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Legal Developments: Fourth Quarter, 2018

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Old National Bancorp
Evansville, Indiana

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2018-22 (October 16, 2018)

Old National Bancorp, Evansville, Indiana ("Old National"), 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 and merge with Klein Financial, Inc. ("Klein"), and thereby indirectly acquire KleinBank, both of Chaska, Minnesota. Following the proposed acquisition, KleinBank would be merged into Old National's subsidiary bank, Old National Bank, Evansville, Indiana.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 36935 (July 31, 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.

Old National, with consolidated assets of approximately \$17.5 billion, is the 96th largest insured depository organization in the United States.[5] Old National controls approximately \$12.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Old National controls Old National Bank, which operates branches in Indiana, Minnesota, Illinois, Kentucky, Michigan, and Wisconsin. Old National is the 6th largest insured depository organization in Minnesota, controlling deposits of approximately \$1.7 billion, which represent 0.7 percent of the total deposits of insured depository institutions in that state.[6]

Klein, with consolidated assets of approximately \$2.0 billion, is the 414th largest insured depository organization in the United States. Klein controls approximately \$1.7 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured

1 12 U.S.C. § 1841 *et seq.*

2 12 U.S.C. § 1842.

3 The merger of KleinBank into Old National Bank is subject to approval by the Office of the Comptroller of the Currency ("OCC"), pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). 12 U.S.C. § 1828(c). The OCC approved the bank merger on October 12, 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 June 30, 2018, unless otherwise noted.

6 State deposit data are as of June 30, 2017.

depository institutions in the United States. Klein controls KleinBank, which operates only in Minnesota. Klein is the 7th largest insured depository organization in Minnesota, controlling deposits of approximately $1.6 billion, which represent 0.7 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Old National would become the 91st largest insured depository organization in the United States, with consolidated assets of approximately $19.5 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Old National would control consolidated deposits of approximately $14.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] Old National would control deposits of approximately $3.4 billion in Minnesota, which would represent 1.4 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.[8] 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 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.[10]

For purposes of the BHC Act, the home state of Old National is Indiana, and KleinBank is located only in Minnesota.[11] Old National and Old National Bank are well capitalized and well managed under applicable law, and Old National Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[12] Minnesota has no statutory minimum age requirement,[13] and KleinBank has been in continuous existence for more than five years.

On consummation of the proposed transaction, Old National would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Minnesota does not impose a limit on the total amount of in-state

7 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).

10 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* 12 U.S.C.§1841(o)(4)–(7).

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

12 12 U.S.C. § 2901 *et seq.*

13 Minn. Stat. 49.411 (2017)

deposits that a single banking organization may control. The Board has considered all other requirements under section 3(d) of the BHC Act, including Old National 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]

Old National Bank and KleinBank compete directly in the Minneapolis/Saint Paul, Minnesota, banking market ("Minneapolis/Saint Paul market").[16] 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 Old National would control;[17] 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");[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 Minneapolis/Saint Paul market. On consummation of the proposal, the Minneapolis/Saint Paul market would remain highly concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines;

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14 12 U.S.C. § 1842(c)(1).

15 12 U.S.C. § 1842(c)(1)(B).

16 The Minneapolis/Saint Paul market is defined as Anoka, Hennepin, Ramsey, Washington, Carver, Scott, and Dakota counties, 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.

17 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).

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.

however, the change in HHI would be small, and numerous competitors would remain in the 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 Minneapolis/Saint Paul 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.[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 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.

Old National and Old National 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 share exchange, with a subsequent merger of the subsidiary depository institutions.[21] The asset quality, earnings, and liquidity of both Old National Bank and KleinBank are consistent with approval, and Old National 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.

[19] Old National operates the 6th largest depository institution in the Minneapolis/Saint Paul market, controlling approximately $1.67 billion in deposits, which represent approximately 0.90 percent of market deposits. Klein operates the 8th largest depository institution in the same market, controlling deposits of approximately $1.44 billion, which represent approximately 0.77 percent of market deposits. On consummation of the proposed transaction, Old National would become the 5th largest depository organization in the market, controlling deposits of approximately $3.12 billion, which represent approximately 1.68 percent of market deposits. The HHI for the Minneapolis/Saint Paul market would increase by 1 point to 3141, and 124 competitors would remain in the market.

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

[21] At the effective time of the merger of Klein with and into Old National, each share of Klein common stock that is issued and outstanding would be converted into a right to receive 7.92 shares of Old National common stock. Old National 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 Old National, Klein, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Old National; 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.

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

The Board also has considered Old National's plans for implementing the proposal. Old National 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. Old National would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Old National'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 Old National'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 Old National and Klein 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, 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, and 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 supervisory views of examiners, other supervisory information, information provided by

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[22] 12 U.S.C. § 1842(c)(2).

[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

the applicant, and public comments 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 Old National Bank and KleinBank; the fair lending and compliance records of both banks; the supervisory views of the OCC and the Consumer Financial Protection Bureau ("CFPB") with respect to Old National Bank, and the Federal Deposit Insurance Corporation ("FDIC") with respect to KleinBank; confidential supervisory information; information provided by Old National; and the public comments on the proposal.[25]

Public Comments 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 Old National Bank to, and in the rate of denials for home mortgage applications from, African Americans as compared to whites in the Evansville and Indianapolis Metropolitan Statistical Areas ("MSAs"), based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").[26] This commenter also criticized the branch closure practices of Old National Bank. Another commenter requested that Old National's proposed acquisition include a forward-looking community benefits plan.[27] Both commenters also cited obligations imposed on KleinBank under a May 2018 settlement agreement with the Department of Justice, related to alleged redlining and other discriminatory behavior of KleinBank (the "DOJ Settlement"). One commenter requested additional information about the steps KleinBank has taken to meet the conditions of the DOJ Settlement and about how Old National would comply with the terms of the DOJ Settlement once it integrates Klein.

Businesses of the Involved Institutions and Response to the Public Comments

Old National Bank is a full-service bank that offers a comprehensive array of banking, trust, investment, leasing, mortgage, and cash management products and services to individual customers and commercial enterprises of all sizes, through its network of branches. KleinBank is a commercial bank that offers a wide range of loan products for commercial, residential real estate, agricultural, and consumer purposes, in addition to various types of retail deposit products.

In response to the commenters' allegations, Old National asserts that approval of the proposed transaction is warranted based on Old National Bank's CRA performance evaluation. Old National 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. Old National also asserts that HMDA data do not reflect the

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

[26] 12 U.S.C. § 2801 *et seq*.

[27] 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., HarborOne Mutual Bankshares*, FRB Order No 2018-18 at 10 n.26 (September 12, 2018); *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.

range of Old National Bank's lending activities and efforts within the communities it serves. Old National represents that it is committed to providing reasonable access to its delivery systems throughout its assessment areas and does not anticipate any branch closures as a result of this transaction.

The terms of the DOJ Settlement require KleinBank to expand its banking services in predominantly minority neighborhoods in the Minneapolis area, including by investing in a loan subsidy fund to increase the amount of extended credit and by engaging in advertising, outreach, financial education, and credit repair. Old National represents that KleinBank has made progress in fulfilling its obligations in this regard. Old National acknowledges that the DOJ Settlement terms are binding on KleinBank's successors and transferees, and Old National represents that it is committed to fulfilling the terms of the settlement agreement and ensuring that the needs of the communities currently served by KleinBank are met. Old National notes that Old National Bank's fair lending policies, programs, and reviews would apply at the combined entity following consummation of the transaction.

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

In general, federal bank supervisors apply a lending test to evaluate the performance of large insured depository institutions, such as Old National Bank and KleinBank, 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 HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("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;[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 invest-

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28 12 U.S.C. § 2906.

29 Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less, small business and small farm loans by loan 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).

30 *See* 12 CFR 228.22(b).

ments 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]

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[32] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Old National Bank

Old National Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of February 13, 2017 ("Old National Bank Evaluation").[33] The bank received a "High Satisfactory" rating for the Lending Test, an "Outstanding" rating for the Investment Test, and a "High Satisfactory" rating for the Service Test.[34] Old National's performance in the state of Indiana was weighted most heavily by examiners due to the bank's volume of lending and deposit activity in this area.

Examiners found that Old National Bank's geographic distribution of loans was good, the geographic distribution of home mortgage loans was adequate, and the geographic distribution of small loans to businesses was excellent. Examiners noted that, overall, the distribution of loans by income level of the borrower and of home mortgage loans by income level of the borrower was good. Examiners found the bank's distribution of loans to businesses of different revenue sizes to be adequate.

Examiners found that Old National Bank originated an overall excellent level of qualified community development investments that were generally responsive to community needs. Examiners found that this had a significantly positive impact on lending performance for most of the bank's AAs.

Overall, examiners concluded that bank branches were accessible to individuals and geographies of different income levels. Examiners also found that in most AAs, branch distribution was good or excellent.

In the Evansville-Henderson IN-KY MMSA,[35] which includes an area of concern to one of the commenters, examiners found Old National Bank's performance to be outstanding. Examiners noted that the geographic distribution of loans reflected good penetration throughout the Evansville-Henderson IN-KY MMSA, including overall good penetration for home mortgage loans and excellent penetration for small business loans. Examiners found that community development lending was responsive to identified needs and that the

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

[32] 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.

[33] The Old National Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans reported pursuant to the HMDA and small loans to businesses and farms reported under the CRA from January 1, 2013, through December 31, 2015. The evaluation period for community development loans, investments, and services was January 1, 2013, through December 31, 2015.

[34] The Old National Bank Evaluation included, in each state and multistate metropolitan area ("MMA") where the bank has an office, a full-scope review of a sample of AAs within that area.

[35] Multistate Metropolitan Statistical Area

geographic distribution of branch offices and the level of community development services were excellent. Examiners noted that Old National Bank exhibited excellent responsiveness to the community development investment needs in the AA. Examiners also found Old National Bank's branches to be accessible to all portions of the AA and that access to banking services in LMI geographies was excellent.

In the Indianapolis-Carmel-Anderson MSA, which includes another area of concern to one of the commenters, examiners found the bank's overall lending activity to be good, including for home mortgages and small business loans. Examiners concluded that the bank's record of opening and closing branches had adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners nevertheless found that the services offered and hours of operation were comparable among locations regardless of income level of the geography and that Old National Bank had made adequate use of alternative delivery systems through telephone and on-line banking, electronic bill pay, and mobile banking options.

Old National's Efforts since the Old National Bank Evaluation

Old National states that, since the Old National Bank Evaluation, Old National Bank has engaged in significant activities to continue to improve its CRA performance. Specifically, the bank has funded grants and scholarships for several community organizations and made commercial loans to develop affordable housing, economic development, and community revitalization initiatives in LMI neighborhoods. Old National Bank also has made several CRA-eligible community development investments. Old National Bank's employees have provided technical support to nonprofit organizations that focus on developing affordable housing as well as to small businesses, and they have taught financial literacy.

CRA Performance of KleinBank

KleinBank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of November 19, 2015 ("KleinBank Evaluation").[36] The bank received a "High satisfactory" rating for the Lending Test, a "Needs to Improve" rating for the Investment Test, and "Low satisfactory" rating for the Service Test.[37]

Examiners concluded that KleinBank's lending levels reflected good responsiveness to the AAs' credit needs, and a high percentage of loans was made in the AAs. Examiners considered that, collectively, the geographic distribution of small business, home mortgage, and small farm lending reflected adequate penetration throughout the AAs given demographic information, and the distribution of loans to borrowers reflected good penetration among businesses and farms of different sizes and individuals of different income levels, given the bank's product lines.

Examiners concluded that KleinBank had a poor level of qualified community development investments and grants, particularly those that are not routinely provided by private

[36] The KleinBank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business loans reported under the CRA from January 1, 2013, through November 18, 2015. The evaluation period for community development lending, investments, and services was April 8, 2013, through November 18, 2015.

[37] The KleinBank Evaluation included a review of the bank's Metro and Western AAs, which, collectively, consist of portions of Hennepin County and all of Anoka, Carver, Dakota, McLeod, Scott, Sherburne, Sibley, and Wright counties. All of these counties, with the exception of McLeod and Sibley counties, are part of the Minneapolis-Saint Paul-Bloomington, Minnesota-Wisconsin MSA. The KleinBank Evaluation also included a review of Chippewa, Lac qui Parle, and Yellow Medicine counties in south-central Minnesota.

investors. The bank demonstrated poor responsiveness to credit and community economic development needs and rarely used innovative or complex investments to support community development initiatives. Examiners found that the bank provided an adequate level of community development services with delivery systems that were reasonably accessible to all portions of its AAs. Examiners considered that the institution's opening and closing of branches generally had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Examiners concluded that services (including business hours) did not vary in a way that inconvenienced portions of the AAs, particularly LMI geographies and individuals.

Klein's Efforts since the KleinBank Evaluation

Old National represents that, since the KleinBank Evaluation, KleinBank has sought to improve its CRA performance and address the terms of the DOJ settlement. Specifically, the bank has developed several key partnerships with communities in majority-minority census tracts and is in the process of formalizing a financial assistance program to increase the amount of credit extended to minority communities. In addition, the bank has submitted a proposal for advertising, outreach, financial education, and credit repair initiatives to the DOJ, hired a community development officer to oversee the bank's lending in predominantly minority communities, and conducted employee training with respect to fair lending.

Views of the OCC, FDIC, and CFPB

In its review of the proposal, the Board consulted with the OCC and FDIC, respectively, regarding the CRA, consumer compliance, and fair lending records of Old National Bank and KleinBank. In addition, the Board consulted with the CFPB regarding Old National Bank's consumer compliance and fair lending records. The Board has considered the results of the most recent consumer compliance examinations of Old National Bank and KleinBank conducted by OCC and FDIC, respectively, which included reviews of the banks' compliance management programs and the banks' compliance with consumer protection laws and regulations. The OCC reviewed and approved the Bank Merger Act application related to the proposal and, in doing so, considered the same comments as were submitted to the Board on the BHC Act application.

The Board has taken this information, as well as the CRA performance records of Old National Bank and KleinBank, into account in evaluating the proposal, including in considering whether Old National has the experience and resources to ensure that Old National Bank would help meet the credit needs of the communities within its AAs following the proposed transaction.

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. Old National represents that, following consummation of the proposal, existing customers of KleinBank would benefit from access to an expanded array of products and services, including wealth management, investment, and student-focused options, and from an expanded branch network. In addition, Old National represents that commercial customers of Old National Bank and KleinBank would benefit from access to a wider array of treasury management services and Old National Bank's greater lending capacity.

Old National represents that it has programs, products, and activities that would meet the anticipated needs of Old National Bank's communities under the CRA, including the needs of LMI areas and individuals. Old National further represents that it is committed to working closely with community leaders, government entities, and residents of the communities it serves to develop a sound and sensible structure for channeling resources and expertise to targeted economic development initiatives serving lower income households and small businesses and to meet community infrastructure requirements.

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 Old National; the public comments on the proposal; the terms of the DOJ Settlement; 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

Section 3 of the BHC Act requires the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[38]

To assess the likely effect of a proposed transaction on the stability of the 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.[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 on the broader economy.[40]

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.[41]

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

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

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

[41] *See People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than $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.[42] 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.[43] 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 Old National 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 15th calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis, acting under delegated authority.

By order of the Board of Governors, effective October 16, 2018.

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[42] Old National and Klein both offer a range of retail and commercial banking products and services. Old National 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.

[43] 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 in connection with this application. 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 a public hearing on the proposal are denied.

Voting for this action: Chairman Powell, Vice Chairman Clarida, Vice Chairman for Supervision Quarles, and Governor Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Cadence Bancorporation
Houston, Texas

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2018-26 (December 7, 2018)

Cadence Bancorporation ("Cadence"), Houston, 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 acquire and merge with State Bank Financial Corporation ("SBFC"), Atlanta, Georgia, and thereby indirectly acquire SBFC's subsidiary nonmember bank, State Bank and Trust Company ("State Bank"), Macon, Georgia. Following the proposed acquisition, State Bank would be merged into Cadence's subsidiary bank, Cadence Bank, N.A. ("Cadence Bank"), Birmingham, Alabama.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 48425 (September 25, 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.

Cadence, with consolidated assets of approximately $11.3 billion, is the 132nd largest insured depository organization in the United States.[5] Cadence controls approximately $9.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Cadence controls Cadence Bank, which operates branches in Alabama, Florida, Mississippi, Tennessee, and Texas.[6]

SBFC, with consolidated assets of approximately $5.0 billion, is the 216th largest insured depository organization in the United States. SBFC controls approximately $4.3 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. SBFC controls State Bank, which operates only in Georgia.

On consummation of the proposal, Cadence would become the 100th largest insured depository organization in the United States, with consolidated assets of approximately $16.3 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Cadence would control consolidated deposits of approximately $13.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] In Georgia, Cadence would become the 12th largest insured depository organization, controlling deposits of approximately $4.4 billion, which would represent approximately 1.7 percent of the total deposits of insured depository institutions in that state.

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1 12 U.S.C. § 1841 *et seq.*

2 12 U.S.C. § 1842.

3 The merger of State Bank into Cadence Bank is subject to approval by the Office of the Comptroller of the Currency ("OCC"), pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). 12 U.S.C. § 1828(c). The OCC approved the bank merger on October 4, 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 June 30, 2018, unless otherwise noted.

6 State deposit data are as of June 30, 2018.

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

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.[8] 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 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.[10]

For purposes of the BHC Act, the home state of Cadence is Mississippi and State Bank is located only in Georgia.[11] Cadence and Cadence Bank are well capitalized and well managed under applicable law, and Cadence Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[12] Georgia's three-year statutory minimum age requirement has been met.[13]

On consummation of the proposed transaction, Cadence 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 Cadence and SBFC have overlapping banking operations, such that a state deposit cap would apply. The Board has considered all other requirements under section 3(d) of the BHC Act, including Cadence 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

[8] 12 U.S.C. § 1842(d)(1)(A).

[9] 12 U.S.C. § 1842(d)(1)(B).

[10] 12 U.S.C. § 1842(d)(2)(A) and (B). 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* 12 U.S.C.§1841(o)(4)–(7).

[11] *See* 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. Cadence (then named Community Bancorp LLC) became a bank holding company on March 4, 2011, when it acquired Cadence Bank. At that time, Mississippi was the state in which the total deposits of Cadence Bank were largest.

[12] 12 U.S.C. § 2901 *et seq*.

[13] Ga. Code Ann. § 7-1-622(b)(1).

[14] 12 U.S.C. § 1842(c)(1).

the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[15]

Cadence Bank and State 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.[16] 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.

Cadence and Cadence 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 share exchange, with a subsequent merger of the subsidiary depository institutions.[17] The asset quality, earnings, and liquidity of both Cadence Bank and State Bank are consistent with approval, and Cadence 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 Cadence, SBFC, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has

[15] 12 U.S.C. § 1842(c)(1)(B).

[16] 12 U.S.C. § 1842(c)(2), (5), and (6).

[17] At the effective time of the merger of SBFC with and into Cadence, each share of SBFC common stock that is issued and outstanding would be converted into a right to receive shares of Cadence common stock, based on an exchange ratio. However, no fractional shares of Cadence common stock would be issued in this share exchange, and such fractional shares would be cashed out. Cadence has the financial resources to effect the proposed transaction.

considered information provided by Cadence; 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.

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

The Board also has considered Cadence's plans for implementing the proposal. Cadence 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. Cadence would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Cadence'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 Cadence'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 Cadence and SBFC in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[18] In its evaluation, 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, and 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,[19] 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.[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 the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and public comments 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.

[18] 12 U.S.C. § 1842(c)(2).
[19] 12 U.S.C. § 2901(b).
[20] 12 U.S.C. § 2903.

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

Public Comments on the Proposal

The Board received comments from five community organizations in Houston supporting the proposal. These commenters generally described the benefits that Cadence Bank provides to the communities it serves in the Houston area. For example, these commenters described Cadence Bank's participation in various projects and partnerships that have benefited the community, including initiatives focused on enhancing economic mobility, financial services, and homeownership for LMI individuals. These commenters also highlighted the opening of a branch in a majority-minority LMI census tract in Houston, and a commenter praised Cadence Bank for funding a community development construction loan to develop a retail center in an LMI and minority community in Houston.

One commenter objected to the proposal on the basis of alleged disparities in the number of home mortgage loans made by Cadence Bank to African Americans in the Dallas-Plano-Irving, Texas Metropolitan Division ("Dallas MD") and the Birmingham-Hoover, Alabama Metropolitan Statistical Area ("Birmingham MSA"), and to African Americans and Latinos in the Houston-The Woodlands-Sugar Land, Texas Metropolitan Statistical Area ("Houston MSA"), in each case as compared to whites in the relevant areas, based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").[21] The commenter also cited a customer complaint alleging racist management practices at Cadence Bank and alleged that Cadence and SBFC are operating as a single entity prior to the Board's approval of the proposal.[22]

Businesses of the Involved Institutions and Response to Public Comments

Cadence Bank is a full-service bank that offers a comprehensive array of commercial and consumer banking, trust and investment, mortgage, and wealth management products and services to individual customers and commercial enterprises of all sizes, through its network of branches. State Bank, through its network of branches in Georgia, offers a range of traditional banking products and services to individuals and small and medium-sized businesses, as well as loans for commercial, residential real estate, agricultural, and consumer purposes.

In response to one commenter's allegations regarding Cadence Bank's home mortgage lending record, Cadence notes that HMDA data do not take into consideration other critical inputs, such as borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to credit underwriting decisions. Additionally, Cadence asserts that HMDA data do not reflect the range of Cadence Bank's community reinvestment activities and efforts. Cadence asserts that Cadence Bank's home mortgage lending record is a reflection of the bank's having to rebuild inherited mortgage lending operations and the bank's brief tenure and small market presence. In addition, Cadence indicates that

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[21] 12 U.S.C. § 2801 *et seq*.

[22] The commenter's allegation that the parties are operating as a single entity prior to the Board's approval of the proposal related to an investor conference call during which the Chief Executive Officer of Cadence stated that he intended to refer a Cadence customer to a division of State Bank. The Board does not generally view a customer referral, without more, as constituting prior control of an entity.

Cadence Bank recently has taken measures to enhance its CRA compliance program significantly, including adopting a CRA plan through 2021, which includes annual CRA performance goals in each of the bank's CRA assessment areas ("AAs"). These goals include (a) increased mortgage lending to LMI borrowers and in LMI census tracts; (b) increased lending to small businesses and businesses in LMI census tracts; and (c) increased community development lending, investments, and services. Cadence represents that Cadence Bank is in the process of formally revising its CRA plan to include its fair lending action plan's annual performance goals for increased mortgage lending to minority borrowers and in minority census tracts in each of its AAs.

With respect to the Dallas MD, Cadence notes that Cadence Bank neither has any branches nor markets its products in Dallas and that the bank's limited lending activities in Dallas primarily result from referrals from other institutions in the market for a niche mortgage loan product (*i.e.*, a second-lien purchase money mortgage loan). Cadence asserts that only a small number of home loan applications were received from African American borrowers in the Dallas MD, and a majority of those loan applications were approved, but certain approved loans were not ultimately accepted by the borrowers. With respect to the Houston MSA, Cadence represents that only a small number of home purchase loan applications were received from African American and Hispanic borrowers, and that a majority of the loans were originated. Cadence further asserts that, as a result of ongoing efforts to increase its visibility in Houston minority communities, Cadence Bank has significantly increased the percentage of its home mortgage loan applications from, and originations to, minorities and in majority-minority census tracts in the Houston MSA in 2018.

Cadence represents that Cadence Bank has taken steps to improve its record of home mortgage lending to minorities in the Birmingham MSA, including establishing a partnership to construct new homes with affordable mortgages; forming a partnership to provide assistance to low-income residents for housing repairs or renovations in a majority African-American neighborhood; and working with minority real estate organizations to increase loan applications from and originations to minorities. Cadence represents that, as a result of these efforts, Cadence Bank has improved its record of home mortgage lending to African Americans and in majority-minority census tracts in the Birmingham MSA.

With respect to the customer complaint cited by a commenter, Cadence asserts that it maintains a robust customer complaint system. Under this system, all customer complaints are investigated and appropriately documented. When allegations or concerns about discrimination or unfair treatment are raised, such claims are escalated to the Fair Lending Officer and the Legal Department for analysis, response, and corrective action, as necessary.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal financial supervisor or supervisors, which in this case are the FDIC and the OCC.[23] In addition, the Board considers information provided by the applicant and by public commenters.

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

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

needs of its entire community, including LMI neighborhoods.[24] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of large insured depository institutions, such as Cadence Bank and State Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an 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 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 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.[27]

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[28] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Cadence Bank

Cadence Bank was assigned an overall "Satisfactory" rating at its most recent CRA Performance Evaluation by the OCC, as of July 27, 2015 ("Cadence Bank Evaluation").[29] The

[24] 12 U.S.C. § 2906.

[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] 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.

[29] The Cadence Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Due to merger and acquisition activity, the evaluation period start dates varied by AA. Accordingly, examiners

bank received "Low Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.[30] Cadence Bank's performance in Alabama and Texas was weighted most heavily by examiners.

