including Abanca. Abanca has policies and procedures to comply with these laws and regulations that are monitored by government entities, including the Bank of Spain, which is responsible for anti-money-laundering compliance.

The Abanca Group 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, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, the Abanca Group has committed to cooperate with the Board to obtain any necessary exemptions or waivers that might be required from third parties for disclosure of such information. In light of these commitments and subject to the condition described below, it has been determined that Abanca 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.[10] Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has

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[9] Abanca is currently, and would remain, part of a parallel-owned banking organization because Mr. Escotet has direct or indirect control over several banks and no single supervisor exercises consolidated supervision over all of these commonly controlled banks. The commitments provide for restrictions on transactions between Abanca's proposed U.S. branch and affiliated companies, as well as regular reporting requirements and other undertakings to help ensure ongoing compliance with the commitments and U.S. law. *See* Joint Agency Statement on Parallel-Owned Banking Organizations, available at: http://www.federalreserve.gov/boarddocs/press/general/2002/20020423/attachment.pdf.

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

been given to (1) the relative size of Abanca in its home country; (2) the scope of Abanca'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 (3) the framework in place for supervising Abanca in its home jurisdiction. Taking into account these considerations, it has been determined that the proposal would not create significant risk to the financial stability of the United States. 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 the Abanca Group, Mr. Escotet, and Mr. Escotet's other controlled companies, as well as the terms and conditions set forth in this order, Abanca's application to establish a branch in Miami, Florida, 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.[11] Should any restrictions on access to information on the operations or activities of Abanca and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Abanca and its affiliates with applicable federal statutes, the Board may require termination of any of Abanca's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Abanca with the commitments made in connection with this application and with the conditions in this order.[12] The commitments and conditions referred to above be 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, 2018.

Ann E. Misback
Secretary of the Board

[11] 12 CFR 265.7(d)(12).

[12] The Board's authority to approve the establishment of branches parallels the continuing authority of the State of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Florida and its agent, the Florida Office of Financial Regulation ("OFR"), to license the proposed branch of Abanca in accordance with any terms and conditions that the OFR may impose.