Examiners noted that the Cadence Bank Evaluation was the first CRA examination for the bank following the combination of a severely troubled bank, a failed bank, and a niche-market bank. Examiners observed that the necessary allocation of resources to stabilize and improve the bank's financial condition impeded the bank's ability to devote significant resources to enhancing lending performance across the bank's AAs and that these considerations compensated for the noted weaknesses in the volume and distribution of loans.

Examiners found that Cadence Bank's geographic distribution of loans, including the distribution of home mortgage loans, was generally poor, although the distribution of small loans to businesses was good. Examiners noted that the overall distribution of loans and the distribution of home mortgage loans by income level of the borrower were adequate. Examiners also found that the performance of small loans to businesses was generally good. Examiners found that community development lending had a generally neutral impact on the Lending Test and noted that the bank focused community development lending on geographies where it lacked sufficient resources to markedly improve retail lending during the evaluation period.

Examiners found that Cadence Bank originated an overall adequate level of qualified community development investments that were generally responsive to community needs in the bank's AAs. Examiners noted that the bank received consideration for a regional investment that did not serve any of the bank's AAs, because the bank was generally responsive to needs in the AAs.

Overall, examiners concluded that bank branches ranged from reasonably accessible to accessible for limited portions of individual rating areas. Examiners noted that the bank's hours did not show significant differences between branches located in areas with different income levels. Examiners found that Cadence Bank offered an adequate level of banking services through alternate delivery systems and that the bank's opening and closing of branches throughout its AAs had not adversely impacted access to banking services.

In the Houston AA, an area of concern to a commenter, examiners found Cadence Bank's performance to be adequate. In reaching this conclusion, examiners gave consideration to the impact that the restructuring of Cadence Bank's entire mortgage origination function

reviewed home purchase, home improvement, and home refinance mortgage loans reported under HMDA and small loans to businesses reported under the CRA from October 1, 2010, through December 31, 2014, for the Birmingham MSA, Tuscaloosa, Alabama MSA ("Tuscaloosa MSA"), North Port-Bradenton-Sarasota, Florida MSA ("Sarasota MSA"), Georgia non-MSA Counties, Mississippi non-MSA Counties, Memphis, Tennessee-Mississippi-Arkansas MSA ("Memphis MSA"), and Nashville MSA AAs; from January 1, 2012, through December 31, 2014, for all AAs in Alabama and Florida, except for the Birmingham MSA, Tuscaloosa MSA, Homosassa Springs MSA, and Sarasota MSA AAs; and from September 14, 2012, to December 31, 2014, for the Houston MSA and San Antonio MSA AAs. The evaluation period for community development loans, the Investment Test, and the Service Test was from September 14, 2010, through December 31, 2014, for the Birmingham MSA, Tuscaloosa MSA, Sarasota MSA, Georgia non-MSA Counties, Mississippi non-MSA Counties, Memphis MSA, and Nashville MSA AAs; from November 11, 2011, through December 31, 2014, for all AAs within the states of Alabama and Florida, except for the Birmingham MSA, Tuscaloosa MSA, Homosassa Springs MSA, and Sarasota MSA AAs; and from September 14, 2012, through December 31, 2014, for the Houston MSA and San Antonio MSA AAs.

30 The Cadence Bank Evaluation included a full-scope review of at least one AA in each state in which the bank has branches. Each of the bank's 23 AAs was reviewed for lending, investment, and service performance using either full-scope or limited-scope examination procedures. At the time of the Cadence Bank Evaluation, Cadence Bank operated only one branch in Georgia, which has since been closed. The Cadence Bank Evaluation did not assess the bank's performance in the Dallas MD because the bank did not operate a branch in the Dallas MD during the evaluation period.

had on its performance in Texas, as a complete overhaul of the support and sales teams, a rewriting of operating and underwriting policies and procedures, and the development of new customer relationships in the competitive Houston market were necessary during the evaluation period. Examiners considered Cadence Bank's overall lending activity in the Houston AA to be excellent, considering the strong competition for all types of loans in this AA. Although the distribution of home mortgage loans by geography and borrower income was considered very poor, examiners found that Cadence Bank's community development lending had a significantly positive impact on lending performance in the AA. Examiners observed that the bank's community development loans in the Houston AA exhibited excellent responsiveness to identified community development needs in the AA, including affordable housing, activities that revitalized or stabilized LMI geographies, and community services targeted to LMI individuals. The bank's performance under the Investment Test and the Service Test in the Houston AA was considered adequate. Examiners noted that the bank's branch distribution in the Houston AA was considered adequate because the location of most of the bank's branches resulted from its 2012 acquisition of a niche market bank, and the branches were on major thoroughfares near public transportation or LMI census tracts.

In the Birmingham AA, another area of concern to a commenter, examiners found Cadence Bank's overall lending activity to be adequate. Examiners concluded that Cadence Bank's home mortgage lending activity was poor and its small business lending activity was good, considering competition in the AA. Examiners found that the geographic distribution of home mortgage loans was poor, and the distribution of home mortgage loans by borrower income was adequate. Examiners rated Cadence Bank's performance under the Service Test and Investment Test in the Birmingham AA as adequate and noted that the bank's excellent performance in providing community development services compensated for poor retail performance with respect to the Service Test.

Cadence's Efforts since the Cadence Bank Evaluation

Cadence represents that, since the Cadence Bank Evaluation, Cadence Bank has engaged in significant activities to continue to improve its CRA performance, including adopting a CRA plan that runs through 2021, which includes annual CRA performance goals in each of the bank's AAs, as described above. In addition, Cadence represents that Cadence Bank has implemented a number of measures to better serve LMI and minority borrowers and communities, including, among others, hiring a new CRA officer and two regional CRA development officers, including one in Birmingham; launching a new mortgage product for owner-occupied primary residences of LMI borrowers or in LMI census tracts; increasing and focusing marketing on underserved populations to promote this new mortgage product; introducing a new loan product for small businesses; launching a new low-cost deposit product to serve LMI and other underbanked or unbanked customers; and developing partnerships with local governments and community-based organizations to facilitate home mortgage, small business, and community development lending in LMI and majority-minority communities. Cadence represents that Cadence Bank is also committed to opening more branches in LMI and majority-minority census tracts and recently opened a new branch in Houston in an LMI and majority-minority census tract.

CRA Performance of State Bank

State Bank received an overall rating of "Satisfactory" at its most recent CRA Performance Evaluation by the FDIC, as of April 24, 2017 ("State Bank Evaluation").[31] The bank

[31] The State Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business loans reported under the CRA

received a “High satisfactory” rating for the Service Test and received “Low satisfactory” ratings for the Lending Test and the Investment Test.[32]

Examiners concluded that State Bank’s lending levels reflected adequate responsiveness to the AAs’ credit needs, and a majority of loans were made in the bank’s AAs. Examiners considered the geographic distribution of loans to reflect adequate penetration throughout the AAs and the distribution of borrowers to reflect generally adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners found that the institution made an adequate level of community development loans and used flexible lending practices to serve the credit needs of its AAs.

Examiners found that State Bank had an adequate level of qualified community development investments and grants and that a few of the investments were in leadership positions, particularly those not routinely provided by private investors. Examiners noted that the bank exhibited good responsiveness to credit and community development needs. Examiners observed that the institution occasionally used innovative and/or complex investments to support community development initiatives.

Examiners found the bank’s retail delivery systems were reasonably accessible to essentially all portions of the bank’s AAs and that the opening and closing of branches generally had not adversely affected the accessibility of its delivery systems. Examiners concluded that services, including business hours, did not vary in a way that inconvenienced portions of the AAs, particularly LMI geographies and individuals. Examiners also determined that the bank provided a relatively high level of community development services within its AAs.

SBFC’s Efforts since the State Bank Evaluation

Cadence represents that, since the State Bank Evaluation, State Bank has taken actions to improve its CRA performance. Specifically, State Bank originated community development loans, including a number of extensions of credit, to revitalize businesses as well as provide financing for student housing in LMI areas. In addition, Cadence represents that State Bank’s level of qualified investments has continued to grow since the State Bank Evaluation. Cadence further reports that a number of State Bank’s community development investments in the bank’s AAs included qualified affordable low-income housing tax credits to support multifamily housing in LMI areas. Cadence represents that the bank’s officers, directors, and employees have continued to participate in a number of activities and organizations within its AAs that provide support to LMI and minority individuals and promote community development and financial literacy.

Views of the OCC and FDIC

In its review of the proposal, the Board has consulted with the OCC regarding the CRA, consumer compliance, and fair lending record of Cadence Bank. The Board has also considered the results of the most recent consumer compliance examinations of Cadence Bank and State Bank conducted by the OCC and FDIC, respectively, which included reviews of the banks’ compliance management programs and the banks’ compliance with consumer protection laws and regulations. The OCC reviewed and approved the Bank Merger Act application related to the proposal and, in doing so, considered adverse

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for the years 2014, 2015, and 2016. The evaluation period for community development loans, the Investment Test, and the Service Test was January 21, 2014, through April 24, 2017. The branch office distribution was as of April 24, 2017.

[32] The State Bank Evaluation included a review of the bank’s AAs in Georgia, which included full-scope examinations of the Macon, Atlanta, and Augusta MSAs, as well as limited-scope examinations of the Warner Robins MSA and the Dooly County non-MSA.

commentsregarding the Birmingham MSA that were similar to the comment submitted to the Board on the BHC Act application regarding the Birmingham MSA.

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

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. Cadence represents that, following consummation of the proposal, existing customers of State Bank and Cadence Bank would benefit from a more extensive network of branches and ATMs across six states, and State Bank's existing customers particularly would benefit from access to an expanded array of products and services, including wealth management, investment, and mobile banking options. In addition, Cadence represents that existing business customers of Cadence Bank would benefit from the Small Business Administration lending programs, asset-based lending activities, and payroll services offered by State Bank, which Cadence Bank would continue after consummation of the proposal.

Cadence represents that, following consummation of the proposal, Cadence Bank would maintain a high level of community development lending, investment, services, and other CRA activities throughout the combined organization's service areas. Cadence represents that the combined bank would continue to expand its mortgage lending to LMI and minority borrowers and communities; its small business lending, including in LMI and minority communities; and its community development, investment, and service activities. Cadence further represents that it is committed to working closely with community leaders, small business owners, members of nonprofit organizations, and residents in its AAs to provide information about the CRA services Cadence Bank offers and to assess the community development needs in the 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 and FDIC; confidential supervisory information; information provided by Cadence; 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

Section 3 of the BHC Act requires 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

[33] 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.[34] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.[35]

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.[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 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.[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.[38] In reaching its conclusion, the Board has consid-

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

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

[36] *See 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] Cadence and SBFC both offer a range of retail and commercial banking products and services. Cadence 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.

[38] A commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on 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 in connection with this application. Under its rules, the Board

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 Cadence 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 15th calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Dallas, acting under delegated authority.

By order of the Board of Governors, effective December 7, 2018.

Voting for this action: Chairman Powell, Vice Chairman Clarida, Vice Chairman for Supervision Quarles, and Governors Brainard and Bowman.

Ann E. Misback
Secretary of the Board

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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 a public hearing on the proposal is denied.

In addition, this commenter requested an extension of the comment period for the proposal. The Board's rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter's request for additional time to comment does not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board determines not to extend the comment period.

Order Issued Under Federal Reserve Act

Comerica Bank
Dallas, Texas

Order Approving the Establishment of Branches
FRB Order No. 2018-24 (November 6, 2018)

Comerica Bank, a state member bank subsidiary of Comerica Incorporated, both of Dallas, Texas, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[1] and the Board's Regulation H[2] to establish two branches in Texas.[3]

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

Comerica Incorporated, with consolidated assets of $72.2 billion, is the 42nd largest depository organization in the United States, controlling approximately $57.7 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] Comerica Bank operates through 441 offices located in Arizona, California, Florida, Michigan, and Texas, and Comerica Bank's main office is in Dallas, Texas. In Texas, Comerica Bank is the 11th largest depository institution, with 122 offices, controlling approximately $9.5 billion in deposits, which represent approximately 1.2 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 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 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 Houston and Dallas branch applications in light of these factors and the public comment received on the proposal.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Comerica Bank, the Board has reviewed reports of examination, other super-

1 12 U.S.C. § 321.

2 12 CFR Part 208.

3 Comerica Bank proposes to establish one branch at 6829 Hillcrest Avenue, Dallas, Texas ("Dallas branch") and one branch at 2 Riverway Drive, Suite 160, Houston, Texas ("Houston branch"). Comerica Bank represents that the Houston branch is intended to replace a branch that is located 2.8 miles away.

4 12 CFR 262.3(b).

5 Total assets are as of June 30, 2018. National asset ranking and deposit data are as of March 31, 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).

visory information, publicly reported and other financial information, information provided by Comerica Bank, and the public comment received on the proposal. Comerica Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Comerica Bank are consistent with approval, and Comerica Bank appears to have adequate resources to absorb the cost of the proposal. In addition, future earnings prospects are consistent with approval. The Board also has reviewed Comerica Bank's proposed investment in the branches and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.[10]

In considering Comerica Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Comerica Bank and the bank's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws. Comerica 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 the record, the Board concludes that Comerica Bank's management, financial history and condition, capital adequacy, and future earnings prospects, as well as the effectiveness of Comerica Bank in combatting moneylaundering activities, are consistent with approval of the proposal.

Convenience and Needs Considerations

In considering the effects of a proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the record of the 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 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 public comments received on the proposal. The Board also may consider the institution's business model, marketing and outreach plans, 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 Comerica Bank, the fair lending and compliance records of Comerica Bank, confidential supervisory

[10] 12 CFR 208.21(a).
[11] 12 U.S.C. § 2901(b).
[12] 12 U.S.C. § 2903.

information, information provided by Comerica Bank, and the public comment received on the proposal.

Public Comment on the Proposal

A commenter objected to the proposal, alleging that Comerica Bank has engaged in redlining and discriminates against African Americans in Houston and Dallas, Texas.[13] Specifically, the commenter alleged that Comerica Bank has denied African American individuals and African American-owned businesses equal access to capital and credit by heavily concentrating its outreach and banking activities in predominantly white neighborhoods and to white individuals and white-owned businesses. The commenter also alleges that Comerica Bank disfavors certain African American neighborhoods in Houston and Dallas with respect to its lending, marketing, community development, and branching activities.

Business of the Applicant and Response to Comment

Through its network of branches, Comerica Bank offers a variety of retail and commercial banking products and services to consumers and businesses, including consumer and commercial products, such as commercial and industrial loans, wealth management services, treasury management services, capital market products, international trade finance, and investment management and advisory services. Comerica Bank represents that it has policies and processes in place to ensure compliance with all anti-discrimination laws and regulations and emphasizes that it has received an Outstanding or Satisfactory CRA rating for many years. In addition, Comerica Bank represents that it has a longstanding commitment to investment in its communities, particularly the Houston area, and has two programs in place to enhance lending to LMI communities and communities of color.

Record of Performance under the CRA

In evaluating the convenience and needs factor and the CRA performance of an institution, the Board generally considers the institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal supervisor or supervisors, which in this case is the Federal Reserve Bank of Dallas ("Reserve Bank").[14] In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[15] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to

[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] 12 U.S.C. § 2906.

determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's 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 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;[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. 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.

CRA Performance of Comerica Bank

Comerica Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of June 22, 2015 ("Comerica Bank Evaluation").[18] Comerica Bank received "High Satisfactory" ratings for the Lending test and the Service test and an "Outstanding" rating for the Investment test.[19]

Examiners found that Comerica Bank's overall lending activity was good in all the states in which it operates, including Texas. According to examiners, the geographic distribution of loans throughout the bank's AAs was excellent. Examiners found that the bank had an adequate distribution of loans among borrowers of different income levels and businesses of different sizes. In addition, examiners found that the bank's lending activity reflected good responsiveness to the credit needs of the AAs, and a substantial majority of the loans were made in the bank's AAs. Examiners also noted that the bank made a relatively high level of community development loans during the review period for a variety of purposes, including for financing affordable housing and high-impact community development proj-

[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 $1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See e.g.,* 12 CFR 228.22(b)(3).

[18] The Comerica Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA-reportable and small business loans, and home equity lines of credit from January 1, 2012, through December 31, 2014. The evaluation period for community development loans, investments, and services was April 1, 2012, through December 31, 2014.

[19] The Comerica Bank Evaluation included a full-scope review of the bank's AAs within the following areas: the Phoenix-Mesa-Scottsdale, Arizona Metropolitan Statistical Area ("MSA"); the Los Angeles-Anaheim-Long Beach, California MSA; the San Jose-Sunnyvale-Santa Clara, California MSA; the Miami-Fort Lauderdale-West Palm Beach, Florida MSA; the Detroit-Warren-Dearborn, Michigan MSA; the Grand Rapids-Wyoming, Michigan MSA; the Dallas-Fort Worth-Arlington, Texas MSA ("Dallas AA"); and the Houston–The Woodlands-Sugar Land, Texas MSA ("Houston AA"). Limited-scope reviews were conducted in 24 other assessment areas in California, Florida, Michigan, and Texas.

ects, promoting economic development, including job creation, and revitalizing or stabilizing targeted communities in LMI census tracts and empowerment zones.

Examiners rated Comerica Bank's performance in Texas under the Lending test as "High Satisfactory." In both the Dallas and Houston AAs, the two areas of interest to the commenter, examiners determined that Comerica Bank's lending levels reflected good responsiveness to the AAs' credit needs. Examiners found that the bank's geographic distribution of loans reflected excellent penetration throughout Texas, including in both the Houston and Dallas AAs. Examiners also found that the bank's distribution of loans to borrowers of different income levels and to businesses of different revenue sizes was adequate in both the Houston and Dallas AAs. Examiners determined that Comerica Bank made a relatively high level of community development loans in Texas. In the Dallas AA, examiners found Comerica Bank to be a leader in community development lending; however, examiners found that Comerica Bank made a low level of community development loans in the Houston AA.

Examiners found that Comerica Bank had an excellent level of qualified community development investments and grants and was often in a leadership position throughout its AAs, including in Texas. Examiners noted that the bank's investments demonstrated good responsiveness to the most pressing credit and community development needs throughout its AAs. Examiners found that the bank's primary vehicle for qualified community development investments was through Low Income Housing Tax Credit ("LIHTC")[20] projects in the states in which it operates. Examiners noted that these LIHTC investments addressed vital needs for affordable housing throughout the bank's AAs and had a material impact on the communities the bank served. Examiners found that, in addition to statewide donations and investments, the Dallas and Houston AAs benefitted from Comerica Bank's LIHTC investments.

Examiners found that Comerica Bank's retail delivery systems were accessible to geographies and individuals of different income levels within its AAs. Examiners noted that Comerica Bank's banking services and business hours did not vary in a way that inconvenienced any portion of the bank's AAs, particularly LMI geographies and individuals. Examiners also noted that in most areas, Comerica Bank had Saturday and extended morning and evening hours and offered no- or low-cost deposit accounts. Examiners found that the bank's record of opening and closing offices in Texas during the review period had not affected the accessibility of its delivery systems, including to LMI geographies or individuals.

In the Houston and Dallas AAs, examiners found Comerica Bank's performance on the Service test to be adequate and excellent, respectively. Examiners noted that the bank's level of community development services was good in Texas. 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 the economic development and revitalization of LMI areas.

In the Dallas AA, examiners found that Comerica Bank was a leader in providing retail and community development services and that these services reflected excellent responsiveness to the needs of the AA. In the Houston AA, examiners found that Comerica Bank's retail and community development services reflected adequate responsiveness to the credit needs of the AA.

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[20] *See* 26 U.S.C. §42.

Comerica Bank's Efforts since the Comerica Bank Evaluation

Comerica Bank represents that since the Comerica Bank Evaluation it has made several enhancements to its CRA program, including by establishing a CRA working group in early 2017. Comerica Bank represents that it restructured its CRA Department in 2018 to utilize a first line of defense/second line of defense strategy and that its systems are being upgraded to improve efficiency and accuracy of reporting. Comerica Bank notes that it has made a significant number of loans to businesses located in LMI census tracts in Dallas and Houston and a significant number of community development loans in the Dallas and Houston AAs. Finally, Comerica Bank represents that it has made a significant number of CRA-qualified investments and CRA-qualified charitable contributions in both the Dallas and Houston AAs.

Additional Supervisory Views of the Reserve Bank

The Board has considered the results of a recent target examination of Comerica Bank's Fair Housing Act fair lending program, which included a redlining review of a number of markets, including the Dallas and Houston AAs. The redlining review included an evaluation of the bank's AA delineation, lending, marketing and outreach efforts, and branching. The Board also has considered Comerica Bank's supervisory record with the Bureau of Consumer Financial Protection.

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. Comerica Bank asserts that the proposed branches would offer expanded hours for customers to handle transactions through video and other new technologies. Excluding safe deposit and night depositary services, Comerica Bank represents that the products and services to be offered at the Houston branch would be substantially the same as those offered at the existing branch that the proposed branch would replace. Comerica Bank asserts that the Dallas branch would provide additional convenience and accessibility to products and services for the surrounding neighborhoods, businesses, and office building complexes, and the greater Dallas community and economy.

Conclusion on Convenience and Needs Considerations

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved.[21] The Board's approval is specifically condi-

[21] The Board construes the public comment to include a request that the Board hold public hearings on the applications. 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 Dallas branch application was published in relevant newspapers of general circulation on August 17, 2018, and the comment period ended on September 1, 2018. Notice of the Houston branch application was published in relevant newspapers of general circulation on July 19, 2018, and the comment

tioned on compliance by Comerica 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 the applications is also subject to the establishment of the proposed branches in Dallas and Houston, respectively, 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 November 6, 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

period ended on August 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 would be clarified by a public hearing. In addition, the request does not demonstrate why the written comments do not present the commenter's views adequately or why a hearing 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.

Order Issued Under International Banking Act

Joint Stock Commercial Bank for Foreign Trade of Vietnam
Hanoi, Vietnam

Order Approving the Establishment of a Representative Office
FRB Order No. 2018-23 (October 26, 2018)

Joint Stock Commercial Bank for Foreign Trade of Vietnam ("Vietcombank"), Hanoi, Vietnam, 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 "New York Representative Office"). 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*, December 21, 2017). The time for submitting comments has expired, and the Board has considered all comments received.

Vietcombank, with total assets of approximately $43.6 billion, is the fourth largest bank in Vietnam by asset size.[2] Vietcombank provides retail and commercial banking services to individuals, corporations, and financial institutions, including international trade finance, foreign exchange and fixed-income trading, lending, project finance, money transfer, and correspondent banking services. Vietcombank operates four domestic subsidiaries that engage in securities activities, financial services, office leasing, and remittance activities. Foreign operations of the bank include a representative office in Singapore, a finance company subsidiary in Hong Kong, and a U.S. money transmitter subsidiary, VCB Money Inc., Garden Grove, California ("VCB Money").[3]

Vietcombank's largest shareholder is the government of Vietnam through the State Bank of Vietnam ("SBV"), the central bank of Vietnam, which currently owns approximately 77 percent of the bank's voting shares. The second largest shareholder, with 15 percent of Vietcombank's voting shares, is Mizuho Bank, Ltd., Tokyo, Japan. The remaining shares of Vietcombank are widely held.

The New York Representative Office would act as a liaison with U.S. clients and prospective clients of Vietcombank. The New York Representative Office also would engage in other representational activities, such as providing analysis of the banking sector and financial services market, acting as a liaison with correspondent banks in the United States, and participating in business symposiums and conferences.[4]

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1 12 U.S.C.§3107(a).

2 Asset data is as of June 30, 2018. Ranking data is as of December 31, 2016.

3 VCB Money is a subsidiary of Vietcombank and was first licensed as a money transmitter in California in 2011. VCB Money provides outbound money transmission services to U.S. residents seeking to send money to Vietnam. VCB Money currently is licensed as a money transmitter in seventeen additional states, and provides services through its own offices and a network of authorized agents in the U.S.

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).

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

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 office, taking into account the nature of such activities and the operating record of the applicant bank.[7] 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, Vietcombank has provided certain commitments that limit the activities of the New York Representative Office. In particular, Vietcombank has committed that the New York Representative Office would not solicit deposits, make credit decisions or any other decisions that bind Vietcombank (except for local administrative matters), or engage in activities related to securities trading, foreign exchange, or money transmission. The New York Representative Office also would not share office space or premises with VCB Money. The New York Representative Office would engage only in the activities described in its application to the Board.

As noted above, Vietcombank engages directly in the business of banking outside the United States. Vietcombank 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 Vietcombank is supervised by the SBV.

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 *See* 12 CFR 211.24(d)(2). In adopting the regulations governing applications to establish representative offices, the Board noted that "[a] lesser standard applies because representative offices do not conduct a banking business, such as taking deposits or making loans, and therefore present less risk to U.S. customers than do branches or agencies." 66 *Fed. Reg*. 54346, 54365 (October 26, 2001).

The SBV serves as the chief supervisory authority over the banking and financial sector in Vietnam, conducts monetary policy, and issues national currency. The SBV applies a risk-based supervisory approach with a focus on credit, liquidity, market, and operational risks. The SBV supervises banking organizations through a combination of off-site monitoring and on-site examinations that focus on compliance with applicable laws and regulations, including anti-money-laundering rules, corporate governance, audit, internal controls, risk management, and financial condition, including asset quality, capital, liquidity, and profitability. The SBV conducts off-site monitoring of Vietcombank through the review of a set of periodic reports on the bank's consolidated operations, including its branches, subsidiaries, and affiliates, both domestic and foreign. Vietcombank is required to provide annual audited financial statements to the SBV. Vietnam is expected to fully transition to International Financial Reporting Standards in the next few years.

Vietnam was the subject of a 2014 Financial Sector Assessment Program ("FSAP") review that revealed weaknesses in bank supervision in Vietnam, including low quality financial data, low compliance with Basel Core Principles, infrequent SBV on-site inspections, and conflicting roles of the SBV. Vietcombank has indicated that the SBV and the Government of Vietnam have taken significant steps to address the deficiencies revealed in the FSAP report. These include the issuance of new regulations to improve the quality of financial data, as well as participation in a joint Vietnam-Canada initiative to transition Vietnam's regulatory and supervisory regime to international standards. To address its independence, the SBV issued a new regulation in February 2017 on the functions, powers, duties, and structure of the SBV.

Based on all the facts of record, including the commitments provided by Vietcombank limiting the activities of the New York Representative Office, it has been determined that Vietcombank is subject to a supervisory framework that is consistent with the current and proposed activities of the New York 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.[8]

Vietnam is a member of the Asia/Pacific Group ("APG") on money laundering and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, Vietnam has created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offence in Vietnam, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering. The SBV enforces these requirements with respect to Vietnamese banks, including Vietcombank. Vietcombank has policies and procedures to comply with these laws and regulations, which are monitored by government entities responsible for anti-money-laundering compliance.

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

Vietcombank appears to have the experience and capacity to support the New York Representative Office. In addition, Vietcombank has established controls and procedures for the New York Representative Office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration Vietcombank'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 Vietcombank's application to establish the New York Representative Office.

Vietcombank has committed to make available to the Board such information on the operations of Vietcombank 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,[9] and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, Vietcombank 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 SBV may share information on Vietcombank'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 Vietcombank has provided adequate assurances of access to any necessary information that the Board may request. In addition, the SBV has no objection to the establishment of the New York Representative Office.

The Board has also considered whether Vietcombank'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 Vietcombank in its home country; the scope of Vietcombank'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 Vietcombank 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 Vietcombank, Vietcombank's application to establish the New York 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 Vietcombank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Vietcombank or its affiliates with applicable federal statutes, the Board may require termination of any of Vietcombank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Vietcombank 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.

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9 12 U.S.C. § 1841 *et seq*.

10 12 CFR 265.7(d)(12).

11 The Board's authority to approve the establishment of the New York 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 New York Representative Office in accordance with any terms or conditions that they may impose.

By order, approved pursuant to authority delegated by the Board, effective October 26, 2018.

Ann E. Misback
Secretary of the Board

Order Issued Under Section 3 of the Bank Holding Company Act, Bank Merger Act, and Federal Reserve Act

Synovus Financial Corp.
Columbus, Georgia

Synovus Bank
Columbus, Georgia

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2018-25 (December 7, 2018)

Synovus Financial Corp. ("Synovus Financial"), Columbus, Georgia, 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 and merge with FCB Financial Holdings, Inc. ("FCB Financial"), and thereby indirectly acquire FCB Financial's subsidiary bank, Florida Community Bank, N.A. ("Florida Community Bank"), both of Weston, Florida.

In addition, Synovus Financial's subsidiary state member bank, Synovus Bank, Columbus, Georgia, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with Florida Community Bank, with Synovus Bank as the surviving entity.[3] Synovus 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 Florida Community Bank.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 44271 (August 30, 2018)).[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 of Synovus Bank and Florida Community Bank was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

Synovus Financial, with consolidated assets of approximately $32.1 billion, is the 64th largest insured depository organization in the United States. Synovus Financial controls approximately $26.4 billion in consolidated deposits, which represent 0.2 percent of the total amount of deposits of insured depository institutions in the United States.[6] Synovus Financial controls Synovus Bank, which operates in Alabama, Florida, Georgia, South Carolina, and Tennessee. Synovus Financial is the 27th largest insured depository organization in Florida, controlling deposits of approximately $3.1 billion, which represent 0.5 percent of the total deposits of insured depository institutions in that state.[7]

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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] Nationwide asset data are as of September 30, 2018, and deposit data are as of June 30, 2018, unless otherwise noted.

[7] State deposit data are as of June 30, 2018, unless otherwise noted.

FCB Financial, with consolidated assets of approximately $12.4 billion, is the 122nd largest insured depository organization in the United States. FCB Financial controls approximately $9.9 billion in deposits, which represent less than 0.1 percent of the total amount of deposits of insured depository institutions in the United States. FCB Financial controls Florida Community Bank, which operates only in Florida. FCB Financial is the 15th largest insured depository organization in Florida, controlling deposits of approximately $9.9 billion, which represent 1.7 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Synovus Financial would become the 51st largest insured depository organization in the United States, with consolidated assets of approximately $45.5 billion, which represent 0.2 percent of the total assets of insured depository organizations in the United States. Synovus Financial would control total deposits of approximately $36.3 billion, which represent 0.3 percent of the total amount of deposits of insured depository institutions in the United States. In Florida, Synovus Financial would become the 12th largest insured depository organization, controlling deposits of approximately $13.0 billion, which represent approximately 2.2 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.[8] 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.[9] 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.[10] 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.[11]

For purposes of the BHC Act, the home state of Synovus Financial is Georgia, and Florida Community Bank is located only in Florida.[12] For purposes of section 44 of the FDI Act, the home state of Synovus Bank is Georgia, and the home state of Florida

[8] 12 U.S.C. § 1842(d)(1)(A).

[9] 12 U.S.C. § 1831u(a)(1).

[10] 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

[11] 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).

[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.

Community Bank is Florida. Synovus Financial and Synovus Bank are well capitalized and well managed under applicable law, and Synovus Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[13] There are no statutory minimum age requirements under the laws of Florida, and Florida Community Bank has been in existence for more than five years.[14]

On consummation of the proposed transaction, Synovus Financial would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Florida does not impose a limit on the total amount of in-state deposits that a single banking organization may control. Florida is the only state in which Synovus Financial and FCB Financial have overlapping operations, and Synovus Financial would control less than 30 percent of total deposits of banking organizations in Florida as a result of the transaction. The Board has considered all other requirements of section 3(d) of the BHC Act and section 44 of the FDI Act, including Synovus 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 and section 44 of the FDI 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.[15] 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.[16]

Synovus Bank and Florida Community Bank compete directly in the Fort Myers Area banking market ("Fort Myers market"), the Naples Area banking market ("Naples market"), the Orlando Area banking market ("Orlando market"), the Sarasota Area banking market ("Sarasota market"), and the Tampa Bay Area banking market ("Tampa Bay market"), all of which are located in Florida.[17] 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 Synovus Financial would control;[18] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under

[13] 12 U.S.C. § 2901 *et seq.*

[14] *See* Fla. Stat. § 658.2953.

[15] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5)

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

[17] The Fort Myers market is defined as Collier and Lee counties, Florida. The Naples market is defined as Collier County (excluding the town of Immokalee), Florida. The Orlando market is defined as Orange, Osceola, and Seminole counties, the western half of Volusia County, and the towns of Clermont and Groveland in Lake County, Florida. The Sarasota market is defined as Manatee County, Sarasota County (not including the portion that is both east of the Myakka River and south of Interstate 75, which includes the town of North Port), the peninsular portion of Charlotte County (the portion 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, Florida. The Tampa Bay market is defined as Hernando, Hillsborough, Pinellas, and Pasco counties, Florida.

[18] State deposit and market share data are as of June 30, 2018, 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*

the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[19] and other characteristics of each market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Fort Myers, Naples, Orlando, Sarasota, and Tampa Bay markets. On consummation of the proposal, the Orlando and Tampa Bay markets would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in the Orlando market would be small, and 44 other competitors would remain in the market.[20] The change in the HHI in the Tampa Bay market would also be small, and 54 other competitors would remain in the market.[21] The Fort Myers, Naples, and Sarasota markets would each remain unconcentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines, and numerous competitors would remain in each market.[22]

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

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

20 Synovus Financial operates the 41st largest depository institution in the Orlando market, controlling approximately $16.5 million in deposits, which represent less than 0.1 percent of market deposits. FCB Financial operates the 11th largest depository institution in the same market, controlling deposits of approximately $889.3 million, which represent approximately 1.8 percent of market deposits. On consummation of the proposed transaction, Synovus Financial would become the 11th largest depository organization in the market, controlling deposits of approximately $905.8 million, which represent approximately 1.8 percent of market deposits. The HHI for the Orlando market would increase by 1 point to 1281.

21 Synovus Financial operates the 16th largest depository institution in the Tampa Bay market, controlling approximately $768.7 million in deposits, which represent approximately 0.9 percent of market deposits. FCB Financial operates the 20th largest depository institution in the same market, controlling deposits of approximately $612.5 million, which represent approximately 0.7 percent of market deposits. On consummation of the proposed transaction, Synovus Financial would become the 11th largest depository organization in the market, controlling deposits of approximately $1.4 billion, which represent approximately 1.6 percent of market deposits. The HHI for the Tampa Bay market would increase by 1 point to 1193.

22 Synovus Financial operates the 30th largest depository institution in the Fort Myers market, controlling approximately $30.6 million in deposits, which represent approximately 0.2 percent of market deposits. FCB Financial operates the 8th largest depository institution in the same market, controlling deposits of approximately $612.6 million, which represent approximately 4.0 percent of market deposits. On consummation of the proposed transaction, Synovus Financial would become the 8th largest depository organization in the market, controlling deposits of approximately $643.2 million, which represent approximately 4.2 percent of market deposits. The HHI for the Fort Myers market would increase by 2 points to 902, and 31 other banking organizations would remain in the market.

Synovus Financial operates the 29th largest depository institution in the Naples market, controlling approximately $56.6 million in deposits, which represent approximately 0.3 percent of market deposits. FCB Financial operates the 8th largest depository institution in the same market, controlling deposits of approximately $774.9 million, which represent approximately 4.5 percent of market deposits. On consummation of the proposed transaction, Synovus Financial would become the 8th largest depository organization in the market, controlling deposits of approximately $831.5 million, which represent approximately 4.9 percent of market deposits. The HHI for the Naples market would increase by 3 points to 874, and 32 other banking organizations would remain in the market.

Synovus Financial operates the 19th largest depository institution in the Sarasota market, controlling approximately $270.0 million in deposits, which represent approximately 1.3 percent of market deposits. FCB Financial operates the 9th largest depository institution in the same market, controlling deposits of approximately $554.0 million, which represent approximately 2.7 percent of market deposits. On consummation of the proposed transaction, Synovus Financial would become the 7th largest depository organization in the market, controlling deposits of approximately $824.0 million, which represent approximately 3.9 percent of market deposits. The HHI for the Sarasota market would increase by 7 points to 927, and 34 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 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 Fort Myers, Naples, Orlando, Sarasota, or Tampa Bay 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 and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[23] In its evaluation of 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.

Synovus Financial and FCB Financial 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 share exchange, with a subsequent merger of the subsidiary depository institutions.[24] The asset quality, earnings, and liquidity of both Synovus Bank and Florida Community Bank are consistent with approval, and Synovus Financial appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are 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 Synovus Financial, FCB Financial, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Synovus Financial; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking,

[23] 12 U.S.C. §§ 1842(c)(2), (5), and (6) and 1828(c)(5).

[24] To effect the holding company merger, a wholly owned subsidiary of Synovus Financial would merge with FCB Financial, with FCB Financial as the surviving entity. Immediately thereafter, FCB Financial would merge with Synovus Financial, with Synovus Financial as the surviving entity. Florida Community Bank would then merge with and into Synovus Bank, with Synovus Bank as the surviving entity.

consumer protection, and anti-money-laundering laws; and the public comments on the proposal.

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

The Board also has considered Synovus Financial's plans for implementing the proposal. Synovus Financial has conducted comprehensive due diligence and is devoting significant financial and other resources to address the post-acquisition integration process for this proposal. Synovus 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, Synovus Financial's management has the experience and resources to operate the combined organization in a safe and sound manner.[25]

Based on all of the facts of record, including Synovus 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 Synovus Financial and FCB Financial in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[26] In its evaluation, 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, and places particular emphasis on the records of the relevant depository institutions under the CRA.[27] 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,[28] 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.[29]

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.

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[25] Following consummation of the proposed transaction, Florida Community Bank's chief executive officer would join Synovus Financial's management as executive vice president.

[26] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[27] 12 U.S.C. § 2901 *et seq.*

[28] 12 U.S.C. § 2901(b).

[29] 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 Synovus Bank and Florida Community Bank; the fair lending and compliance records of both banks; confidential supervisory information; information provided by and consultations with relevant supervisors; information provided by Synovus Financial; and the public comments on the proposal.

Public Comments on the Proposal

The Board received comments from two commenters on the proposal. One commenter requested that Synovus Bank provide a community benefits plan to address the commenter's concerns with Synovus Bank's lending and CRA performance, as well as to detail how the transaction would benefit the underserved throughout the bank's footprint.[30] The commenter asserted that a community benefits plan was particularly warranted in light of the fact that Synovus Bank received "Low Satisfactory" ratings on each of the Lending, Investment, and Service tests at its most recent CRA performance evaluation, whereas Florida Community Bank received "High Satisfactory" ratings on each of the three performance tests at its last CRA performance evaluation. The commenter expressed concerns with Synovus Bank's home mortgage lending to LMI and minority individuals and in minority areas of certain markets based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA");[31] small business lending in certain markets; branch distribution in LMI and minority areas of particular markets; and community development activity in certain markets.

A second commenter objected to the proposal, alleging disparities in denial rates and home mortgage originations to African Americans and/or Hispanics, as compared to whites, in certain markets. The commenter also noted a complaint filed with the Bureau of Consumer Financial Protection ("Bureau") against Synovus Bank relating to collecting on a debt allegedly not owed and a customer review alleging poor customer service by a Synovus Bank branch related to a check hold. Finally, the commenter asserted that the proposal would not produce a public benefit.

Businesses of the Involved Institutions and Response to the Public Comments

Through its network of branches in Alabama, Florida, Georgia, South Carolina, and Tennessee, Synovus Bank offers a variety of products and services, including retail, mortgage, commercial banking, trust, and investment services to retail, business, and institutional clients.

Through its network of branches in Florida, Florida Community Bank offers a full range of traditional banking products and services to individuals, small and medium-size businesses, and other local entities, and targets commercial customers engaged in a wide variety of industries.

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[30] While the commenter did not explicitly request that a community benefits plan involve an agreement between the group and Synovus Bank, the commenter indicated that it would look forward to meeting with Synovus Bank to discuss development of a community benefits plan. 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., HarborOne Mutual Bancshares* and *HarborOne Bancorp, Inc*., FRB Order No. 2018-18 at 10 n. 26 (September 12, 2018); *TriCo Bancshares*, FRB Order No. 2018-13 at 9 n.20 (June 6, 2018); *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.

[31] 12 U.S.C. § 2801 *et seq*.

In response to the assertion that Synovus Bank should develop a community benefits plan to address perceived weaknesses in the bank's CRA performance and in other respects, Synovus Financial notes that providing a community benefits plan is not a legal requirement and that Synovus Bank at its most recent CRA performance evaluation received an overall "Satisfactory" rating, as well as a rating of "Satisfactory" for each of its state and multi-state assessments. Synovus Financial cites this performance evaluation as evidence that Synovus Bank had adequate penetration in LMI geographies with respect to HMDA-reportable lending, excellent penetration in LMI geographies with respect to small business lending, and adequate distribution of both HMDA-reportable and small business loans among borrowers of different income levels and businesses of different sizes. Synovus Financial notes that there have been recent year-over-year increases in the proportion of the organization's mortgage loan applications from minority census tracts, as well as in the proportion of its applications from and originations to African Americans in key markets.

With respect to Synovus Bank's community development lending, Synovus Financial asserts that the bank's level of community development lending was found to be adequate in its last CRA performance evaluation and notes that Synovus Bank has continued to expand its affordable credit programs and increase its community investment portfolio. Synovus Financial also notes that Synovus Bank routinely evaluates its distribution of branches and is developing ways to increase the number of alternative systems for delivering retail banking services to customers.

Synovus Financial also notes that Synovus Bank is committed to identifying and continuously monitoring gaps in its CRA performance and fair lending performance and continues to implement a plan to enhance branch awareness, improve community outreach, and increase distribution of loan applications in underserved markets.

In response to the allegations regarding Synovus Bank's home mortgage lending record, Synovus Financial asserts that the bank's record reflects decisions based upon underwriting criteria applied without regard to the race of the borrower. Synovus Financial represents it is it committed to compliance with fair lending laws and regulations and has developed strategies to increase lending in high minority census tracts. With respect to the complaint and customer review cited, Synovus Financial asserts that it maintains a robust customer complaint system and that Synovus Financial and its third-party vendors took appropriate measures to investigate the matters and respond appropriately, including by explaining the applicable bank policies to the customer.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views from the relevant federal financial supervisor or supervisors, which in this case are the Federal Reserve Bank of Atlanta ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC").[32] In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[33] An institution's most recent CRA performance evaluation is a particularly important consideration in the appli-

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

[33] 12 U.S.C. § 2906.

cations process because it represents a detailed, on-site evaluation by the institution's primary federal financial 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 Synovus Bank and Florida Community Bank, in helping to meet the credit needs of the communities they serve. The lending test specifically evaluates an 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;[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.[35] 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.[36]

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 Synovus Bank

Synovus Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of November 6, 2017 ("Synovus Bank Evaluation").[38] The bank received "Low Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.[39]

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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 *See* 12 CFR 228.22(b).

36 *See* 12 CFR 228.21 *et seq*.

37 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.

38 The Synovus Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed residential mortgage loans of Synovus Bank and its wholly owned mortgage affiliate, Synovus Mort-

Examiners found that the bank's overall geographic distribution of lending in LMI geographies was adequate for HMDA-reportable lending and excellent for small business lending. Examiners concluded that the bank's overall distribution of HMDA-reportable lending was adequate among borrowers of different income levels and that its overall distribution of small business lending among businesses of different sizes was adequate. Examiners noted that Synovus Bank made an adequate level of community development loans.

Examiners found that Synovus Bank made an adequate level of qualified community development investments in response to community development needs of its AAs. Examiners noted that the bank's investments included projects to support affordable housing and investments to promote economic development. Examiners noted that the bank's contributions supported organizations engaged in community services for LMI individuals or communities. Examiners also noted that the bank contributed to other community development needs, such as to provide affordable housing support to nonprofits developing affordable housing and offering homebuyer education.

Examiners found that Synovus Bank's delivery systems were reasonably accessible to the bank's geographies and individuals of different income levels and that, to the extent changes had been made, the bank's opening and closing of branches throughout its AAs generally had not adversely affected the accessibility of the bank's 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 the bank's AAs, particularly LMI geographies and individuals, and that the bank provided an adequate level of community development services within its AAs.

Synovus Bank's Efforts since the Synovus Bank Evaluation

Synovus Financial represents that, since the Synovus Bank Evaluation, Synovus Bank has continued to develop its CRA strategy and plan. Specifically, Synovus Financial states that Synovus Bank has developed CRA performance targets for the Lending, Investment, and Service tests in each of the bank's AAs. Synovus Financial cites numerous examples of CRA activities undertaken by Synovus Bank since the Synovus Bank Evaluation, including community development loans, investments, and services. Synovus Financial also represents that Synovus Bank continues to maintain strong partnerships with community development organizations and has worked to make its retail banking services more accessible.

CRA Performance of Florida Community Bank

Florida Community Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of March 6, 2017 ("Florida Community

gage Corporation, as well as small business loans of Synovus Bank from January1,2014, through December 31, 2016. In addition, examiners considered the community development loans originated by Synovus Bank between January 1, 2014, and June 30, 2017, as well as all qualified investments that were funded prior to but still outstanding as of December 31, 2016, or purchased between January 1, 2014, and June 30, 2017, and all community development services performed during that same period of time.

[39] The Synovus Bank Evaluation included a full-scope review of at least one AA in each state where the bank has branches. Each of the bank's 49 AAs was reviewed for lending, investment, and service performance using either full-scope or limited-scope examination procedures.

Bank Evaluation").[40] The bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.[41]

Examiners found that Florida Community Bank's lending activity reflected good responsiveness to credit needs in the bank's AAs. Examiners noted that the bank's lending activity reflected adequate responsiveness to AA credit needs for mortgages and small business loans and considered the level of community development lending to be excellent. Examiners found that the geographic distribution of loans and the distribution of loans by income level of the borrower were adequate. Examiners also noted that Florida Community Bank used innovative and flexible lending practices to address credit needs within its AAs.

Examiners found that Florida Community Bank made a good level of qualified investments and grants/donations and that a few of the investments were innovative or complex and not routinely provided by private investors.

Examiners found Florida Community Bank's retail delivery systems to be reasonably accessible to geographies and individuals of different income levels in the bank's AAs. Examiners determined that the level of community development services provided by the bank was excellent. Examiners stated that the services provided were responsive to AA needs, such as financial literacy, community service, training, and affordable housing.

Additional Supervisory Views

In its review of the proposal, the Board has consulted with the Reserve Bank regarding the CRA and consumer compliance, including fair lending, records of Synovus Bank and considered the results of the OCC's most recent CRA and consumer compliance examinations of Florida Community Bank. The Board also has considered Synovus Bank's supervisory record with the Bureau.

The Board has taken the consultations with the Reserve Bank and the information discussed above into account in evaluating the proposal, including in considering whether Synovus Financial has the experience and resources to ensure that Synovus 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. Synovus Financial represents that, following consummation of the proposal, customers of the combined organization would have access to a larger branch and ATM network and a greater variety of banking products and services than either Synovus Financial or FCB Financial could provide alone. Synovus Financial further represents that the services currently offered by the two banking organi-

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[40] The Florida Community Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed residential mortgage and small business loans from January1,2014, through December 31, 2016. The evaluation period for community development loans, investments, and services was from October 15, 2013, through December 31, 2016.

[41] The Florida Community Bank Evaluation included full-scope evaluations of the Ft. Lauderdale-Pompano Beach-Deerfield Beach Metropolitan District ("MD") AA; Miami-Miami Beach-Kendall MD AA; West Palm Beach-Boca Raton-Boynton MD AA; and Naples-Marco Island Metropolitan Statistical Area ("MSA") AA. Examiners conducted limited-scope evaluations of the Cape Coral-Ft. Myers MSA AA; Deltona-Daytona Beach-Ormond Beach MSA AA; North Port-Bradenton-Sarasota MSA AA; Orlando-Kissimmee-Sanford MSA AA; Palm Bay-Melbourne-Titusville MSA AA; Port St. Lucie MSA AA; Punta Gorda MSA AA; Sebastian-Vero Beach MSA AA; Tampa-St. Petersburg-Clearwater MSA AA; and Hendry County Non-MSA AA.

zations are complementary and that customers would be well served by the combined organization. Synovus Financial also represents that the resulting organization would remain committed to the communities it serves, including underbanked communities. Synovus Financial intends to continue Florida Community Bank's existing CRA programs in the areas Florida Community Bank currently operates and to retain all CRA staff within the combined organization. Synovus Financial asserts that the combined organization would synergize the CRA strengths of both banks and enhance the current CRA records of each bank.

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 Reserve Bank, the OCC, and the Bureau; confidential supervisory information; information provided by Synovus Financial; 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 its review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

Section 3 of the BHC Act and the Bank Merger Act require the Board to consider a proposal's "risk 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 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]

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[42] 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

[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 No. 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.

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.[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 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

Synovus Bank has applied under section 9 of the FRA to establish branches at the current locations of Florida Community Bank.[47] The Board has assessed the factors it is required to consider when reviewing an application under that section.[48] Specifically, the Board has considered Synovus 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 applications should be, and hereby are, approved.[50] In reaching its conclusion, the Board has

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[46] Synovus Bank and Florida Community Bank offer a broad range of retail and commercial banking products and services. Synovus 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 for them would remain.

[47] *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 located, 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, all of Synovus Bank's branches would be permissible under applicable state law. *See* Fla. Stat. § 658.2953.

[48] 12 U.S.C. § 322; 12 CFR 208.6.

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

[50] A commenter requested that the Board hold public hearings or meetings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any 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 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 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

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 Synovus Financial and Synovus 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 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective December 7, 2018.

Voting for this action: Chairman Powell, Vice Chairman Clarida, Vice Chairman for Supervision Quarles, and Governors Brainard and Bowman.

Ann E. Misback
Secretary of the Board

Appendix A

Branches to Be Established by Synovus Bank

1. 1701 North Atlantic Avenue, Cocoa Beach, Florida 32931
2. 2105 North Courtenay Parkway, Merritt Island, Florida 32953
3. 5599 South University Drive, Davie, Florida 33328
4. 632 South Federal Highway, Fort Lauderdale, Florida 33301
5. 1709 East Hallandale Beach Boulevard, Hallandale, Florida 33009
6. 5375 West Atlantic Boulevard, Margate, Florida 33063
7. 1142 Weston Road, Weston, Florida 33326
8. 2500 Weston Road, Suite 300, Weston, Florida 33331
9. 3100 South Mccall Road, Englewood, Florida 34224
10. 1255 Tamiami Trail, Port Charlotte, Florida 33953
11. 125 Nesbit Street, Punta Gorda, Florida 33950
12. 1400 North 15th Street, Immokalee, Florida 34142
13. 2400 Tamiami Trail North, Suite 100, Naples, Florida 34103
14. 2325 Vanderbilt Beach Road, Naples, Florida 34109
15. 155 North Bridge Street, Labelle, Florida 33935
16. 1000 South Broad Street, Brooksville, Florida 34601
17. 130 South Westshore Boulevard, Tampa, Florida 33609
18. 13128 North Dale Mabry Highway, Tampa, Florida 33618
19. 12105 West Linebaugh Avenue, Tampa, Florida 33626
20. 4000 20th Street, Vero Beach, Florida 32960
21. 3360 Bonita Beach Road, Bonita Springs, Florida 34133
22. 205 Del Prado Boulevard South, Cape Coral, Florida 33990
23. 7900 Summerlin Lake Drive, Fort Myers, Florida 33907
24. 1261 Homestead Road, Lehigh Acres, Florida 33936
25. 715 Colorado Avenue, Stuart, Florida 34994
26. 2020 Ponce De Leon Boulevard, Suite 102, Coral Gables, Florida 33134

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.

27. 9128 Northwest 25th Street, Doral, Florida 33172
28. 8404 Northwest 103rd Street, Suites B and C, Hialeah Gardens, Florida 33016
29. 2 South Biscayne Boulevard, Suite 110, Miami, Florida 33131
30. 5900 Bird Road, Miami, Florida 33155
31. 13298 Biscayne Boulevard, North Miami, Florida 33181
32. 1802 North East Miami Gardens Drive, North Miami Beach, Florida 33179
33. 11315 South Dixie Highway, Pinecrest, Florida 33156
34. 130 South Park Avenue, Apopka, Florida 32703
35. 8910 Conroy-Windermer Road, Orlando, Florida 32835
36. 369 North New York Avenue, Winter Park, Florida 32789
37. 11431 West Palmetto Park Road, Boca Raton, Florida 33428
38. 140 North Federal Highway, Boca Raton, Florida 33432
39. 7593 Boynton Beach Boulevard, #120, Boynton Beach, Florida 33437
40. 4850 West Atlantic Avenue, Delray Beach, Florida 33445
41. 14235 US Highway One, Juno Beach, Florida 33408
42. 1314 Greenview Shores Boulevard, Wellington, Florida 33414
43. 1555 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401
44. 8444 South Tamiami Trail, Sarasota, Florida 34231
45. 1790 Main Street, Sarasota, Florida 34236
46. 2160 West State Road 434, Longwood, Florida 32779
47. 2500 Virginia Avenue, Fort Pierce, Florida 34981
48. 1301 Southeast Port Saint Lucie Boulevard, Port Saint Lucie, Florida 34952
49. 1120 West Granada Boulevard, Ormond Beach, Florida 32174
50. 4777 Clyde Morris Boulevard, Port Orange, Florida 32129

Order Issued Under Bank Merger Act and Federal Reserve Act

Security Trust & Savings Bank
Storm Lake, Iowa

Order Approving the Acquisition of Assets and Assumption of Liabilities and the Establishment of a Branch
FRB Order No. 2018-21 (October 12, 2018)

Security Trust & Savings Bank ("Security Bank"), a state member bank subsidiary of Storm Lake Security Bancorporation ("Security Bancorp"), both of Storm Lake, Iowa, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[1] to purchase substantially all of the assets and assume substantially all of the liabilities of First National Bank of Rembrandt ("FNB Bank"), Rembrandt, Iowa. Security Bank also has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[2] to establish a branch office at the location of FNB Bank's main office.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[4] The time for 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 and the FRA. As required by the Bank Merger Act, a report on the competitive effects of Security Bank's acquisition of the assets and assumption of the liabilities of FNB Bank was requested from the United States Attorney General, and a copy of the request has been provided to the Office of the Comptroller of the Currency ("OCC").

Security Bancorp, with consolidated assets of approximately $201.6 million, is the 2,978th largest insured depository organization in the United States. Security Bancorp controls approximately $181.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] Security Bancorp controls Security Bank, which operates only in Iowa. Security Bancorp is the 102nd largest insured depository organization in Iowa, controlling deposits of approximately $181.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

FNB Bank, with assets of approximately $54.5 million, is the 5,038th largest insured depository organization in the United States. FNB Bank controls approximately $43.4 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. FNB Bank operates only in Iowa. FNB Bank is the 242nd largest insured depository organization in Iowa, controlling deposits of approximately $43.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[6]

On consummation of the proposal, Security Bancorp would become the 2,540th largest insured depository organization in the United States, with consolidated assets of approxi-

1 12 U.S.C. § 1828(c).
2 12 U.S.C. § 321.
3 The branch would be located at 101 East Main Street, Rembrandt, Iowa.
4 12 U.S.C. § 1828(c)(3); 12 CFR 262.3(b).
5 Nationwide asset and deposit data are as of March 31, 2018, unless otherwise noted.
6 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.

mately $256.1 million, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Security Bancorp would control total deposits of approximately $224.7 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Iowa, Security Bancorp would become the 73rd largest insured depository organization, controlling deposits of approximately $224.8 million, which represent less than 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]

Security Bank and FNB Bank compete directly in the Buena Vista, Iowa banking market ("Buena Vista 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 Security Bank would control;[10] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the U.S. Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[11] and other characteristics of the market.

The structural effects that consummation of the proposal would have in the Buena Vista 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.

Using initial screening data, Security Bank is the largest depository organization in the Buena Vista market, controlling approximately $181 million in deposits, which represent approximately 22.5 percent of market deposits. FNB Bank is the seventh largest depository

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7 12 U.S.C. § 1828(c)(5).

8 12 U.S.C. § 1828(c)(5)(B).

9 The Buena Vista market is defined as Buena Vista County, plus Eureka, Eden, Delaware, Douglas, and Cook townships in Sac County, all in Iowa.

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.

organization in the Buena Vista market, controlling approximately $43.7 million in deposits, which represent approximately 5.44 percent of market deposits. On consummation, Security Bank would remain the largest depository organization in the Buena Vista market, controlling approximately $224.8 million in market deposits, which would represent approximately 28 percent of market deposits. The HHI in this market would increase by 261 points, from 1604 to 1865.

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 Buena Vista market.[12] Several factors indicate that the increase in concentration in the Buena Vista 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 Buena Vista market,[13] as measured in terms of the ratios of those types of loans to total loans and assets.[14] The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations. In addition, the Board has considered the competitive influence of one credit union in the Buena Vista 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.[15] 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 the credit union to small businesses relative to commercial banks' lending levels.

Adjusting to reflect competition from the thrift and the credit union, Security Bank's market share would increase to 27.6 percent, and the market concentration level as measured by the HHI would increase by 240 points, from a level of 1498 to 1738 as a result of the transaction. The market concentration, as well as the resulting market share, would be within the DOJ Bank Merger Guidelines. Including the thrift and the credit union, nine

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[12] 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).

[13] 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*.

[14] This thrift institution has a ratio of commercial and industrial loans to assets of 6.5 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.*

[15] 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, 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).

other depository organizations would continue to serve the Buena Vista market, including two with market shares greater than 15 percent each.

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 the Buena Vista market or in any other relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on 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 Buena Vista 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.[16] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved, as well as information regarding the financial condition of the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, 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. The Board also consults with other relevant bank supervisory agencies.

Security Bank and FNB Bank are both well capitalized, and the resulting bank would remain so on consummation of the proposal. The proposed transaction is structured as a purchase of assets and assumption of liabilities.[17] The asset quality, earnings, and liquidity of both Security Bank and FNB Bank are consistent with approval, and Security Bank 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 Security Bank after consummation of the proposal. The Board has considered Security Bank's plans for implementing the proposal and has reviewed the examination records of Security Bank and FNB Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Security Bank, 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.

[16] 12 U.S.C. § 1828(c)(5) & (11).

[17] The proposed transaction would be funded with cash on hand.

Security Bancorp, Security Bank, and FNB Bank are each considered to be well managed. Security Bank's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Security Bank's plans for implementing the proposal. Security Bank 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. Security Bank would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Security Bank's management has the experience and resources to operate the combined organization in a safe and sound manner, and Security Bank plans to integrate FNB Bank's existing management and personnel in a manner that augments Security Bank's management.[18]

Based on all of the facts of record, including Security Bank's supervisory record, managerial and operational resources, and plans for operating the resulting 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 Security Bank and FNB Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[19] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[20] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,[21] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[22]

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. The Board also may consider the institution's business model and marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

[18] Following consummation of the proposed transaction, most FNB Bank employees would become employees of Security Bank.

[19] 12 U.S.C. § 1828(c)(5).

[20] 12 U.S.C. § 2901 *et seq*.

[21] 12 U.S.C. § 2901(b).

[22] 12 U.S.C. § 2903.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Security Bank and FNB Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Chicago ("Reserve Bank") and other federal regulatory agencies; confidential supervisory information; and information provided by Security Bank.

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.[23] In this case, the Board considered the supervisory views of the Reserve Bank with respect to Security Bank and the OCC with respect to FNB 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.[24] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's 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,[25] 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;[26] (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.

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

24 12 U.S.C. § 2906.

25 12 U.S.C. § 2801 *et seq*.

26 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).

CRA Performance of Security Bank

Security Bank was assigned an overall "Satisfactory" rating by the Reserve Bank at its most recent CRA performance evaluation, as of June 9, 2014 ("Security Bank Evaluation").[27] The bank received a "Satisfactory" rating for the Lending Test.[28]

Examiners found that Security Bank originated a majority of its loans inside its AA. Examiners also noted that the bank's geographic distribution of loans reflected a reasonable dispersion throughout its AA. In addition, examiners found the bank's loan distribution reflected reasonable penetration among borrowers of different income levels and farms of different revenue sizes. Examiners noted that the bank's loan-to-deposit ratio was less than reasonable considering the characteristics of the bank, performance of competitors, and economic and demographic conditions. Examiners also noted that neither Security Bank nor the Reserve Bank received any CRA-related complaints since Security Bank's previous CRA evaluation.

CRA Performance of FNB Bank

FNB Bank was assigned an overall CRA rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of March 3, 2015 ("FNB Bank Evaluation").[29] The bank received an "Outstanding" rating for the Lending Test.[30]

Examiners found that FNB Bank originated a substantial majority of its loans within its AA. Examiners further found that the borrower distribution of loans represented an excellent penetration among farms of different sizes and consumers of different income levels. Examiners noted that the bank had a reasonable quarterly average loan-to-deposit ratio. Examiners also noted that no complaints were received by FNB Bank or the OCC during the evaluation period.

Additional Supervisory Views

In its review of the proposal, the Board considered the most recent consumer compliance examination and fair lending review of Security Bank by the Reserve Bank. The Board also considered the most recent consumer compliance examination of FNB Bank conducted by the OCC.

The Board has taken this information, as well as the CRA performance records of Security Bank and FNB Bank, into account in evaluating the proposed transaction, including in considering whether Security Bank 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 AA.

[27] The Security Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed home mortgage and small farm loans originated from January 1, 2013, through December 31, 2013.

[28] The Security Bank Evaluation included a full-scope evaluation of four census tracts in southern Buena Vista County, Iowa.

[29] The FNB Bank Evaluation was conducted using Small Institution CRA Evaluation Procedures. Examiners reviewed agricultural loans and consumer loans originated from January 1, 2012, through December 31, 2014.

[30] The FNB Bank Evaluation included a full-scope evaluation of Buena Vista County and Clay County, both in Iowa.

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. Security Bank states that it does not anticipate discontinuing any products or services of FNB Bank. Security Bank represents that it offers a broader range of services than FNB Bank, including trust services, and that Security Bank's robust online presence would allow current FNB Bank customers to access services that are not currently offered by FNB Bank, including online banking and bill pay that can be accessed outside normal banking hours. Security Bank represents that its larger branch network would allow current FNB customers access to three banking locations within Buena Vista County, rather than the single location currently operated by FNB Bank.

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 Security Bank, 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 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."[31]

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

The Board'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

[31] Dodd-Frank Act § 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-02(2010), codified at 12 U.S.C. § 1828(c)(5).

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

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

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.[34]

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 activities.[35] 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 a Branch

Security Bank has applied under section 9 of the FRA to establish and operate a branch at the current main office of FNB Bank.[36] The Board has assessed the factors it is required to consider when reviewing an application under that section.[37] Specifically, the Board has considered Security 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.[38] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Security Bank with all the conditions imposed in this order, including

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[34] *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.

[35] Security Bank and FNB Bank offer a broad range of retail and commercial banking products and services. Security Bank 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.

[36] *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). Upon consummation, Security Bank's branch would be permissible under applicable state law. *See* Iowa Code § 524.1201.

[37] 12 U.S.C § 322; 12 CFR 208.6.

[38] Upon consummation of the proposal, Security Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

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 October 12, 2018.

Voting for this action: Chairman Powell, Vice Chairman Clarida, Vice Chairman for Supervision Quarles and Governor Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

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Legal Developments: First Quarter, 2019

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

First Busey Corporation
Champaign, Illinois

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2019-01 (January 10, 2019)

First Busey Corporation ("FBC"), Champaign, Illinois, a bank holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to merge with The Banc Ed Corp. ("Ed Corp"), and thereby indirectly acquire The Bank of Edwardsville ("Ed Bank"), both of Edwardsville, Illinois. Following the proposed acquisition, Ed Bank would be merged into FBC's subsidiary bank, Busey Bank, Champaign, Illinois.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 46488 (September 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.

FBC, with consolidated assets of approximately $7.8 billion, is the 164th largest insured depository organization in the United States.[5] FBC controls approximately $6.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. FBC controls Busey Bank, which operates in Illinois, Missouri, Indiana, and Florida. FBC is the 17th largest insured depository organization in Illinois, controlling deposits of approximately $5.0 billion, which represent 1.0 percent of the total deposits of insured depository institutions in that state.[6] FBC is the 25th largest insured depository organization in Missouri, controlling deposits of approximately $922.3 million, which represent 0.6 percent of the total deposits of insured depository institutions in that state.

1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Ed Bank into Busey 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 December 6, 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 June 30, 2018, unless otherwise noted.

6 State deposit data are as of June 30, 2018, unless otherwise noted.

Ed Corp, with consolidated assets of approximately $1.9 billion, is the 437th largest insured depository organization in the United States. Ed Corp 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. Ed Corp controls Ed Bank, which operates in Illinois and Missouri. Ed Corp is the 31st largest insured depository organization in Illinois, controlling deposits of approximately $1.6 billion, which represent 0.3 percent of the total deposits of insured depository institutions in that state. Ed Corp is the 264th largest insured depository organization in Missouri, controlling deposits of approximately $11.8 million, which represent less than 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, FBC would become the 150th largest insured depository organization in the United States, with consolidated assets of approximately $9.6 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. FBC would control consolidated deposits of approximately $7.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] In Illinois, FBC would become the 15th largest insured depository organization, controlling deposits of approximately $6.6 billion, which represent 1.4 percent of the total deposits of insured depository institutions in that state. In Missouri, FBC would remain the 25th largest insured depository organization, controlling deposits of approximately $934.2 million, which represent approximately 0.6 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.[8] 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 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.[10]

For purposes of the BHC Act, the home state of FBC is Illinois, and Ed Bank is located in Illinois and Missouri.[11] FBC and Busey Bank are well capitalized and well managed under

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7 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).

10 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* 12 U.S.C. § 1841(o)(4)–(7).

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

applicable law, and Busey Bank has an overall "Outstanding" rating under the Community Reinvestment Act of 1977 ("CRA").[12] Missouri has no statutory minimum age requirements that apply to the proposal,[13] and Ed Bank has been in existence for more than five years.

On consummation of the proposed transaction, FBC would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Illinois imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control,[14] and Missouri imposes a 13 percent limit.[15] In each of these states, the only states in which FBC and Ed Corp have overlapping banking operations, the combined banking 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 Busey 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.[16] 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.[17]

Busey Bank and Ed Bank compete directly in the St. Louis, Missouri, banking market ("St. Louis market").[18] 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 FBC would control;[19] 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

[12] 12 U.S.C. § 2901 *et seq*.

[13] Missouri law prohibits the interstate acquisition of a Missouri bank that has been in existence for fewer than 5 years. *See* Mo. Ann. Stat. § 362.077(1). Missouri's minimum age requirements do not apply to the proposal because Ed Bank is a state bank that is not chartered under Missouri law.

[14] 205 Ill. Comp. Stat. 5/21.3(a).

[15] Mo. Ann. Stat. § 362.915.

[16] 12 U.S.C. § 1842(c)(1).

[17] 12 U.S.C. § 1842(c)(1)(B).

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

[19] State deposit and market share data are as of June 30, 2018, 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).

Review guidelines ("DOJ Bank Merger Guidelines");[20] 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 St. Louis market. On consummation of the proposal, the St. Louis market would remain unconcentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI would be small and numerous competitors would remain in the St. Louis market.[21]

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. 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 St. Louis 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.[22] 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.

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

[21] FBC operates the 18th largest depository institution in the St. Louis market, controlling approximately $922.3 million in deposits, which represent approximately 1.0 percent of market deposits. Ed Corp operates the 9th largest depository institution in the St. Louis market, controlling approximately $1.6 billion in deposits, which represent approximately 1.8 percent of market deposits. On consummation of the proposed transaction, FBC would become the 7th largest depository organization in the market, controlling deposits of approximately $2.5 billion, which represent approximately 2.8 percent of market deposits. The HHI in the St. Louis market would increase by 3 points to 805, and 131 competitors would remain in the market.

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

FBC and Busey 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 and stock purchase, with a subsequent merger of the subsidiary depository institutions.[23] The asset quality, earnings, and liquidity of both Busey Bank and Ed Bank are consistent with approval, and FBC 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 FBC, Ed Corp, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by FBC; 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.

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

The Board also has considered FBC's plans for implementing the proposal. FBC 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. In general, FBC would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective.[24] In addition, FBC's management has the experience and resources to operate the combined organization in a safe and sound manner, and FBC plans to integrate Ed Corp's existing management and personnel in a manner that augments FBC's management.[25]

Based on all the facts of record, including FBC'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 FBC and Ed Corp 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.[26] In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit

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

[24] FBC represents that it may adopt risk-management policies and procedures from Ed Corp, and these are considered acceptable from a supervisory perspective.

[25] Following consummation of the holding company merger, an individual on the board of directors of Ed Corp would join the board of directors of FBC.

[26] 12 U.S.C. § 1842(c)(2).

needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served, and 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,[27] 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.[28]

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 public comments 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 Busey Bank and Ed Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by FBC, and the public comments on the proposal.

Public Comments on the Proposal

The Board received a letter from a commenter, representing 15 community organizations, objecting to the proposal on the basis of Busey Bank's CRA record in the St. Louis, Missouri, metropolitan area ("St. Louis area").[29] The commenters asserted that Busey Bank has failed to maintain a high level of lending and serving in LMI neighborhoods within the St. Louis area since it merged with Pulaski Bank, National Association ("Pulaski Bank"), in 2016. The commenters expressed concern regarding the total percentage of loans that Busey Bank originated to LMI borrowers and communities within the St. Louis area, as reflected in Home Mortgage Disclosure Act ("HMDA") data from 2016 and 2017. The commenters argued that Busey Bank's lending to LMI borrowers lagged behind peer institutions and the lending record of Pulaski Bank.

In addition, the commenters expressed concern regarding the potential effect of the proposal on lending to Hispanic and African American borrowers within the St. Louis area. Specifically, the commenters stated that Ed Bank is a leader in lending to Hispanic borrowers due in part to the bank's innovative mortgage products and bilingual branch in Fairmont City, Illinois. The commenters urged Busey Bank to maintain the innovative products and services offered by Ed Bank in order to better serve the Hispanic community. In addition, the commenters expressed concern regarding the total percentage of loans that each of Busey Bank and Ed Bank originated to African American borrowers within the St. Louis area, as reflected in 2016 and 2017 HMDA data. The commenters urged

[27] 12 U.S.C. § 2901(b).

[28] 12 U.S.C. § 2903.

[29] FBC submitted a comment that it received from a community organization in support of the proposal. The organization represented that Busey Bank has a record of assisting community development programs in the St. Louis area.

Busey Bank to provide commitments that describe how it plans to meet the credit needs of African American borrowers and communities.

The commenters also criticized Busey Bank's record of community development lending, investments, and services within the St. Louis area. The commenters asserted that Ed Bank is a leader in community development activities and expressed concern that the proposal could negatively impact communities currently served by Ed Bank.

The commenters requested that approval of the proposal be conditioned on Busey Bank adopting a community benefits agreement with commitments specific to lending, branches, services, community development lending and investments, and community engagement.[30]

Businesses of the Involved Institutions and Response to the Public Comments

FBC operates primarily through Busey Bank, which operates a network of branches in Illinois, Missouri, Indiana, and Florida. Busey Bank offers a variety of products and services, including checking and savings accounts, mortgage and business loans, and asset management services.

Ed Corp operates primarily through Ed Bank, which operates a network of branches in Illinois and Missouri. Ed Bank offers a variety of products and services, including checking and savings accounts, mortgage and business loans, and wealth management services.

FBC asserts that the HMDA data referenced by the commenters do not fully reflect Busey Bank's CRA record. Specifically, FBC argues that the HMDA data are affected by demographic and economic factors in the St. Louis area that impact home ownership for LMI borrowers. Furthermore, FBC represents that Busey Bank's entry into the St. Louis area banking market resulted in slight disruptions to the bank's mortgage lending, which FBC attributes to the post-merger integration of Pulaski Bank and Busey Bank's sale of out-of-footprint mortgage offices. FBC asserts that Busey Bank is currently better geographically positioned and has strengthened its overall lending activity and focus on markets served by the bank.

In addition, FBC notes that the HMDA data referenced by the commenters do not suggest a pattern of discrimination or the presence of a fair lending issue at Busey Bank. FBC asserts that Busey Bank is committed to the fair and equal treatment of all customers and represents that the bank maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations.

FBC represents that Busey Bank currently offers mortgage products and loan programs within the St. Louis area that are designed to help meet the credit needs of LMI borrowers and communities. FBC also represents that Busey Bank is a leader in making community development loans within the St. Louis area based on volume, responsiveness, and complexity. Further, FBC asserts that Busey Bank has a strong record of community outreach, including providing employees paid time off to serve their communities. FBC represents that employees of Busey Bank have focused their volunteer activities within the St. Louis area on efforts that support community services, affordable housing, and the revi-

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[30] 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., Synovus Financial Corp.* and *Synovus Bank*, FRB Order No. 2018-25 at 12 n. 30 (December 7, 2018); *TriCo Bancshares*, FRB Order No. 2018-13 at 9 n.20 (June 6, 2018); *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.

talization and stabilization of neighborhoods. In addition, FBC represents that Busey Bank partners with community organizations in the St. Louis area that support, among other things, LMI borrowers, affordable housing, small business lending, and economic development. FBC represents that Busey Bank plans to strengthen its CRA program through the proposed acquisition by adopting innovative CRA-related products and services currently offered by Ed Bank, including the MyCommunity Home Loan product and multilingual services at branch locations.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views from the relevant federal financial supervisor or supervisors, which in this case is the FDIC with respect to both institutions.[31] In addition, the Board considers information provided by the applicant and by public commenters.

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 financial 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 Busey Bank and Ed Bank, in helping to meet the credit needs of the communities they serve. The lending test specifically evaluates an 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,[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 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;[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.[35] Large institutions also are subject to an investment test, which evaluates the number and amounts of qualified investments that

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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 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 *See* 12 CFR 228.22(b).

benefit their AAs, and a service test, which evaluates both the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[36]

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, the Board evaluates HMDA data disparities in the context of other information regarding the lending record of the institution.

CRA Performance of Busey Bank

Busey Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of September 30, 2015 ("Busey Bank Evaluation").[38] The bank received "Outstanding" ratings for the Lending Test and Service Test, and the bank received a "High Satisfactory" rating for the Investment Test.[39]

Examiners found that Busey Bank's overall lending levels reflected excellent responsiveness to the credit needs of its AAs and that Busey Bank originated a substantial majority of its loans within its AAs. Examiners also found that the geographic distribution of the bank's loans reflected excellent penetration throughout the bank's combined AAs. Further, examiners found that, given the product lines offered by Busey Bank, its distribution of loans to borrowers reflected excellent penetration among retail customers of different income levels and business customers of different sizes. Examiners noted that Busey Bank was a significant home mortgage and small business lender throughout its combined AAs, as well as a leader in community development lending. Examiners also noted that Busey Bank exhibited an excellent record of serving the credit needs of LMI individuals, very small businesses, and the most economically disadvantaged areas of its AAs, including through extensive use of flexible lending programs.

Examiners found that Busey Bank had a significant level of community development investments and grants within its combined AAs and occasionally used complex investments to support community development initiatives. Examiners also found that Busey Bank was a leader in providing community development services, and found that the bank's facilities and delivery systems were readily accessible to all portions of the bank's AAs. In addition, examiners found that the bank's services, including business hours, did not vary in a way that inconvenienced certain portions of the bank's AAs, particularly LMI census tracts and individuals.

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36 *See* 12 CFR 228.21 *et seq.*

37 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.

38 The Busey Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business and small farm loans as reported under CRA data collection requirements, from January 1, 2013, through June 30, 2015. The evaluation period for community development loans, investments, and services was August 30, 2012, through September 30, 2015.

39 The Busey Bank Evaluation included a full-scope evaluation of all or parts of the Champaign-Urbana, Illinois Metropolitan Statistical Area ("MSA"); the Bloomington-Pontiac, Illinois Combined Statistical Area; the Peoria, Illinois MSA; the Indianapolis-Carmel-Anderson, Indiana MSA; and the Cape Coral-Fort Myers, Florida MSA. Limited-scope evaluations were performed of all or parts of the Decatur, Illinois MSA; the Shelby County, Illinois Non-MSA; the North Port-Sarasota-Bradenton, Florida MSA; and the Punta Gorda, Florida MSA. Busey Bank entered the St. Louis, Missouri-Illinois Multistate MSA in 2016, after the Busey Bank Evaluation was completed.

FBC's Efforts since the Busey Bank Evaluation

FBC states that, since the Busey Bank Evaluation, Busey Bank has maintained its high standards with respect to community engagement. FBC notes that in 2017, Busey Bank formed a Fair and Responsible Banking Department within its Risk Management Division that is responsible for driving the bank's CRA efforts within its AAs and managing the bank's fair lending program. FBC represents that Busey Bank's employees have continued to support various community initiatives, with a focus on affordable housing, financial literacy, and economic development. Further, FBC represents that Busey Bank offers a variety of loan products designed to assist LMI borrowers through features such as down-payment assistance, grants, and forgivable second mortgages.

In addition, FBC states that Busey Bank has strengthened its small business lending since the Busey Bank Evaluation. For example, FBC represents that Busey Bank was one of the largest providers of U.S. Small Business Administration loans in the St. Louis area during 2016 and 2017. FBC also represents that Busey Bank was recognized by a local publication in 2017 as one of the best banks in the St. Louis area for providing services and resources to small business owners.

CRA Performance of Ed Bank

Ed Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of May 22, 2017 ("Ed Bank Evaluation").[40] The bank received "High Satisfactory" ratings for the Lending Test and the Service Test, and the bank received a "Low Satisfactory" rating for the Investment Test.[41]

Examiners concluded that Ed Bank's lending levels reflected good responsiveness to the credit needs of the bank's AA. Examiners found that the bank made a substantial majority of its small business, small farm, and home loans within its AA, and the geographic distribution of the bank's loans reflected good penetration throughout the bank's AA. Examiners also found that, given the product lines offered by Ed Bank, its distribution of lending by borrower income reflected good penetration among retail customers of different income levels and business customers and farms of different sizes. Examiners concluded that Ed Bank had an excellent record of making home mortgage loans to LMI borrowers, and the bank was a leader in making community development loans within its AA.

Examiners found that Ed Bank's community development investments showed adequate responsiveness to the credit needs of the bank's AA. Examiners noted that the bank occasionally used innovative and/or complex investments that supported community development initiatives. Examiners noted that Ed Bank provided a relatively high level of community development services, including financial education resources and homebuyer workshops. In addition, examiners noted that the bank's services did not vary in a way that inconvenienced portions of the bank's AA, particularly LMI census tracts and individuals.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding Busey Bank's and Ed Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed

[40] The Ed Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA, and small business loans reported under CRA data collection requirements, from January 1, 2014, through December 31, 2016. The evaluation period for community development lending, investments, and services was July 28, 2014, through May 22, 2017.

[41] The Ed Bank Evaluation included an evaluation of the bank's sole AA, which consists of parts of the St. Louis, Missouri-Illinois Multistate MSA.

and approved the Bank Merger Act application related to the proposal and, in doing do, considered adverse comments that were similar to the comments submitted to the Board on the BHC Act application. The Board has considered the results of the most recent consumer compliance examinations of Busey Bank and Ed Bank conducted by FDIC examiners, which included reviews 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 Busey Bank and Ed Bank, into account in evaluating the proposal, including in considering whether FBC has the experience and resources to ensure that Busey Bank would help meet the credit needs of the communities within its AAs following the proposed transaction.

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. FBC represents that, following consummation of the bank merger, the combined bank would retain the full range of products and services currently offered by Busey Bank and Ed Bank. FBC represents that customers of Ed Bank would gain access to new products and services, including Busey Bank's health savings accounts, insured cash sweep services, and person-to-person mobile banking services. In addition, FBC represents that customers of Busey Bank would benefit by receiving access to, among other things, mortgage lending products currently offered by Ed Bank, including the MyCommunity Home Loan product, which is specifically designed to meet the needs of LMI borrowers and communities. FBC represents that customers of both banks would benefit from a larger branch and ATM network.

FBC represents that Busey Bank would continue to utilize its current products, programs, and procedures, along with those adopted from Ed Bank, to meets its obligations under the CRA. FBC further represents that it would work together with existing partners of Busey Bank and Ed Bank, including community groups, in order to achieve Busey Bank's goals for the bank's CRA and fair lending 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 FBC, 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

Section 3 of the BHC Act requires 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

[42] 12 U.S.C. § 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.[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 on the broader economy.[44]

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.[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 has less than $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.[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 FBC 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

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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 No. 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] FBC and Ed Corp both offer a range of retail and commercial banking products and services. FBC 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 Chicago, acting under delegated authority.

By order of the Board of Governors, effective January 10, 2019.

Voting for this action: Chairman Powell, Vice Chairman Clarida, Vice Chairman for Supervision Quarles, and Governors Brainard and Bowman.

Ann E. Misback
Secretary of the Board

CenterState Bank Corporation
Winter Haven, Florida

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2019-06 (March 11, 2019)

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 and merge with National Commerce Corporation ("Commerce") and thereby indirectly acquire Commerce's subsidiary bank, National Bank of Commerce ("Commerce Bank"), both of Birmingham, Alabama. Following the proposed acquisition, Commerce Bank would be merged into CenterState's subsidiary bank, CenterState Bank, National Association ("CenterState Bank"), Winter Haven.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 65166 (December 19, 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.

CenterState, with consolidated assets of approximately $12.3 billion, is the 125th largest insured depository organization in the United States.[5] CenterState controls approximately $9.5 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] CenterState controls CenterState Bank, which operates in Florida, Alabama, and Georgia.[7] CenterState is the 17th largest insured depository organization in Florida, controlling deposits of approximately $8.4 billion, which represent 1.4 percent of deposits in that state. CenterState is the 51st largest insured depository organization in Alabama, controlling deposits of approximately $239.8 million, which represent less than 1 percent of deposits in that state. CenterState is the 25th largest insured depository organization in Georgia, controlling deposits of approximately $943.7 million, which represent less than 1 percent of deposits in that state.

Commerce, with consolidated assets of approximately $4.2 billion, is the 258th largest insured depository organization in the United States. Commerce controls approximately $3.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Commerce controls Commerce Bank, which operates in Alabama, Florida, and Georgia. Commerce is the 13th largest insured depository organization in Alabama, controlling deposits of approximately $1.2 billion, which represent 1.2 percent of deposits in that state. Commerce is the 43rd largest insured depository organization in Florida, controlling deposits of approximately $1.4 billion, which represent less than 1 percent of deposits in that state. Commerce is the 27th 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 Commerce Bank into CenterState Bank is subject to approval by the Office of the Comptroller of the Currency ("OCC"), pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). *See* 12 U.S.C. § 1828(c).

4 12 CFR 262.3(b).

5 Unless otherwise noted, national asset data are as of December 31, 2018, and deposit, ranking, and market-share data are as of September 30, 2018.

6 Insured depository institutions include commercial banks, savings associations, and savings banks.

7 State deposit data are as of June 30, 2018.

deposits of approximately $780.4 million, which represent less than 1 percent of deposits in that state.

On consummation of the proposal, CenterState would become the 103rd largest insured depository organization in the United States, with consolidated assets of approximately $16.4 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 $12.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Alabama, CenterState would become the 10th largest insured depository organization, controlling deposits of approximately $1.4 billion, which would represent approximately 1.4 percent of the total deposits of insured depository institutions in that state. In Florida, CenterState would become the 16th largest insured depository organization, controlling deposits of approximately $9.8 billion, which would represent approximately 1.7 percent of the total deposits of insured depository institutions in that state. In Georgia, CenterState would become the 17th largest insured depository organization, controlling deposits of approximately $1.7 billion, which would represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate 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 that is well capitalized and well managed 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 would be prohibited under state law.[8] Section 3(d) also provides that the Board (1) 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] (2) must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 ("CRA")[10] and the applicant's record of compliance with applicable state community reinvestment laws;[11] and (3) may not approve an application pursuant to section 3(d) if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States[12] or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[13]

For purposes of the BHC Act, the home state of CenterState is Florida, and Commerce Bank is located in Alabama, Florida, and Georgia. CenterState is well capitalized and well managed under applicable law. The statutory minimum age requirements of Alabama and Georgia have been met because Commerce Bank has been in existence in Alabama and

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8 12 U.S.C. § 1842(d)(1)(A). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of each company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. *See* 12 U.S.C. § 1841(o)(4).

9 12 U.S.C. § 1842(d)(1)(B).

10 12 U.S.C. § 2901 *et seq*.

11 12 U.S.C. § 1842(d)(3).

12 12 U.S.C. § 1842(d)(2)(A).

13 12 U.S.C. § 1842(d)(2)(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 any state in which the bank is chartered, headquartered, or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7).

Georgia for more than five years.[14] CenterState Bank also has an "Outstanding" rating under the CRA.

On consummation of the proposed transaction, CenterState would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Alabama and Georgia each impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[15] In each state, the combined organization would control less than 30 percent of the total amount of in-state deposits. The Board has considered all other requirements under section 3(d) of the BHC Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by section 3(d) from approving the proposal.

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.[16] 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.[17]

CenterState and Commerce have subsidiary banks that compete directly in ten banking markets in Alabama, Florida, and Georgia. The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits of insured depository institutions in each market ("market deposits") that CenterState would control;[18] the concentration levels of market deposits and the increase in these levels in each market, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[19] the number of competitors that would remain in each market; and other characteristics of each market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in each of the banking markets in which CenterState Bank and Commerce Bank compete. On consummation, one banking market would remain highly concentrated, eight banking markets would remain moderately concentrated, and one banking market would remain unconcentrated, as measured by the

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[14] Ala. Code § 5-13B-23(c) (five years); Ga. Code § 7-1-628.3(b) (three years).

[15] Ala. Code § 5-13B-23(b); Ga. Code § 7-1-628.3(a).

[16] 12 U.S.C. § 1842(c)(1)(A).

[17] 12 U.S.C. § 1842(c)(1)(B).

[18] Unless otherwise indicated, state deposit and market share data are based on calculations in which the deposits of thrift institutions are included at 50 ercent. 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 FinancialGroup,* 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 ercent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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

HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in these markets generally would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in these banking markets.[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 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.[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.

CenterState, Commerce, and their subsidiary depository institutions 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 share exchange, with a subsequent merger of the subsidiary depository institutions.[22] The asset quality, earnings, and liquidity of both CenterState Bank and Commerce Bank are consistent with approval, and CenterState 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.

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

[21] 12 U.S.C. § 1842(c)(2), (5), and (6).

[22] To effect the transaction, each share of Commerce common stock would be converted into the right to receive shares of CenterState common stock, based on an exchange ratio. However, any fractional shares of CenterState common stock that would result from this conversion would be exchanged for cash. CenterState 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 CenterState, Commerce, 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, Commerce, and their subsidiary depository institutions are each considered to be well managed. CenterState's directors and senior executive officers have 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-acquisition 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, and CenterState plans to integrate Commerce's existing management and personnel in a manner that augments CenterState's management.[23]

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 determines 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 CenterState and Commerce in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[24] In its evaluation, 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 these communities, and 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,[25] and requires the appropriate federal bank supervisory agency to assess a depository institution's record of helping to meet the credit needs of its

[23] Following consummation of the proposed transaction, the chairman of Commerce would become the chief executive officer of CenterState Bank, and the president and chief executive officer of Commerce would become the chief financial officer of CenterState and CenterState Bank. In addition, three directors of Commerce would be added to the boards of directors of CenterState and CenterState Bank, and one director of Commerce Bank would be added to the board of directors of CenterState Bank.

[24] 12 U.S.C. § 1842(c)(2).

[25] 12 U.S.C. § 2901(b).

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 the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and public comments 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 CenterState Bank and Commerce Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC, confidential supervisory information, information provided by CenterState, and the public comments on the proposal.

Public Comments on the Proposal

The Board received comments on the proposal from one commenter. The commenter alleged disparities in CenterState Bank's home mortgage origination and denial rates in certain markets for minority applicants compared to white applicants based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").[27] Referencing a specific consumer complaint, the commenter also alleged that CenterState Bank has a history of inadequately responding to complaints from customers acquired through mergers. The commenter expressed concern that CenterState Bank would close branches and become less locally accountable upon consummation of the proposal and asserted that the proposal would not provide a public benefit.

Businesses of the Involved Institutions and Response to the Public Comments

Through their networks of branches, CenterState Bank and Commerce Bank offer deposit, loan, trust, and wealth management products and services to retail and commercial customers.

In response to the commenter's allegations, CenterState asserts that it has a long and positive history of serving the needs, including lending needs, of the communities in its geographic footprint. CenterState contends that the commenter's selective focus on HMDA data from five markets lacks context about the bank's lending record and activities in these markets. CenterState asserts that a significant proportion of its branches are in LMI census tracts, the proportion of its mortgage originations is generally consistent with that of its peers and the demographics of the communities it serves, and its employees volunteer with organizations that serve minority and LMI borrowers. In addition, CenterState asserts that CenterState Bank made mortgage lending a central line of business only recently in 2016, so the bank's originations in 2017 were lower compared to 2018. CenterState also notes that CenterState Bank recently received an overall "Outstanding" CRA rating.

In response to the commenter's allegation that CenterState Bank has mishandled complaints from customers acquired through mergers, CenterState notes that it received only a limited number of complaints from the tens of thousands of customers acquired

[26] 12 U.S.C. § 2903.

[27] 12 U.S.C. § 2801 *et seq*.

through the specific merger referenced in the comments. CenterState states that CenterState Bank has a comprehensive system for serving customers acquired through merger, including informing new customers of the process of transitioning to CenterState Bank and providing customer service representatives who can answer questions by phone or in person at CenterState Bank branches, and a complaint management program that tracks customer complaints, including those received through social media. CenterState asserts that CenterState Bank is committed to responding to customer complaints in a timely and thoughtful manner and to gaining insight into how to improve internal procedures and training. CenterState indicates that CenterState Bank has increased the number of telephone lines and staff available to handle questions from customers acquired by merger.

Regarding the commenter's concern that CenterState Bank would close branches upon consummation of the proposal and that the proposal would result in less local accountability, CenterState represents that CenterState Bank does not anticipate closing any branches in connection with the proposal and that CenterState Bank focuses on the needs of local markets. In addition, CenterState states that one of the bank's core values is to be driven by local markets and that employees are encouraged to make decisions with their communities' best interests at stake.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views from the relevant federal financial supervisor, which in this case is the OCC with respect to both institutions.[28] In addition, the Board considers information provided by the applicant and by public commenters.

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 financial supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") 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 an 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

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

[29] 12 U.S.C. § 2906.

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 needs of LMI individuals and geographies.[31] The Investment Test applicable to large institutions evaluates the number and amounts of qualified investments that benefit their AAs, and the Service Test 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 Commerce Bank, are subject to the Lending Test, as well as a community development test ("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 CenterState Bank

CenterState Bank was assigned an overall "Outstanding" rating at its most recent CRA Performance Evaluation by the OCC, as of May 14, 2018 ("CenterState Bank Evaluation").[35] The bank received "Outstanding" ratings for the Lending Test and Service Test and a "Low Satisfactory" rating for the Investment Test.[36] Examiners gave significant consideration to CenterState Bank's performance in the Lakeland-Winter Haven MSA.

Overall, examiners found that CenterState Bank's lending activity reflected good responsiveness to credit needs in its AAs for mortgages and small business loans, and that the bank's lending within its AAs was excellent. Examiners also found that the geographic distribution of loans reflected excellent penetration through the bank's AAs and that the borrower distribution reflected good penetration among retail customers of different income levels and business customers of different sizes. Examiners determined that

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).

31 *See* 12 CFR 228.22(b).

32 *See* 12 CFR 228.21 *et seq*.

33 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 CenterState Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage lending activity reported under HMDA and small business lending activity reported under the CRA for the full calendar years of 2015, 2016, and 2017. The evaluation period for community development loans, qualified investments, and community development services was from April 6, 2015, through April 30, 2018.

36 The CenterState Bank Evaluation included a full-scope review of the Lakeland-Winter Haven Metropolitan Statistical Area ("MSA"), the Miami-Fort Lauderdale-West Palm Beach MSA, the Ocala MSA, and the Putnam County non-MSA. Limited-scope evaluations were performed for the bank's other AAs.

CenterState Bank was a leader in making community development loans and used innovative and flexible lending practices to meet the credit needs of its communities. Examiners noted that CenterState Bank had an adequate level of qualified investments that exhibited good responsiveness to credit and community economic development needs. In addition, examiners found that CenterState Bank provided excellent retail banking services and was a leader in providing community development services.

In the Orlando-Kissimee-Sanford MSA, an area of concern to the commenter, examiners determined that CenterState Bank had good performance for mortgage lending by income and geography, good performance for small business lending, and excellent performance for small business lending by geography. Examiners noted that the geographic distribution of home mortgage loans was excellent in this MSA, and the bank's strong lending in this MSA had a significant positive impact on the bank's overall rating.

In the Miami-Fort Lauderdale-West Palm Beach MSA, another area of concern to the commenter, examiners found that CenterState Bank had an excellent distribution of home mortgage loans, based on excellent home purchase lending and excellent home refinance lending. Although examiners noted that CenterState Bank's overall loan volume in this MSA was low, they found the penetration of loans in LMI geographies was excellent. Examiners determined that the geographic distribution of small business loans in this MSA was excellent and that the distribution of home purchase and home refinance loans was adequate.

In the Tampa-St. Petersburg-Clearwater MSA, another area cited by the commenter, examiners found that home mortgage lending was good overall. Examiners noted that home mortgage lending by income and geography in the MSA was adequate and that small business lending by geography was excellent.

In the Jacksonville MSA, another area identified by the commenter, examiners found that the volume of home mortgage loans was insufficient to provide any meaningful analysis. However, examiners noted that small business lending by geography in the MSA was excellent. Examiners also noted that lending to small businesses was good, and community development lending in this MSA was strong.

In the Lakeland-Winter Haven MSA, the final area identified by the commenter, examiners found that CenterState Bank's lending activity reflected good responsiveness to credit needs. Examiners determined that the level of home mortgage and small business lending in the MSA was good. Examiners also found that the geographic distribution of home mortgage loans in the MSA was good. Examiners noted that home purchase and refinance lending in LMI geographies in the MSA was good and that home improvement lending in LMI geographies was excellent. Examiners also found that the distribution of home mortgage loans by borrower in the MSA was good.

In all of its AAs, examiners found that CenterState Bank had an adequate level of qualified community development investments that exhibited good responsiveness to credit and community economic development needs. Examiners also found that the bank occasionally used complex investments to support community development initiatives. Examiners determined that CenterState Bank's branches were accessible to geographies and individuals of different income levels. In addition, examiners concluded that acquisition and merger activity by CenterState Bank did not negatively impact the bank's branch distribution. Examiners found that CenterState Bank's hours and services offered throughout the bank's AAs did not vary in a way that inconvenienced LMI individuals.

CRA Performance of Commerce Bank

Commerce Bank received an overall rating of "Satisfactory" at its most recent CRA Performance Evaluation by the OCC, as of November 16, 2015 ("Commerce Bank Evaluation").[37] The bank received "Satisfactory" ratings for the Lending Test and the Community Development Test.[38]

Examiners found Commerce Bank's lending in its AAs to be satisfactory and that the bank originated a majority of its loans inside its AAs. Examiners also found that Commerce Bank achieved reasonable penetration for lending to borrowers of different incomes and reasonable dispersion for geographic distribution of lending within its AAs.

Examiners found that Commerce Bank adequately responded to community development needs in its AAs through a combination of loans, investments, and services. Examiners also found that the bank had demonstrated a commitment to its community by financing community development organizations that operate in the community and participating with various committees and boards that provide affordable housing or community services to LMI individuals.

Views of the OCC

In its review of the proposal, the Board consulted with the OCC regarding the CRA, consumer compliance, and fair lending record of CenterState Bank. The Board has also considered the results of the most recent consumer compliance examinations of CenterState Bank and Commerce Bank conducted by the OCC, which included reviews of the banks' compliance management programs and compliance with consumer protection laws and regulations.

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

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.[39] CenterState represents that, following consummation of the proposal, CenterState Bank would not discontinue any products or services currently offered by CenterState Bank or Commerce Bank. CenterState asserts that existing customers of Commerce Bank and CenterState Bank would benefit from a more extensive network of branches and ATMs, and Commerce Bank's existing customers would benefit from access to an expanded array of products and services, including deposit products and mobile banking services designed for public employees, seniors, students, and small businesses. CenterState maintains that customers of Commerce Bank would benefit from a broader range of mortgage loans offered by CenterState Bank, including mortgage loans for affordable housing.

[37] The Commerce Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. The Commerce Bank Evaluation reviewed residential mortgage loans from January 1, 2012, through June 30, 2015, and community development activities from November 15, 2012, to November 16, 2015.

[38] The Commerce Bank Evaluation included a review of the bank's AAs in Alabama and Florida, which included full-scope examinations of the Birmingham MSA AA and the Huntsville AA.

[39] The commenter asserted that the proposal would not produce a benefit to the public.

CenterState represents that, following consummation of the proposal, CenterState Bank would maintain a high level of community development lending, investment, services, and other CRA activities throughout the combined organization's service areas. CenterState also represents that the combined bank would continue to expand its mortgage and small business lending to and community development, investment, and service activities for LMI and minority borrowers and communities. CenterState asserts that CenterState Bank is committed to working closely with community leaders, small business owners, members of nonprofit organizations, and residents in its AAs to provide information about the CRA services it offers and to assess the community development needs in its AAs. CenterState maintains that CenterState Bank's staff would continue to provide financial expertise to non-profit organizations and operate financial literacy workshops for LMI 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 OCC, confidential supervisory information, information provided by CenterState, 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 determines that the convenience and needs factor is consistent with approval.

Financial Stability

Section 3 of the BHC Act requires 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 on the broader economy.[42]

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 signifi-

[40] 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).

cant 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 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.[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.[45] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by CenterState 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 15th calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good

[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] As noted, through their subsidiary banks, CenterState and Commerce both offer a range of retail and commercial banking products and services. CenterState 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.

[45] The commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on 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 in connection with this application. 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 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 written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

cause by the Board or the Federal Reserve Bank of Atlanta, acting under delegated authority.

By order of the Board of Governors, effective March 11, 2019.

Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Brainard and Bowman.

Margaret McCloskey Shanks
Secretary of the Board

Appendix

CenterState and Commerce banking markets consistent with board precedent and DOJ Bank Merger Guidelines (data as of June 30, 2018)

Bank	Rank	Amount of deposits	Market deposit shares (%)	Resulting HHI	Change in HHI	Remaining number of competitors
Auburn/Opelika, Alabama – Lee County, Alabama (less the portion that is within 12 road miles of Phenix City, Alabama or Columbus, Georgia).						
CenterState Pre-Consummation	5	$171.3M	6.16			
Commerce	11	$111.5M	4.01			
CenterState Post-Consummation	3	$282.8M	10.17	1220	49	17
Daytona Beach Area, Florida – Flagler County; the towns of Allandale, Daytona Beach, Daytona Beach Shores, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ormond-by-the-Sea, Pierson, Port Orange, and South Daytona of Volusia County; the town of Astor of Lake County, all in Florida.						
CenterState Pre-Consummation	12	$198.1M	2.09			
Commerce	15	$123.8M	1.31			
CenterState Post-Consummation	8	$322.0M	3.4	1456	5	20
Indian River County, Florida						
CenterState Pre-Consummation	12	$114.8M	2.53			
Commerce	11	$130.6M	2.89			
CenterState Post-Consummation	9	$245.4M	5.42	1063	15	16
Jacksonville Area, Florida – Baker, Clay, Duval, and Nassau counties; the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, and Switzerland in St. Johns County, all in Florida; the city of Folkston in Charlton County, Georgia.						
CenterState Pre-Consummation	15	$189.5M	0.38			
Commerce	13	$344.6M	0.7			
CenterState Post-Consummation	10	$534.2M	1.08	2707	1	34
North Lake/Sumter Area, Florida – Sumter and Lake counties (less the towns of Astor, Clermont, and Groveland), both of Florida.						
CenterState Pre-Consummation	13	$93.4M	1.48			
Commerce	15	$72.4M	1.14			
CenterState Post-Consummation	10	$165.8M	2.62	1313	3	17
Saint Augustine Area, Florida – St. Johns County (less the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, Switzerland, and Hastings), Florida.						
CenterState Pre-Consummation	4	$235.3M	11.4			
Commerce	10	$95.7M	4.64			
CenterState Post-Consummation	3	$331.1M	16.03	1274	105	13
Orlando Area, Florida – Orange, Osceola, Seminole, and the western half of Volusia counties; the towns of Clermont and Groveland in Lake County, all in Florida.						
CenterState Pre-Consummation	14	$757.7M	1.53			
Commerce	20	$271.8M	0.55			
CenterState Post-Consummation	11	$1,029.5M	2.08	1285	2	43

(continued on next page)

Appendix—*continued*

CenterState and Commerce banking markets consistent with board precedent and DOJ Bank Merger Guidelines (data as of June 30, 2018)—*continued*

Bank	Rank	Amount of deposits	Market deposit shares (%)	Resulting HHI	Change in HHI	Remaining number of competitors
Sarasota Area, Florida – Manatee, Sarasota (less the portion that is both east of the Myakka River and south of Interstate 75, which includes the towns of North Port), the peninsular portion of Charlotte west of the Myakka River (including the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West, and Placida); Gasparilla Island (including the town of Boca Grande) in Lee County, all in Florida.						
CenterState Pre-Consummation	13	$482.7M	2.31			
Commerce	21	$204.5M	0.98			
CenterState Post-Consummation	8	$687.2M	3.29	932	5	35
Tampa Bay Area, Florida – Hernando, Hillsborough, Pinellas, and Pasco counties, all in Florida.						
CenterState Pre-Consummation	15	$854.8M	1.02			
Commerce	34	$146.7M	0.17			
CenterState Post-Consummation	15	$1,001.5M	1.19	1194	0	54
Atlanta, Georgia – Bartow, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Walton, and Hall (less the town of Clermont) counties; the towns of Auburn and Winder in Barrow County and Luthersville in Meriwether County, all in Georgia.						
CenterState Pre-Consummation	23	$597.5M	0.35			
Commerce	21	$780.4M	0.46			
CenterState Post-Consummation	16	$1,377.9M	0.81	1546	0	82

Order Issued Under Federal Reserve Act

Regions Bank
Birmingham, Alabama

Order Approving the Establishment of Branches
FRB Order No. 2019-03 (February 5, 2019)

Regions Bank, a state member bank subsidiary of Regions Financial Corporation, both of Birmingham, Alabama, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[1] and the Board's Regulation H[2] to establish branches in Georgia, Illinois, Missouri, Tennessee, and Texas, as set forth in Appendix A.[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.

Regions Financial Corporation, with total assets of $124.8 billion, is the 33rd largest depository organization in the United States, controlling approximately $93.5 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] Regions Bank operates in 15 states through 1,477 branches, and the bank's main office is in Birmingham, Alabama.[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

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1 12 U.S.C. § 321.

2 12 CFR part 208.

3 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. *See* 12 U.S.C. § 321. 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)(2).Regions Bank has branches in Georgia, Illinois, Missouri, Tennessee, and Texas and is permitted to establish additional branches under each state's laws. *See* Ga. Code Ann. § 7-1-628.6; 205 Ill. Comp. Stat. 5/21.4; Tenn. Code Ann. §§ 45-2-614 and 45-2-1412; Mo. Rev. Stat. § 362.107; and Tex.Fin.CodeAnn. § 203.006.

4 12 CFR 262.3(b).

5 Total assets, national asset ranking, and national deposit data are as of September 30, 2018, and state deposit data are as of June 30, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

6 Regions Bank has operations in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Texas.

In Georgia, Regions Bank is the sixth largest depository organization, with 121 branches, controlling approximately $6.8 billion in deposits, which represent approximately 2.7 percent of the total amount of deposits in that state.

In Illinois, Regions Bank is the 25th largest depository organization, with 49 branches, controlling approximately $2.2 billion in deposits, which represent approximately 0.5 percent of the total amount of deposits in that state.

In Missouri, Regions Bank is the ninth largest depository organization, with 61 branches, controlling approximately $2.5 billion in deposits, which represent approximately 1.5 percent of the total amount of deposits in that state.

In Tennessee, Regions Bank is the second largest depository organization, with 221 branches, controlling approximately $18.7 billion in deposits, which represent approximately 12.1 percent of the total amount of deposits in that state.

In Texas, Regions Bank is the 24th largest depository organization, with 78 branches, controlling approximately $3.6 billion in deposits, which represent approximately 0.4 percent of the total amount of deposits of insured depository institutions in that state.

7 12 CFR 208.6(b).

management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA");[8] and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.[9] The Board has considered the branch applications in light of these factors and the public comment received on the proposal.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Regions Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Regions Bank, and the comment received on the proposal. Regions Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Regions Bank are consistent with approval, and Regions Bank appears to have adequate resources to absorb the costs of the proposal.

In addition, future earnings prospects are considered consistent with approval. The Board also has reviewed Regions Bank's proposed investment in the branches and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.[10]

In considering Regions Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Regions Bank and the bank's record of compliance with applicable banking laws, including consumer protection and anti-money-laundering laws. Regions Bank is considered to be well managed. Regions Bank's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and the bank's risk-management program appears consistent with approval.

Based on this review and all the facts of record, the Board concludes that Regions Bank's management, financial history and condition, capital adequacy, and future earnings prospects, as well as the effectiveness of Regions Bank in combatting money-laundering activities, are consistent with approval of the proposal.

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the 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 its 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

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8 12 U.S.C. § 2901 *et seq.*

9 12 CFR 208.21(a).

10 12 CFR 208.21(a).

11 12 CFR 208.6(b)(3).

12 12 U.S.C. § 2901(b).

of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank branching proposals.[13]

In addition, the Board considers the bank's overall compliance record and recent fair lending examinations. Fair lending laws require all lending institutions to provide 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 Regions Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Regions Bank, and the public comment received on the proposal.

Public Comment on the Proposal

One commenter objected to the proposal, alleging that Regions Bank discriminates against African Americans and "redlines" African American neighborhoods in the Houston and Dallas areas, both in Texas.[14] Specifically, the commenter alleged that Regions Bank has denied African American individuals and African American-owned businesses equal access to capital and credit by heavily concentrating its outreach and banking activities in predominantly white neighborhoods and to white individuals and white-owned businesses in Houston and Dallas. The commenter also alleges that Regions Bank disfavors certain African American neighborhoods in Houston and/or Dallas with respect to its lending, marketing, branching, and community development activities and in other respects.

Business of the Applicant and Response to Comment

Regions Bank offers a broad range of retail and commercial banking products to consumers and businesses through its network of branches. The products and services include commercial, residential, agricultural, and consumer loans, personal checking and savings accounts, business checking and savings accounts, money market accounts, cash management products and services, foreign exchange services, credit cards, merchant services, and wealth management services.

In response to the commenter's allegations, Regions Bank asserts that it is committed to making financial products and services available to all prospective and existing customers on a fair and responsible basis and states that responsible lending principles are built into Regions Bank's corporate values. Regions Bank notes that it has established loan and credit policies and procedures to assure consistent, fair, and accurate processes. Regions Bank represents that it offers all products to all applicants without regard to any prohibited basis, and it is committed to the fair and equal treatment of all applicants and borrowers. Regions Bank further represents that it engages in diverse marketing and outreach campaigns to achieve lending to minority groups.

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[13] 12 U.S.C. § 2903.

[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.

Record of Performance under the CRA

In evaluating the CRA performance of the involved institution, the Board generally considers the institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal supervisor, which in this case is the Federal Reserve Bank of Atlanta ("Reserve Bank").[15] In addition, the Board considers information provided by the applicant and by public commenters.

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, such as Regions Bank, in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates an 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"),[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 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;[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.[19] 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.[20]

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

[16] 12 U.S.C. § 2906.

[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.,* 12 CFR 228.22(b)(3).

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

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

CRA Performance of Regions Bank

Regions Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of April 1, 2016 ("Regions Bank Evaluation").[21] The bank received a "High Satisfactory" rating for each of the Lending Test, Investment Test, and Service Test.[22]

Examiners found that Regions Bank's overall lending activity was responsive to the credit needs in all of its assessment areas, and there were no conspicuous gaps in lending activity by income category. Examiners noted that the bank originated a substantial majority of its loans inside its AAs. Examiners found that the distribution of the bank's loans to retail customers of different income levels and business customers of different sizes was good and that the bank's overall geographic distribution of HMDA and small business loans reflected good penetration throughout LMI areas. Examiners also found that the bank made an adequate level of community development loans, the majority of which were for affordable housing and community services, and that the bank was responsive to the community development needs throughout its AAs.

Examiners rated Regions Bank's performance in Texas under the Lending Test as "Low Satisfactory." Examiners found that the distribution of the bank's borrowers reflected good penetration among individuals of different income levels and businesses of different sizes and that the geographic distribution of the bank's loans reflected adequate penetration throughout Texas. Further, examiners found that the bank made an adequate level of community development loans in Texas and was responsive to community development and credit needs. In Houston, an area of concern for the commenter, examiners concluded that the bank's lending performance was adequate and noted that the bank made an adequate level of community development loans. Examiners found that the bank's lending performance in Dallas, another area of concern for the commenter, exceeded the bank's state-wide lending performance.

Examiners found that, overall, Regions Bank made a significant level of qualified community development investments in response to community development needs. Examiners made a similar finding with respect to the bank's investment performance in Texas, which examiners rated as "High Satisfactory." Examiners noted that the majority of investments in Texas were concentrated in the Austin or Houston AAs and that the bank's investment performance was good in the Houston AA. In addition, examiners found that the bank's performance in the Dallas AA exceeded the bank's state-wide investment performance in Texas, due to the bank's strong mix of contributions and investments that were responsive to local community development and credit needs.

Examiners found that Regions Bank's retail delivery systems were reasonably accessible to geographies and individuals of different income levels within the bank's AAs. Examiners noted that the bank's opening and closing of branches generally did not adversely affect the accessibility of banking services to LMI geographies and/or individuals. Examiners found that banking services and business hours did not vary in a way that inconvenienced any portion of the bank's AAs, including LMI geographies and individuals. Moreover, examiners found that the bank provided a high level of community development services that benefited all of its AAs, including Texas.

[21] The Regions Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business lending activities reported by the bank from January 1, 2014, through December 31, 2015. The evaluation period for community development lending, investments, and services was July 1, 2014, through March 31, 2016.

[22] Regions Bank's AAs are set forth in Appendix B.

Examiners rated Regions Bank's service performance in Texas as "High Satisfactory." In the Houston AA, examiners concluded that, although the bank's branch distribution was weak in LMI geographies, there had been no change in the accessibility of retail services for LMI geographies and/or individuals, and many branches had extended hours, including branches located in LMI geographies. Examiners also found that the bank's delivery services and hours of operation did not vary in a way that inconvenienced LMI geographies or individuals. In addition, examiners found that the bank provided a relatively high level of community development services in the Houston AA. Examiners also concluded that, in the Dallas AA, the bank's service performance was consistent with the bank's statewide service performance.

Regions Bank's Efforts since the Regions Bank Evaluation

Regions Bank represents that, since the Regions Bank Evaluation, it has continued to offer several lending and deposit products that benefit LMI individuals and communities and small businesses. According to Regions Bank, such products include a Regions Business Line of Credit; its "Regions NOW Banking" suite of services, which is designed for unbanked and underbanked customers who prefer a pay-as-you-go approach to managing their finances; and its "Savings Account Secured Loans" and lines of credit that allow borrowers to use their savings accounts as collateral. Regions Bank also represents that it offers affordable mortgage products for LMI borrowers, including some products that require little to no down payment and/or do not require mortgage insurance, thus lowering monthly payments.

Regions Bank represents that it has continued to serve the banking needs in its AAs, including Houston and Dallas, through community development lending, investments, and services since the Regions Bank Evaluation. The bank contends that it has made a number of community development loans, including in the Houston and Dallas markets. Regions Bank represents that it has made a number of community development investments that support organizations focused on LMI and minority individuals and communities, including a grant to an organization that provides essential services to LMI individuals and families in Houston. Regions Bank contends that it engages in marketing and outreach, including targeted radio and advertising campaigns, to achieve lending penetration in LMI and minority census tracts, including those tracts in the Houston and Dallas AAs. In addition, Regions Bank represents that bank employees have actively participated in a variety of volunteer activities in its AAs, including events that target primarily LMI and minority individuals and small business owners, such as an event offering assistance to minority small business owners in Houston.

Additional Supervisory Considerations

In addition to the Regions Bank Evaluation, the Board has considered the results of a 2015 target examination of Regions Bank's Fair Housing Act ("FHA") fair lending program. The Board has also considered the preliminary findings of a more recent FHA examination, which included a redlining review of a number of markets, including the Houston and Dallas AAs. The redlining review included an evaluation of the bank's lending, marketing and outreach, assessment area, and branching within these markets. In addition, the Board has considered Regions Bank's supervisory record with the Consumer Financial Protection Bureau.

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. Regions Bank asserts that the proposed branches would provide economic and employment benefits and a broad range of financial services to the markets they serve. The bank represents that the proposed branches would utilize enhanced technologies and provide expanded services and convenience to customers of the bank.

Conclusion on Convenience and Needs Considerations

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved.[23] The Board's approval is specifically conditioned on compliance by Regions 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 this 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 these applications is also subject to the establishment of the proposed branches within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank, acting under authority delegated by the Board.

By order of the Board of Governors, effective February 5, 2019.

Voting for this action: Chairman Powell, Vice Chairman Clarida, Vice Chairman for Supervision Quarles, and Governors Brainard and Bowman.

Ann E. Misback
Secretary of the Board

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[23] 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 the relevant newspapers of general circulation on September 28, 2018. The comment period on each application ended on October 13, 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.

Appendix A

Branches to be Established by Regions Bank

Georgia Branches

Sandy Plains Branch
Shallowford Road, Just East of Sandy Plains Road
Marietta, Georgia 30062

Suwanee Branch
Intersection of McGinnis Ferry Road and Peachtree Industrial Boulevard
Suwanee, Georgia 30024

Village Shoppes at Windermere Branch
Northwest Corner of Intersection of Old Atlanta Road and Mathis Airport Parkway
Suwanee, Georgia 30024

Illinois Branch

Carbondale Branch
Northeast Corner of Intersection of West Main Street and North Oakland Avenue
Carbondale, Illinois 62901

Missouri Branch

Lemay Branch
Lemay Ferry Road, Just East of Buckley Road
Affton, Missouri 63125

Tennessee Branch

Arlington Branch
Southeast Corner of Intersection of Airline Road and Milton Wilson Boulevard
Arlington, Tennessee 38002

Texas Branch

Longview Main Branch
West Marshall Avenue, Just East of Intersection with South Spur 63
Longview, Texas 75601

Appendix B

The Regions Bank Evaluation included a full-scope review of the bank's AAs within the following: Birmingham, Alabama, Metropolitan Statistical Area ("MSA"); Montgomery, Alabama, MSA; Little Rock, Arkansas, MSA; Miami, Florida, MSA; Tampa, Florida, MSA; Atlanta, Georgia, MSA; Carbondale-Marion, Illinois, MSA; Indianapolis, Indiana, MSA; Waterloo, Iowa, MSA; Southwest Kentucky, Kentucky; Baton Rouge, Louisiana, MSA; New Orleans, Louisiana, MSA; Jackson, Mississippi, MSA; Northern Mississippi, Mississippi; Springfield, Missouri, MSA; Charlotte, North Carolina, MSA; Charleston, South Carolina, MSA; Nashville, Tennessee, MSA; Austin, Texas, MSA; Houston, Texas, MSA; and Augusta-Chattanooga-Columbus-Kingsport-Memphis-St. Louis-Texarkana, MSA.

A limited-scope review was conducted in the bank's AAs within the following: Anniston, Alabama, MSA; Auburn, Alabama, MSA; Coffee-Covington-Escambia, Alabama; Daphne, Alabama, MSA; Decatur, Alabama, MSA; Dothan, Alabama, MSA; Fayette County, Alabama; Florence, Alabama, MSA; Gadsden, Alabama, MSA; Huntsville, Alabama, MSA; Mobile, Alabama, MSA; Northern Alabama; Southern Alabama; Tallapoosa-Talladega, Alabama; Tuscaloosa, Alabama, MSA; Fayetteville, Arkansas, MSA; Fort Smith, Arkansas, MSA; Hot Springs, Arkansas, MSA; Jonesboro, Arkansas, MSA; Northeast Arkansas; Northwest Arkansas; Southern Arkansas; Union County, Arkansas; Daytona, Florida, MSA; Fort Lauderdale, Florida, MSA; Fort Myer, Florida, MSA; Fort Walton, Florida, MSA; Gainesville, Florida, MSA; Homosassa Springs, Florida, MSA; Jacksonville, Florida, MSA; Lakeland, Florida, MSA; Naples, Florida, MSA; Northern Florida; Ocala, Florida, MSA; Okeechobee, Florida; Orlando, Florida, MSA; Palm Bay, Florida, MSA; Panama City, Florida, MSA; Pensacola, Florida, MSA; Punta Gorda, Florida, MSA; Sarasota, Florida, MSA; Tallahassee, Florida, MSA; The Villages, Florida, MSA; West Palm Beach, Florida, MSA; Albany, Georgia, MSA; Athens, Georgia, MSA; Dalton, Georgia, MSA; Elbert and Wilkes counties, Georgia; Gainesville, Georgia, MSA; Jefferson-Jenkins, Georgia; Morgan-Elbert-Wilkes, Georgia; Northeast Georgia; Northwest Georgia; Rome, Georgia, MSA; Savannah, Georgia, MSA; Southwest Georgia; Valdosta, Georgia, MSA; Bloomington, Illinois, MSA; Central Illinois; Champaign, Illinois, MSA; Decatur, Illinois, MSA; Livingston, Illinois, MSA; Peoria, Illinois, MSA; Southeast Illinois; Southern Illinois; Springfield, Illinois, MSA; Bloomington, Indiana, MSA; Clinton-Grant, Indiana; Evansville, Indiana, MSA; Knox-Lawrence, Indiana; Kokomo, Indiana, MSA; Lafayette, Indiana, MSA; Louisville, Indiana, MSA; Terre Haute, Indiana, MSA; Cedar Rapids, Iowa, MSA; Des Moines, Iowa, MSA; Fayette, Iowa; Iowa City, Iowa, MSA; Simpson, Kentucky; Alexandria, Louisiana, MSA; Hammond, Louisiana, MSA; Houma, Louisiana, MSA; Lafayette, Louisiana, MSA; Monroe, Louisiana, MSA; Morehouse, Louisiana; Northwest Louisiana; Shreveport, Louisiana, MSA; Southern Louisiana; Adams-Wilkinson, Mississippi; Central Mississippi; Gulfport, Mississippi, MSA; Hattiesburg, Mississippi, MSA; Northwest Mississippi; Southern Mississippi; Warren, Mississippi; Cape Girardeau, Missouri, MSA; Central Missouri; Columbia, Missouri, MSA; Jefferson City, Missouri, MSA; Lawrence County, Missouri; Southeast Missouri; St. Genevieve-Perry, Missouri; Taney County, Missouri; Macon County, North Carolina; Raleigh, North Carolina, MSA; Columbia, South Carolina, MSA; Greenville, South Carolina, MSA; Hampton County, South Carolina; Hilton Head Island-Bluffton-Beaufort, South Carolina, MSA; McCormick-Barnwell, South Carolina; Spartanburg, South Carolina, MSA; Clarksville, Tennessee, MSA; Cleveland, Tennessee, MSA; Eastern Tennessee; Jackson, Tennessee, MSA; Johnson City, Tennessee, MSA; Knoxville, Tennessee, MSA; Middle Tennessee; Morristown, Tennessee, MSA; Western Tennessee; Cass, Texas; Dallas, Texas, MSA; Fort Worth, Texas, MSA; Longview, Texas, MSA; Nacogdoches-Angelina-Anderson, Texas; and Tyler, Texas, MSA.

Order Issued Under Home Owners' Loan Act

WSFS Financial Corporation
Wilmington, Delaware

Order Approving the Acquisition and Merger of Savings and Loan Holding Companies
FRB Order No. 2019-04 (February 27, 2019)

WSFS Financial Corporation ("WSFS"), Wilmington, Delaware, 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 Beneficial Bancorp, Inc. ("Beneficial"), and thereby indirectly acquire Beneficial Bank, both of Philadelphia, Pennsylvania, following the conversions of Beneficial Bank from a Pennsylvania state savings bank to a federal savings association and Beneficial from a bank holding company to an SLHC.[2] Immediately following the conversions, Beneficial would merge with and into WSFS, and Beneficial Bank would merge with and into WSFS's subsidiary federal savings association, Wilmington Savings Fund Society, FSB ("WSFS Bank"), Wilmington, Delaware.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 55365 (November 5, 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 10(e) of HOLA.[5]

WSFS, with consolidated assets of approximately \$7.2 billion,[6] is the 177th largest insured depository organization in the United States, controlling approximately \$5.7 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] WSFS controls WSFS Bank, which operates in Delaware and Pennsylvania. WSFS Bank is the 33rd largest insured depository institution in Pennsylvania, with approximately \$1.2 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.

Beneficial, with consolidated assets of approximately \$5.9 billion, is the 198th largest insured depository organization in the United States, controlling approximately \$4.3 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Beneficial controls Beneficial Bank, which operates in Pennsylvania and New Jersey. Beneficial Bank is the 22nd largest insured depository institution in Pennsylvania, with approximately \$2.9 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.

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1 12 U.S.C. § 1467a(e).

2 The Federal Reserve Bank of Philadelphia ("Reserve Bank"), acting under delegated authority, has approved an application by Beneficial under section10(e) of HOLA to become an SLHC upon the conversion of Beneficial Bank to a federal savings association, and the Office of the Comptroller of the Currency ("OCC") has approved an application under section 5 of HOLA (12U.S.C.§1464) by Beneficial Bank to convert to a federal savings association.

3 The OCC has approved an application under section 18(c) of the Federal Deposit Insurance Act ("FDI Act") (12 U.S.C. § 1828(c)) by WSFS Bank to merge with Beneficial Bank, with WSFS Bank surviving.

4 12 CFR 238.14(c)(2).

5 12 U.S.C. § 1467a(e)(2); *see also* 12 CFR 238.15.

6 National asset and deposit data are as of September 30, 2018.

7 State and market deposit data and all ranking data are as of June 30, 2018.

On consummation of the proposal, WSFS would become the 118th largest insured depository organization in the United States, with consolidated assets of approximately $13.0 billion. WSFS would control deposits of approximately $10 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Pennsylvania, WSFS would become the 19th largest insured depository organization, controlling deposits of approximately $4.1 billion, which represent approximately 1 percent of the total deposits of insured depository institutions in that state.

Deposit Cap and Interstate Analysis

Section 10(e)(2)(E) of HOLA generally provides that the Board may not approve an application by an SLHC to acquire an insured depository institution in a state other than the SLHC's home state if the SLHC controls, or upon consummation would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.[8]

For purposes of HOLA, Beneficial Bank's home state is Pennsylvania, and WSFS's home state is Delaware. Upon consummation of the proposal, WSFS would control less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board determines that it is not required to deny the proposal under section 10(e)(2)(E) of HOLA.

In addition, section 10(e)(3) of HOLA prohibits the Board from approving a proposal that would result in the formation of a multiple SLHC that controls savings associations in more than one state.[9] Because the merger of Beneficial Bank with and into WSFS Bank would occur simultaneously with the merger of Beneficial with and into WSFS, WSFS would not control more than one savings association as a result of the proposed transaction and, therefore, the proposal would not result in the formation of a multiple SLHC. Accordingly, in light of all the facts of record, the Board determines that it is not required to deny the proposal under section 10(e)(3) of HOLA.

Competitive Considerations

Section 10(e)(2) of HOLA prohibits the Board from approving a proposal that would result in a monopoly or that would be in furtherance of any combination or conspiracy to monopolize, or to attempt to monopolize, the savings and loan business in any part of the United States.[10] 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.[11]

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[8] 12 U.S.C. § 1467a(e)(2)(E). A federal savings association's home state is the state in which its home office is located. 12 U.S.C. § 1467a(e)(7)(B)(iii). An SLHC's home state is the state in which the total deposits of all insured depository institution subsidiaries of such company were the greatest on the date on which the company became an SLHC. 12 U.S.C. § 1467a(e)(7)(B)(iv).

[9] 12 U.S.C. § 1467a(e)(3). A multiple SLHC is an SLHC that directly or indirectly controls two or more savings associations. 12 U.S.C. § 1467a(a)(1)(E).

[10] 12 U.S.C. § 1467a(e)(2)(A); *see also* 12 CFR 238.15(a)(1).

[11] 12 U.S.C. § 1467a(e)(2)(B); *see also* 12 CFR 238.15(a)(2).

WSFS and Beneficial compete directly in the Philadelphia banking market ("Philadelphia market").[12] The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the relative share of total deposits of insured depository institutions in the market ("market deposits") that WSFS 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] the number of competitors that would remain in the market; 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 Philadelphia market. On consummation of the proposal, the Philadelphia market would remain unconcentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines.[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, including the Philadelphia 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 Philadelphia 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 HOLA, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[16] In its evaluation of finan-

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[12] The Philadelphia market is defined as Camden, Cumberland, Gloucester, and Salem counties, New Jersey; Beverly, Bordentown, and Burlington cities, Fieldsboro, Palmyra, and Riverton boroughs, and Bordentown, Burlington, Chesterfield, Cinnaminson, Delanco, Delran, Eastampton, Edgewater Park, Evesham, Florence, Hainesport, Lumberton, Mansfield, Maple Shade, Medford, Moorestown, Mount Holly, Mount Laurel, Riverside, Springfield, and Willingboro townships in Burlington County, New Jersey; Trenton city and Hamilton township in Mercer County, New Jersey; and Bucks, Chester, Delaware, Montgomery and Philadelphia counties, Pennsylvania.

[13] Local deposit and market share data 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] WSFS operates the 19th largest depository institution in the Philadelphia market, controlling approximately $1.2 billion in deposits, which represent 0.7 percent of market deposits. Beneficial operates the 8th largest depository institution in the same market, controlling deposits of approximately $4.2 billion, which represent approximately 2.6 percent of market deposits. On consummation of the proposed transaction, WSFS would become the 6th largest depository organization in the market, controlling deposits of approximately $5.4 billion, which represent approximately 3.3 percent of market deposits. The HHI for the Philadelphia market would increase by 4 points to 935, and 91 competitors would remain in the market.

[16] 12 U.S.C. § 1467a(e)(2).

cial 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 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 operations. In assessing 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.

WSFS, Beneficial, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a merger of holding companies that is structured as a cash and share exchange with a simultaneous merger of the subsidiary depository institutions.[17] The asset quality, earnings, and liquidity of WSFS, Beneficial, and their subsidiary depository institutions are consistent with approval, and WSFS appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization.[18] The Board has conducted an evaluation of the competence, experience, and integrity of the officers, directors, and principal shareholders of WSFS and WSFS Bank; their record of compliance with laws and regulations; and the record of WSFS and WSFS Bank of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.[19] The Board has reviewed the examination records of WSFS, Beneficial, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by WSFS; 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 the public comment on the proposal.

WSFS, Beneficial, and their subsidiary depository institutions are each considered to be well managed. The directors and senior executive officers of WSFS have knowledge of and experience in the banking sector, and WSFS's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered WSFS's plans for implementing the proposal. WSFS has conducted comprehensive due diligence and is devoting significant financial and other resources to address the post-acquisition integration process for this proposal. WSFS would apply its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, WSFS's management has the experience and resources to operate the combined organiza-

[17] To effect the merger, all outstanding shares of Beneficial common stock would be converted into the right to receive cash from WSFS and shares of WSFS common stock. WSFS has the financial resources to effect the proposed transaction.

[18] *See* 12 U.S.C. § 1467a(e)(2).

[19] *See* 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(2).

tion in a safe and sound manner, and WSFS would integrate Beneficial's existing management and personnel in a manner that augments WSFS's management.[20]

Based on all the facts of record, including WSFS's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines 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 WSFS and Beneficial 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 effects of the transaction on the convenience and needs of the communities to be served.[21] In this evaluation, 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 these communities, and 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 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 expansionary proposals.[24]

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 the 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 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 WSFS Bank and Beneficial Bank, the fair lending and compliance records of both depository institutions, the supervisory views of the OCC and Federal Deposit Insurance Corporation ("FDIC"), confidential supervisory information, information provided by WSFS, and the public comment on the proposal.

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[20] Three members of Beneficial's board of directors would be appointed to the boards of WSFS and WSFS Bank, and an advisory board would be established with membership that includes current directors of Beneficial's board. Further, Beneficial's Chief Lending Officer would become WSFS's Executive Vice President and Head of Pennsylvania and New Jersey Commercial Lending.

[21] 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(3).

[22] 12 U.S.C. § 2901 *et seq.*

[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

Summary of Public Comment on Convenience and Needs

A commenter objected to the proposal alleging, based on data reported under the Home Mortgage Disclosure Act ("HMDA")[25] for 2017, that WSFS Bank denied home purchase mortgage loans to African American and Latino applicants at significantly higher rates than to white applicants in the Wilmington, Delaware-Maryland-New Jersey Metropolitan Division ("MD") and the Salisbury, Maryland-Delaware Metropolitan Statistical Area ("MSA"). The commenter also raised concerns regarding branch closures anticipated in connection with the proposed mergers.

Businesses of the Involved Institutions and Response to the Public Comment

WSFS Bank offers a variety of deposit and lending products and services to retail and business customers through its branches in Delaware and Pennsylvania. Through its branches in Pennsylvania and New Jersey, Beneficial Bank also offers a variety of deposit and lending products and services to retail and business customers.

WSFS asserts that the disparate denial rates cited by the commenter do not take into account legitimate underwriting factors, such as credit history and existing debt levels. WSFS represents that the loan denials underlying the data were based on determinations that the applications did not satisfy WSFS Bank's underwriting criteria.

WSFS represents it would close a total of 25 WSFS Bank and Beneficial Bank branches in connection with the proposed transaction, primarily because of the proximity of those branches to other branches of the combined bank.[26] WSFS represents that it would comply with the requirements of section 42 of the FDI Act[27] and interagency guidance applicable to branch closures.[28]

Records of Performance under the CRA

In evaluating the CRA performance of involved institutions, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views from the relevant federal financial supervisor or supervisors, which in this case are the OCC for WSFS Bank and the FDIC for Beneficial Bank.[29] In addition, the Board considers information provided by the applicant and by public commenters.

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 financial supervisor of the institution's overall record of lending in its communities.

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[25] 12 U.S.C. § 2801 *et seq*.

[26] In addition, in connection with the proposal, Beneficial Bank has entered into an agreement to sell five of its branches that would not be within the combined bank's planned footprint.

[27] 12 U.S.C. § 1831r-1.

[28] *See* Joint Policy Statement on Branch Closings by Insured Depository Institutions, https://www.federalreserve.gov/boarddocs/press/BoardActs/1999/19990707/r-1036.pdf.

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

[30] 12 U.S.C. § 2906.

In general, federal financial supervisors apply a lending test to evaluate the performance of large insured depository institutions, such as WSFS Bank and Beneficial Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an 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;[31] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.[32] 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.[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, the Board evaluates HMDA data disparities in the context of other information regarding the lending record of the institution.

CRA Performance of WSFS Bank

WSFS Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of August 7, 2017 (the "WSFS Bank Evaluation").[35] WSFS Bank received a "High Satisfactory" rating for the Lending Test, an "Outstanding" rating for the Investment Test, and a "Low Satisfactory" rating for the Service Test.

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

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

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

[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 WSFS Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The Lending Test evaluation period was January 1, 2014, through December 31, 2016, except with respect to community development loans. For community development loans and the Investment and Service Tests, the evaluation period was September 3, 2014, through August 7, 2017. Examiners conducted full-scope reviews of designated geographic areas within three AAs ("full-scope AAs"): (i) the Wilmington, Delaware-Maryland-New Jersey MD, (ii) the Dover, Delaware MSA, and (iii) the Philadelphia, Pennsylvania MD. In addition, examiners conducted limited-scope reviews of the Chester County-Bucks County-Montgomery County, Pennsylvania MSA and the Salisbury, Maryland-Delaware MSA ("limited-scope AAs").

Examiners found that WSFS Bank exhibited an overall excellent level of lending activity in two of its three full-scope AAs, and an adequate level of lending activity in the remaining full-scope AA. Examiners found that the overall geographic distribution of lending activity across the full-scope AAs ranged from adequate to outstanding with respect to home purchase, home improvement, home refinance, and small business loans. In two of its three full-scope AAs, examiners found that the percentage of WSFS Bank's home mortgage loans in LMI geographies in 2014-2016 was equal to or exceeded the percentage of aggregate peer lending in the same geographies. In the remaining full-scope AA, examiners considered the geographic distribution of home mortgage lending in LMI geographies to be adequate-to-good. In addition, examiners considered the percentage of WSFS Bank's small business loans in LMI geographies to be at least adequate in all three of its full-scope AAs. Examiners also noted that WSFS Bank maintained an overall excellent level of community development lending across all three of its full-scope AAs.

Examiners considered WSFS Bank's performance under the Investment Test to be outstanding across all three of its full-scope AAs and excellent or outstanding across its limited-scope AAs. Examiners found that WSFS Bank had an excellent level of qualified investments that were responsive to the credit and community needs of its AAs.

Examiners noted that WSFS Bank maintained an adequate branch distribution system that was reasonably accessible to individuals living in LMI geographies. Examiners found that branch openings and closings generally had not adversely affected the accessibility of WSFS Bank's delivery systems. Examiners considered hours and services offered in its full-scope AAs to be adequate-to-good and noted that WSFS Bank complemented its traditional service delivery methods with online banking, which included bill pay, mobile banking, automated teller machines, bank-by-mail, and 24-hour telephone banking. Finally, examiners noted that WSFS Bank maintained an adequate level of community development services across all three full-scope AAs.

WSFS Bank's Efforts since the WSFS Bank Evaluation

WSFS represents that since the WSFS Bank Evaluation, WSFS Bank has originated or renewed community development loans to support: affordable housing development, the revitalization of LMI communities with redevelopment designations, Community Development Financial Institutions that provide community development loans in WSFS Bank's AAs, and organizations that deliver community services for LMI individuals and communities. WSFS also represents that WSFS Bank has made investments in Low Income Housing Tax Credit Equity funds and mortgage-backed securities collateralized by mortgages to LMI individuals in its AAs. Further, WSFS represents that the bank has continued its participation in community development grant programs, including a program that supports counseling for first-time homebuyers and homeowners facing foreclosure and an educational initiative that aims to improve the educational performance of low-income students. WSFS represents that the bank's employees continue to participate in various initiatives and organizations that provide services to benefit LMI individuals and communities.

CRA Performance of Beneficial Bank

Beneficial Bank was assigned an overall "Outstanding" rating by the FDIC at its most recent CRA performance evaluation, as of July 31, 2017 (the "Beneficial Bank Evaluation").[36] Beneficial Bank received a "High Satisfactory" rating for the Lending Test and "Outstanding" ratings for the Investment and Service Tests.

Examiners found that Beneficial Bank's lending levels reflected a good level of responsiveness to the credit needs of the bank's AA. Examiners also found that the geographic distribution of loans reflected adequate penetration throughout the AA, while the distribution of borrowers reflected good penetration among retail customers of different income levels and businesses of different sizes. Examiners noted that Beneficial Bank used flexible lending practices to serve the credit needs of its AA and made a relatively high level of community development loans.

Examiners determined that Beneficial Bank had an excellent level of community development investments and grants and noted that the bank exhibited excellent responsiveness to credit and community economic needs. Examiners observed that Beneficial Bank occasionally used innovative and/or complex investments to support community development initiatives.

Examiners found that Beneficial Bank's delivery systems were accessible to essentially all portions of the bank's AA and that the bank was a leader in providing community development services. Examiners further found that Beneficial Bank's opening and closing of branches did not adversely affect the accessibility of the bank's delivery systems and that services offered by Beneficial Bank did not vary in a way that inconvenienced certain portions of the AA, particularly LMI geographies or individuals.

Views of the OCC and the FDIC

In its review of the proposal, the Board considered supervisory information from the OCC and the FDIC regarding the CRA, consumer compliance, and fair lending records of WSFS Bank and Beneficial Bank, respectively. The Board also considered the results of recent consumer compliance examinations of each bank, which included reviews of the banks' compliance with fair lending laws. In addition, the Board consulted with the OCC, which approved the application under section 18(c) of the FDI Act related to the proposal, and in doing so, considered the convenience and needs of the communities served by WSFS Bank and Beneficial Bank, including with respect to the anticipated branch closures, as well as the institutions' records of performance under the CRA.

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

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. WSFS represents that customers of both WSFS Bank and Beneficial Bank would benefit from access to a larger branch network, thereby enhancing customers' access to branch banking services. WSFS further represents that the proposal would increase the access of WSFS Bank's customers to equipment leasing

[36] The Beneficial Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period was May 5, 2014, through July 31, 2017. Examiners conducted a full-scope evaluation of the bank's sole AA, which consists of eight contiguous counties within the Philadelphia-Reading-Camden, Pennsylvania-New Jersey-Delaware-Maryland Combined Statistical Area.

services currently provided by Beneficial Bank, while Beneficial Bank's customers would benefit from access to WSFS Bank's wealth management and Cash Connect services through the combined bank.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of WSFS Bank and Beneficial Bank under the CRA; the institutions' records of compliance with fair lending and other consumer protection laws; supervisory information from the OCC and the FDIC; confidential supervisory information; information provided by WSFS; 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 determines that the convenience and needs factor is consistent with approval.

Effect of the Transaction on the Savings Association, and Insurance Risk to the Deposit Insurance Fund

In acting on a proposal under section 10(e) of HOLA, the Board considers the likely effect of the transaction on the savings association and the insurance risk to the Deposit Insurance Fund.[37] As discussed above, the financial and managerial resources and the future prospects of the combined organization are consistent with approval. The Board has considered the likely effect of the transaction on the resultant depository institution and believes that it is consistent with approval. In view of the current resources and capital of WSFS and Beneficial; the future prospects of the combined organization; the significant financial and other resources being devoted to support the proposed combined organization; the managerial resources of WSFS, Beneficial, and their subsidiary depository institutions; and the likely effect of the transaction on the proposed combined organization, the Board believes that the proposal would not appear likely to materially affect the insurance risk of the Deposit Insurance Fund.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.[38] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under HOLA and other applicable statutes. The Board's approval is specifically conditioned on compliance by WSFS with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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[37] 12 U.S.C. § 1467a(e)(2).

[38] A commenter requested that the Board hold public hearings or meetings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 238.14(e),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 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 that would be clarified by a public hearing. In addition, the request does not demonstrate why written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective February 27, 2019.

Voting for this action: Chairman Powell, Vice Chairman Clarida, Vice Chairman for Supervision Quarles, and Governors Brainard and Bowman.

Ann E. Misback
Secretary of the Board

Orders Issued Under the Bank Merger Act and Federal Reserve Act

Equity Bank
Andover, Kansas

Order Approving the Acquisition of Assets, Assumption of Liabilities, and the Establishment of Branches
FRB Order No. 2019-02 (January 23, 2019)

Equity Bank, Andover, Kansas, the state member bank subsidiary of Equity Bancshares, Inc. ("Equity Bancshares"), Wichita, Kansas, 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 MidFirst Bank, a federal savings bank subsidiary of Midland Financial Co. ("Midland Financial"), both of Oklahoma City, Oklahoma.[2] In addition, Equity Bank has applied under section 9 of the Federal Reserve Act ("FRA")[3] to establish and operate branches at the locations of the acquired branches of MidFirst Bank.

Under the proposal, Equity Bank would assume approximately $100 million of MidFirst Bank's $8.3 billion in deposits, as well as acquire approximately $7 million of MidFirst Bank's loans and related assets.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[4] The time for 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 and the FRA. 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.

Equity Bancshares, with consolidated assets of approximately $3.7 billion, is the 268th largest insured depository organization in the United States, controlling deposits of approximately $2.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions[5] in the United States.[6] Equity Bancshares controls Equity Bank, which has offices in Arkansas, Kansas, Missouri, and Oklahoma. Equity Bank is the 37th largest insured depository institution in Oklahoma, with approximately $442.2 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.[7]

Midland Financial, with consolidated assets of approximately $15.4 billion, is the 103rd largest insured depository organization in the United States, controlling deposits of approximately $8.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Midland Financial controls

1 12 U.S.C. § 1828(c).

2 In particular, Equity Bank seeks to acquire the branches of MidFirst Bank located at 1754 North Academy Street, Guymon, Oklahoma ("North Academy Branch"); 2602 North Highway 64, Guymon, Oklahoma ("North Highway Branch"); and 110 East 1st Street, Cordell, Oklahoma.

3 12 U.S.C. § 321.

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

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

6 Nationwide asset and deposit data are as of June 30, 2018.

7 State deposit data are as of June 30, 2018.

MidFirst Bank, which has offices in Arizona, California, Colorado, Oklahoma, and Texas. MidFirst Bank is the third largest insured depository institution in Oklahoma, with approximately $5.2 billion in deposits, which represent 6 percent of the total amount of deposits of insured depository institutions in that state.

On consummation of the proposal, Equity Bancshares would remain the 268th largest depository organization in the United States, with consolidated assets of approximately $3.7 billion. Equity Bancshares would control approximately $2.7 billion in deposits, representing less than 1 percent of the total deposits of insured depository institutions in the United States. Equity Bancshares would become the 24th largest insured depository organization in Oklahoma, controlling deposits of approximately $542.2 million, which represent approximately 0.6 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

The Bank Merger Act generally provides that the Board may not approve an application to engage in a transaction under the Bank Merger Act if the transaction involves insured depository institutions with different home states and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United States.[8] For purposes of the Bank Merger Act, the home state of Equity Bank is Kansas and the home state of MidFirst Bank is Oklahoma.[9] Upon consummation of the proposal, Equity Bank would control less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under 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 an attempt to monopolize the business of banking in any relevant market.[10] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any 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.[11]

Equity Bank and MidFirst Bank compete directly in the Guymon, Oklahoma, banking market (“Guymon market”), and two of the branches that Equity Bank proposes to acquire are located in that 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 share of total deposits of insured depository institutions in the market (“market deposits”) that Equity Bank would

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8 12 U.S.C. § 1828(c)(13).

9 A state bank’s home state is the state by which the bank is chartered. 12 U.S.C. § 1828(c)(13)(C)(ii)(II). A federal savings association’s home state is the state in which the home office of the savings association is located. 12 U.S.C. § 1828(c)(13)(C)(ii)(III).

10 12 U.S.C. § 1828(c)(5)(A).

11 12 U.S.C. § 1828(c)(5)(B).

12 The Guymon market is defined as Cimarron and Texas counties (less the city of Texhoma), Oklahoma, and Morton County, Kansas. The North Highway Branch and the North Academy Branch are located in this market.

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 Guymon market.

The competitive effects of the proposal in the Guymon 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. Equity Bank is the largest competitor in the Guymon market, controlling approximately $133.3 million in deposits, which represent approximately 22.3 percent of market deposits. MidFirst Bank is the seventh largest depository institution in the Guymon market, controlling approximately $32.5 million in weighted deposits, which represent approximately 5.4 percent of market deposits. On consummation of the proposal, Equity Bank would remain the largest depository institution in the Guymon market, controlling approximately $198.2 million in market deposits, which would represent approximately 31.5 percent of market deposits. The HHI in the market would increase by 369 points, from 1467 to 1836.

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 Guymon market.[15] Factors indicate that the increase in concentration in the Guymon market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, after consummation of the proposal, seven depository institutions would compete with Equity Bank in the Guymon market. These include one depository institution with a more than 19 percent market share and four depository institutions each with an approximately 10 percent share of market deposits. The presence of these market competitors suggests that Equity Bank would have limited ability unilaterally to offer less attractive terms to consumers, and these competitors would be able to exert competitive pressure on Equity Bank in the Guymon market. Further, MidFirst Bank engages in low levels of small business lending in the Guymon market, and analysis of available data suggests the transaction is unlikely to have an adverse competitive impact on small business lending in the market.

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market, including the Guymon 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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[13] Local deposit and market share data are as of June 30, 2018, 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 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.

[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).

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 Guymon 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.[16] 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.

Equity Bank is well capitalized and would remain so on consummation of the proposal. Equity Bank appears to have adequate financial resources to effect the proposal.[17] The asset quality, earnings, and liquidity of Equity Bank are consistent with approval, and Equity 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 purchased. In addition, the future prospects of Equity Bank are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of Equity Bank after consummation of the proposal. The Board has reviewed the examination record of Equity Bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered information provided by Equity Bank; the Board's supervisory experiences with the institution; and Equity Bank's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Equity Bank is considered to be well managed. The directors and senior executive officers of Equity Bank 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. Equity Bank has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal. Equity Bank would apply its risk-management policies, procedures, and controls at the acquired branches, and these policies, procedures, and controls are considered acceptable from a supervisory perspective. In addition, Equity 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.

[16] 12 U.S.C. § 1828(c)(5).

[17] Equity Bank would fund the transaction with available cash on hand.

Based on all of the facts of record, including Equity 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 Equity Bank and MidFirst Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[18] In its evaluation, 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, and 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 the institutions' 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, including with respect to fair lending. 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, 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 Equity Bank and MidFirst Bank; the consumer compliance, including fair lending, records of Equity Bank and MidFirst Bank; confidential supervisory information; and information provided by Equity Bank.

Records of Performance under the CRA

In evaluating the CRA performance of the institutions involved, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views, from the relevant federal financial supervisor or supervisors, which in this case are the Federal Reserve Bank of Kansas City ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC").[22]

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit

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

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 financial 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 large insured depository institutions, such as MidFirst Bank, in helping to meet the credit needs of the communities they serve. The lending test specifically evaluates an 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"),[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 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.[27] Intermediate small banks, such as Equity 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.[28]

CRA Performance of Equity Bank

Equity Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of November 28, 2016 ("Equity Bank

[23] 12 U.S.C. § 2906.

[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).

Evaluation").[29] Equity Bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test.[30]

Examiners found that Equity Bank's average net loan-to-deposit ratio reflected a reasonable effort to extend credit given the bank's size, business activities, and financial condition and the credit needs of the bank's AAs. Examiners noted that a majority of the bank's loans were originated within the bank's AAs. Examiners found that Equity Bank's geographic distribution of HMDA and small business loans reflected reasonable dispersion throughout the bank's AAs. Examiners noted that the distribution of the bank's lending reflected reasonable penetration among borrowers of different income levels and businesses of different revenue sizes within the bank's AAs.

Examiners found that Equity Bank's level of qualified community development loans, investments, donations, and services demonstrated an excellent responsiveness to the needs of the AAs considering the bank's capacity and the availability of community development opportunities in the AAs. Examiners noted that Equity Bank's community development activities were excellent in the Kansas City Missouri-Kansas Multistate MSA AA and the Wichita, Kansas MSA AA and adequate in the State of Missouri/Western Missouri AA and the Western Kansas MSA AA.

CRA Performance of MidFirst Bank

MidFirst Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of October 30, 2017 ("MidFirst Bank Evaluation").[31] The bank received an "Outstanding" rating for the Lending Test, a "Low Satisfactory" rating for the Investment Test, and a "High Satisfactory" rating for the Service Test.[32]

Examiners found that MidFirst Bank's lending activity was good, and the bank originated a majority of loans inside its AAs. Examiners noted that MidFirst Bank's overall geographic distribution of loans was excellent. Examiners also found the bank's distribution of home mortgage loans by income level of borrower and distribution of loans to businesses with different revenue sizes to be good.

Examiners noted that the bank's community development lending was excellent and helped to support revitalization and stabilization efforts, affordable housing, and community services to LMI individuals. Examiners determined that MidFirst Bank's overall investment performance was adequate.

Examiners noted that MidFirst Bank's service delivery systems were accessible to essentially all portions of the bank's AAs, commensurate with the size and scope of the institu-

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[29] The Equity Bank Evaluation was conducted using Intermediate Small Institution CRA Examination Procedures. Examiners reviewed residential mortgage loans from January 1, 2014, through December 31, 2015, and small business loans from January 1, 2015, through December 31, 2015. Examiners reviewed community development activities from September 9, 2013, through November 28, 2016.

[30] The Equity Bank Evaluation included full-scope evaluations of the Wichita, Kansas Metropolitan Statistical Area ("MSA") AA; the Kansas City Missouri-Kansas Multistate MSA AA; the Western Kansas MSA AA; and the State of Missouri/Western Missouri AA. Limited-scope evaluations were performed in the Topeka, Kansas MSA AA; the Southeast Kansas MSA AA; and the Crawford County, Kansas MSA AA.

[31] The MidFirst Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed residential mortgage and small business loans from January 1, 2014, through December 31, 2016. The evaluation period for community development loans, investments, and services was from January 1, 2014, through October 30, 2016.

[32] The MidFirst Bank Evaluation included full-scope evaluations of the Oklahoma City, Oklahoma MSA AA; Oklahoma non-MSA AA; Phoenix-Mesa-Scottsdale, Arizona MSA AA; and Denver-Aurora-Lakewood, Colorado MSA AA. A limited-scope evaluation was performed in the Tulsa, Oklahoma MSA AA.

tion's operations. Examiners also noted that MidFirst Bank provided an excellent level of community development services, including loan modifications for LMI borrowers.

Additional Supervisory Views

In its review of the proposal, the Board has considered the results of the most recent consumer compliance examination of Equity 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 also has considered the supervisory record of MidFirst Bank, including with respect to consumer compliance.

The Board has taken the information discussed above into account in evaluating the proposal, including in considering whether Equity Bank has the experience and resources to help 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. Equity Bank states that it is committed to providing products and services that benefit the customers of the branches to be acquired. Equity Bank represents that it would offer a wide range of products and services to the customers of the branches, including consumer and commercial deposit and loan products, free nationwide ATM services, online banking, remote deposit capabilities, and investment services. Equity Bank further represents that it would not discontinue any products or services currently offered by MidFirst Bank at the branches.

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

Financial Stability

The Bank Merger Act requires the Board to consider the risk of the proposal "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

[33] 12 U.S.C. § 1828(c)(5).

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

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.[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 an acquisition of 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 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.[37]

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

Equity Bank has applied under section 9 of the FRA to establish and operate branches at the locations of the acquired branches of MidFirst Bank.[38] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered Equity 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.

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[35] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 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] Equity Bank and MidFirst Bank are predominately engaged in retail and commercial banking activities. Equity Bank 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.

[38] *See* 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. 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). Upon consummation, Equity Bank's branches would be permissible under applicable state law. *See* 6 Okl. St. Ann. § 501.1.

[39] 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposed transaction, Equity Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Equity 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 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective January 23, 2019.

Voting for this action: Chairman Powell, Vice Chairman Clarida, Vice Chairman for Supervision Quarles, and Governors Brainard and Bowman.

Margaret McCloskey Shanks
Deputy Secretary of the Board

First Interstate Bank
Billings, Montana

Order Approving the Merger of Banks and the Establishment of Branches
FRB Order No. 2019-07 (March 22, 2019)

First Interstate Bank, the state member bank subsidiary of First Interstate BancSystem, Inc. ("First Interstate"), both of Billings, Montana, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[1] to merge with Idaho Independent Bank, Coeur d'Alene, Idaho, a state non-member bank, with First Interstate Bank as the surviving entity. In addition, First Interstate Bank has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main office and branches of Idaho Independent 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 and the FRA. 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 ("FDIC").

First Interstate, with consolidated assets of approximately $13.3 billion, is the 117th largest insured depository organization in the United States, controlling deposits of approximately $10.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions[4] in the United States.[5] First Interstate controls First Interstate Bank, which has offices in Montana, Wyoming, South Dakota, Oregon, Washington, and Idaho. First Interstate Bank is the 13th largest insured depository institution in Idaho, with approximately $575.1 million in deposits, which represent 2.2 percent of the total amount of deposits of insured depository institutions in that state.[6]

Idaho Independent Bank, with total assets of approximately $747.2 million, is the 1,002nd largest insured depository institution in the United States, controlling deposits of approximately $626.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Idaho Independent Bank has offices only in Idaho. Idaho Independent Bank is the 12th largest insured depository institution in Idaho, with approximately $609.9 million in deposits, which represent 2.4 percent of the total amount of deposits of insured depository institutions in that state.

On consummation of the proposal, First Interstate would become the 110th largest insured depository organization in the United States, with consolidated assets of approximately $14.1 billion. First Interstate would control approximately $11.5 billion in deposits, representing less than 1 percent of the total amount of deposits of insured depository institutions in the United States. First Interstate Bank would become the 7th largest insured depository institution in Idaho, controlling deposits of approximately $1.2 billion, which

1 12 U.S.C. § 1828(c).

2 12 U.S.C. § 321. These locations are listed in Appendix A.

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 asset data are as of December 31, 2018. National deposit, ranking, and market-share data are as of September 30, 2018, unless otherwise noted.

6 State deposit data are as of June 30, 2018, unless otherwise noted.

represent approximately 4.6 percent of the total deposits of insured depository institutions in that state.

Interstate Analysis

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 and provided the resulting bank would be well capitalized and well managed.[7] Under section 44, the Board (1) may not approve an application that would permit an out-of-state bank or 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] and (2) in general, may not approve an interstate application if the resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States[9] or, in certain circumstances, if the resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[10]

For purposes of section 44 of the FDI Act and the Bank Merger Act, the home state of First Interstate Bank is Montana and the home state of Idaho Independent Bank is Idaho.[11] First Interstate Bank is well capitalized and, upon consummation of the transaction, would be well capitalized and well managed under applicable law. There are no statutory minimum age requirements under the laws of Idaho,[12] and Idaho Independent Bank has been in existence for more than five years.

Upon consummation of the proposal, First Interstate Bank would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Idaho, the only state in which First Interstate Bank and Idaho Independent Bank have overlapping operations, does not impose a limit on the total amount of in-state deposits that a single banking organization may control,[13] and First Interstate Bank would control less than 30 percent of the total deposits of banking organizations in Idaho as a result of the transaction. The Board has considered all other requirements of section 44 of the FDI Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by section 44 of the FDI Act or the Bank Merger Act from approving the proposal.

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7 12 U.S.C. §1831u(a)(1). Under section 44 of the FDI Act, a state bank's home state is the state in which the bank is chartered. *See* 12 U.S.C. §1831u(g)(4).

8 12 U.S.C. §1831u(a)(5).

9 12 U.S.C. § 1831u(b)(2)(A). The Bank Merger Act also includes a prohibition on approval of interstate merger transactions where the resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1828(c)(13).

10 12 U.S.C. § 1831u(b)(2)(B). The state deposit restrictions of section 44 of the FDI Act apply to any state in which both the applicant and target banks have branches. *See* 12 U.S.C. § 1831u(b)(2)(B)(i).

Under certain circumstances not present here, the Board also must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 ("CRA"), 12 U.S.C. § 2901 *et seq.*, and the applicant's record of compliance with applicable state community reinvestment laws. 12 U.S.C. § 1831 u(b)(3).

11 For purposes of section 44 of the FDI Act and the Bank Merger Act, a state bank's home state is the state in which the bank is chartered. 12 U.S.C. §§ 1831u(g)(4) and 1828(c)(13)(C)(ii).

12 *See* Idaho Code Ann. § 26-101 *et seq.*

13 *See* Idaho Code Ann. § 26-1606(1).

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.[14] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any 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 Interstate Bank and Idaho Independent Bank compete directly in the Boise, Idaho, banking market ("Boise market"); the Spokane, Washington-Idaho, banking market ("Spokane market"); and the Mountain Home, Idaho, banking market ("Mountain Home market").[16] The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record.[17] In particular, the Board has considered the relative share of total deposits of insured depository institutions in each market ("market deposits") that First Interstate Bank would control;[18] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[19] and other characteristics of each 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 Boise and Spokane markets. On consummation of the proposal, the Boise and Spokane markets would remain moderately concentrated, and numerous competitors would remain in each market.[20]

Banking Market Warranting Special Scrutiny

The competitive effects of the proposal in the Mountain Home market warrant a detailed review because the concentration levels on consummation would exceed the thresholds in

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[14] 12 U.S.C. § 1828(c)(5)(A).

[15] 12 U.S.C. § 1828(c)(5)(B).

[16] The Boise and Spokane markets are defined in Appendix B. The Mountain Home market is defined as Elmore County and the Grand View county subdivision of Owyhee County, both of Idaho.

[17] On January 10, 2019, the Federal Reserve Bank of Minneapolis ("Reserve Bank"), acting under authority delegated by the Board, approved an application by First Interstate Bank to merge with Community 1st Bank, Post Falls, Idaho, with First Interstate Bank as the surviving entity. The Board has considered the potential competitive effects of that transaction as part of its review of the proposal by First Interstate Bank to merge with Idaho Independent Bank.

[18] Local deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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

[20] The competitive effects of the proposal in the Boise and Spokane markets are discussed in Appendix B.

the DOJ Bank Merger Guidelines when using initial competitive screening data. First Interstate Bank is the fourth largest competitor in the Mountain Home market, controlling approximately $26.6 million in weighted deposits, which represent approximately 13.7 percent of market deposits. Idaho Independent Bank is the fifth largest depository institution in the Mountain Home market, controlling approximately $15.3 million in weighted deposits, which represent approximately 7.9 percent of market deposits. On consummation of the proposal, First Interstate Bank would become the third largest depository institution in the Mountain Home market, controlling approximately $41.9 million in weighted deposits, which would represent approximately 21.6 percent of market deposits. The HHI in the market would increase by 217 points, from 2501 to 2718.

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 Mountain Home market.[21] Factors indicate that the increase in concentration in the Mountain Home market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, one credit union exerts a competitive influence in the Mountain Home 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.[22] The Board finds that these circumstances warrant including the deposits of the 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, First Interstate Bank, upon consummation, would control approximately 16 percent of market deposits, and the market concentration level in the Mountain Home market measured by the HHI would increase by 119 points to 2163. Although consummation of this proposal would eliminate one existing competitor, the Mountain Home market would continue to be served by five depository institutions, including the credit union noted above. Excluding First Interstate Bank, these competitors would include three depository institutions each with a more than 20 percent share of market deposits and one depository institution with a more than 10 percent share of market deposits. The presence of these viable competitors suggests that First Interstate Bank would have limited ability to unilaterally offer less attractive terms to consumers, and these competitors would be able to exert competitive pressure on First Interstate Bank in the Mountain Home market.

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market, including the Mountain Home 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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[21] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. *See NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

[22] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., 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, 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).

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 Boise, Spokane, or Mountain Home 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.[23] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved, as well as information regarding the financial condition of the organizations' significant nonbanking operations, if applicable. 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.

First Interstate Bank and Idaho Independent Bank are well capitalized and the resulting bank would remain so on consummation of the proposal. The proposed transaction involves a bank merger, and First Interstate Bank appears to have adequate financial resources to effect the proposal.[24] The asset quality, earnings, and liquidity of both First Interstate Bank and Idaho Independent Bank are consistent with approval, and First Interstate Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of First Interstate Bank are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of First Interstate Bank after consummation of the proposal. The Board has reviewed the examination records of First Interstate Bank and Idaho Independent Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Interstate Bank; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

First Interstate Bank and Idaho Independent Bank are considered to be well managed. The directors and senior executive officers of First Interstate Bank have knowledge of and experience in the banking sector, and the bank's risk-management program appears consistent with approval of this expansionary proposal. First Interstate has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal. First Interstate Bank would apply its risk-management policies, procedures, and controls at the combined bank, and these policies, procedures, and controls are considered acceptable from a supervisory perspective. In addi-

[23] 12 U.S.C. § 1828(c)(5).

[24] As consideration for the bank merger, shareholders of Idaho Independent Bank would receive newly issued shares of First Interstate. Neither First Interstate nor First Interstate Bank plans to incur debt to consummate the merger.

tion, First Interstate Bank's management has the experience and resources to operate the combined bank in a safe and sound manner.

Based on all of the facts of record, including First Interstate Bank's supervisory record, managerial and operational resources, and plans for operating the bank after consummation, the Board determines 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 Interstate Bank and Idaho Independent Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[25] In its evaluation, 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, and 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,[26] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[27]

In addition, the Board considers the banks' overall compliance records, including with respect to fair lending. 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, and information provided by the applicant. The Board also may consider the 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 of the facts of record, including reports of examination of the CRA performance of First Interstate Bank and Idaho Independent Bank; the consumer compliance, including fair lending, records of First Interstate Bank and Idaho Independent Bank; confidential supervisory information; and information provided by First Interstate Bank.

Records of Performance under the CRA

In evaluating the CRA performance of the institutions involved, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views, from the relevant federal financial supervisor or supervisors, which in this case are the Reserve Bank and the FDIC.[28]

[25] 12 U.S.C. § 1828(c)(5).

[26] 12 U.S.C. § 2901(b).

[27] 12 U.S.C. § 2903.

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

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 financial supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") to evaluate the performance of large insured depository institutions, such as First Interstate Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an 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,[30] 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;[31] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.[32] The Investment Test applicable to large institutions evaluates the number and amounts of qualified investments that benefit their AAs, and the Service Test evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[33] Intermediate small banks, such as Idaho Independent Bank, are subject to the Lending Test, as well as a community development test ("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.[34]

CRA Performance of First Interstate Bank

First Interstate Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the Reserve Bank, as of June 6, 2016 ("First Interstate

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[29] 12 U.S.C. § 2906.

[30] 12 U.S.C. § 2801 *et seq*.

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

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

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

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

Evaluation").[35] First Interstate Bank received an "Outstanding" rating for each of the Lending Test, Investment Test, and Service Test.[36]

Examiners found that First Interstate Bank's lending activity demonstrated excellent responsiveness to credit needs throughout the bank's AAs. Examiners noted that the bank extended a substantial majority of its loans within its AAs. Examiners found that the distribution of the bank's lending to LMI borrowers and businesses and farms of different sizes was excellent. In addition, examiners found that, overall, the bank's distribution of loans was excellent throughout the bank's AAs, including LMI census tracts and nonmetropolitan middle-income census tracts that were classified as distressed and/or underserved.

Examiners found that First Interstate Bank was a leader in making community development loans and had an overall excellent level of qualified investments in the form of securities and donations. Examiners also found that First Interstate Bank made significant use of innovative and complex investments when opportunities existed. Examiners noted that the bank's delivery systems were readily accessible throughout the bank's AAs, including to LMI individuals and geographies. Examiners also found that First Interstate Bank was a leader in providing community development services throughout its AAs. Examiners noted, for example, that the bank's officers and employees assisted nonprofit organizations that supported LMI individuals, job creation, and small businesses.

CRA Performance of Idaho Independent Bank

Idaho Independent Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the FDIC, as of March 28, 2016 ("Idaho Bank Evaluation").[37] The bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test.[38]

Examiners found that Idaho Independent Bank's loan-to-deposit ratio was reasonable, given the bank's size, financial condition, and AA credit needs. Examiners found that the bank made a substantial majority of home mortgage and small business loans, by number and dollar volume, within its combined AAs. Examiners noted that the bank's overall geographic distribution of loans reflected reasonable dispersion throughout the bank's combined AAs. Examiners also noted that the bank's overall distribution of borrowers reflected reasonable penetration among businesses of different revenue sizes and individuals of different income levels within the bank's combined AAs.

[35] The First Interstate Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed residential mortgage loans, consumer loans, small business loans, and small farm loans from January 1, 2013, through December 31, 2015. Examiners reviewed community development activities from January 1, 2013, through December 31, 2015.

[36] The First Interstate Evaluation included full-scope evaluations of the Billings, Montana Metropolitan Statistical Area ("MSA") AA; the Bozeman, Montana AA; the Casper, Wyoming MSA AA; the Sheridan, Wyoming AA; and the Rapid City, South Dakota MSA AA. Limited-scope evaluations were performed in the Great Falls, Montana MSA AA; the Missoula, Montana MSA AA; the Hamilton, Montana AA; the Hardin/Miles City, Montana AA; the Helena, Montana AA; the Kalispell, Montana AA; the Absarokee/Columbus, Montana AA; the Cheyenne, Wyoming MSA AA; the Jackson, Wyoming AA; the Laramie, Wyoming AA; the Riverton, Wyoming AA; the Belle Fourche, South Dakota AA; the Edgemont, South Dakota AA; and the Sioux Falls, South Dakota MSA AA.

[37] The Idaho Bank Evaluation was conducted using Intermediate Small Institution CRA Examination Procedures. Examiners reviewed home mortgage loans and small business loans from January 1, 2014, through December 31, 2015. Examiners reviewed community development loans, qualified investments, and community development services from January 22, 2013, through March 28, 2016.

[38] The Idaho Bank Evaluation included a full-scope evaluation of the Boise-Nampa, Idaho MSA AA. Limited-scope evaluations were performed in the Coeur d'Alene MSA AA and Elmore and Blaine counties, all of Idaho.

Examiners noted that Idaho Independent Bank was an active community development lender and made community development investments and donations to nonprofit organizations across its AAs, including organizations that provided affordable housing, trade-based career training, and youth services for children of LMI families. In addition, examiners noted that Idaho Independent Bank employees provided financial services to various community development organizations that benefited the bank's combined AAs.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the Reserve Bank regarding the CRA and consumer compliance, including fair lending, records of First Interstate Bank and considered the FDIC's most recent CRA and consumer compliance evaluations of Idaho Independent Bank. The Board has taken the consultations with the Reserve Bank and the information discussed above into account in evaluating the proposal, including in considering whether First Interstate Bank has the experience and resources to help 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. First Interstate Bank represents that it does not anticipate making significant changes in or discontinuing any existing products or services of either First Interstate Bank or Idaho Independent Bank following consummation of the bank merger. First Interstate Bank also represents that customers of Idaho Independent Bank would gain access to, among other benefits, higher lending limits, wealth management services, a more robust credit card program, and a more robust digital banking platform. First Interstate Bank notes that customers of both banks 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 consumer protection laws, confidential supervisory information, information provided by First Interstate Bank, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on its review, the Board determines that the convenience and needs factor is consistent with approval.

Financial Stability

The Bank Merger Act requires the Board to consider the risk of the proposal "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 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

[39] 12 U.S.C. § 1828(c)(5).

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 on the broader economy.[41]

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.[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 total assets and a pro forma organization of less than $100 billion in total 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 firm in the event of financial distress.[43] 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

First Interstate Bank has applied under section 9 of the FRA to establish and operate branches at the locations of the current main office and branches of Idaho Independent Bank.[44] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered First Interstate 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 prem-

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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] First Interstate Bank and Idaho Independent Bank are predominately engaged in retail and commercial banking activities. First Interstate Bank 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.

[44] *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 section 44 of the FDI Act, both national banks and state member banks resulting from an interstate merger 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)(1).

ises.[45] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by First Interstate 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 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective March 22, 2019.

Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Brainard and Bowman.

Ann E. Misback
Secretary of the Board

Appendix A

Branches to Be Established by First Interstate Bank

1. 401 West Front Street, Boise, Idaho 83702
2. 317 North 9th Street, Boise, Idaho 83702
3. 8351 West Overland Road, Boise, Idaho 83709
4. 113 East Idaho Avenue, Meridian, Idaho 83642
5. 90 South Star Road, Star, Idaho 83669
6. 491 North Main Street, Suite 101, Ketchum, Idaho 83340
7. 620 South Kimball Avenue, Caldwell, Idaho 83605
8. 804 12th Avenue South, Nampa, Idaho 83651
9. 310 American Legion Boulevard, Mountain Home, Idaho 83647
10. 1260 West Riverstone Drive, Coeur d'Alene, Idaho 83814
11. 8882 North Government Way, Hayden Lake, Idaho 83835

[45] 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposed transaction, First Interstate Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

Appendix B

First Interstate Bank/Idaho Independent Bank banking markets consistent with Board precedent and DOJ Bank Merger Guidelines

Bank	Rank	Amount of deposits	Market deposit shares (%)	Resulting HHI	Change in HHI	Remaining number
Boise, Idaho ("Boise market") – Defined as the Boise metropolitan area in Canyon and Ada counties, southern Gem County, and the cities of Marsing and Homedale in Owyhee County, all of Idaho.						
First Interstate Bank Pre-Consummation	5	$522.5M	4.7			
Idaho Independent Bank	8	$390.8M	3.5			
First Interstate Bank Post-Consummation	4	$913.2M	8.1	1452	32	21
Spokane, Washington-Idaho ("Spokane market") – Defined as the Spokane metropolitan area in Spokane County, Washington, and the central western portion of Kootenai County, Idaho.						
First Interstate Bank Pre-Consummation	9	$460.2M	4			
Idaho Independent Bank	10	$185.3M	1.6			
First Interstate Bank Post-Consummation	7	$645.5M	5.6	1257	13	22

Data and rankings are as of June 30, 2018. 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 3 of the Bank Holding Company Act, Bank Merger Act, and Federal Reserve Act

Fifth Third Bancorp
Cincinnati, Ohio

Fifth Third Bank
Cincinnati, Ohio

Order Approving the Acquisition of a Bank Holding Company, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2019-05 (March 6, 2019)

Fifth Third Bancorp ("Fifth Third"), Cincinnati, Ohio, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to acquire MB Financial, Inc. ("MB Financial"), and thereby indirectly acquire MB Financial Bank, N.A. ("MB Bank"), both of Chicago, Illinois.

In addition, Fifth Third's subsidiary state member bank, Fifth Third 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 MB Bank, with Fifth Third Bank as the surviving entity.[3] Fifth Third 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 MB Bank.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 28642 (June 20, 2018)).[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.

Fifth Third, with consolidated assets of approximately $141.7 billion, is the 26th largest depository organization in the United States. Fifth Third controls approximately $104.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] Fifth Third controls Fifth Third Bank, which operates in Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, and West Virginia. Fifth Third Bank is the 12th largest depository institution in Illinois, controlling deposits of approximately $10.7 billion, which represent 2.2 percent of the total deposits of insured depository institutions in that state.[7] Fifth Third Bank is the third largest depository institution in Indiana,

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 12 U.S.C. § 1828(c).

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

5 12 CFR 262.3(b).

6 National asset data and national deposit, ranking, and market-share data are as of September 30, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

7 State deposit data are as of June 30, 2018, unless otherwise noted.

controlling deposits of approximately $8.8 billion, which represent 6.7 percent of the total deposits of insured depository institutions in that state.

MB Financial, with consolidated assets of approximately $19.7 billion, is the 90th largest depository organization in the United States. MB Financial controls approximately $14.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MB Financial controls MB Bank, which operates in Illinois and Indiana. MB Bank is the ninth largest depository institution in Illinois, controlling deposits of approximately $15.1 billion, which represent 3.1 percent of the total deposits of insured depository institutions in that state. MB Bank is the 140th largest depository institution in Indiana, controlling deposits of approximately $8.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Fifth Third would become the 21st largest insured depository organization in the United States, with consolidated assets of approximately $161.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Fifth Third would control approximately $119.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, Fifth Third would become the fourth largest insured depository organization, controlling deposits of approximately $25.8 billion, which represent 5.4 percent of the total deposits of insured depository institutions in that state. In Indiana, Fifth Third would remain the third largest insured depository institution, controlling deposits of approximately $8.8 billion, which represent 6.7 percent of the total deposits of insured depository institutions in that state.

Interstate 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 that is well capitalized and well managed 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] Similarly, 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 and provided the resulting bank would be well capitalized and well managed.[9] The Board (1) 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 target bank has not been in existence for the lesser of the state statutory minimum period of time or five years;[10] (2) must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 ("CRA")[11] and the applicant's record of compliance with applicable state community reinvestment laws;[12] and (3) may not approve an interstate application if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than

8 12 U.S.C. § 1842(d)(1)(A). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of each 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 bank's main office is located. *See* 12 U.S.C. § 1841(o)(4).

9 12 U.S.C. §1831u(a)(1). Under 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 its main office is located. *See* 12 U.S.C. §1831u(g)(4).

10 12 U.S.C. §§1831u(a)(5) and 1842(d)(1)(B).

11 12 U.S.C. § 2901 *et seq.*

12 12 U.S.C. §§ 1831u(b)(3) and 1842(d)(3).

10 percent of the total deposits of insured depository institutions in the United States,[13] or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[14]

For purposes of the BHC Act, the home state of Fifth Third is Ohio, and MB Bank is located in Illinois and Indiana. For purposes of section 44 of the FDI Act, the home state of Fifth Third Bank is Ohio, and the home state of MB Bank is Illinois. Fifth Third is well capitalized and well managed, and, upon consummation of the bank merger, Fifth Third Bank would continue to be well capitalized and well managed under applicable law. Fifth Third Bank has an overall "Outstanding" rating under the CRA and is in compliance with applicable state community reinvestment laws. MB Bank has been in existence for more than five years in Illinois and Indiana.[15]

On consummation of the proposal, Fifth Third would control less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Illinois and Indiana, the only states in which Fifth Third and MB Bank have overlapping banking operations, each impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[16] In each state, the combined organization would control less than 30 percent of the total amount of in-state deposits. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by either statute from approving the proposal.

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 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.[18]

Fifth Third Bank and MB Bank compete directly in the Chicago, Illinois, banking market ("Chicago market") and the Gary/Hammond, Indiana, banking market ("Gary/Hammond market").[19] The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits

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[13] 12 U.S.C. §§ 1831u(b)(2)(A) and 1842(d)(2)(A).

[14] 12 U.S.C. §§ 1831u(b)(2)(B) and 1842(d)(2)(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 any state in which the bank is chartered, headquartered, or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7). The state deposit restrictions of section 44 of the FDI Act apply to any state in which both the applicant and target banks have branches. *See* 12 U.S.C. § 1831u(b)(2)(B)(i).

[15] 12 U.S.C. § 1842(d)(1)(B)(ii).

[16] 205 Ill. Comp. Stat. 10/3.09 (2018); Ind. Code Ann. § 28-2-17-29 (2018).

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

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

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

in insured depository institutions in the market ("market deposits") that Fifth Third would control;[20] 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");[21] the number of competitors that would remain in the market; and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Chicago and Gary/Hammond markets. On consummation of the proposal, the Chicago market would remain unconcentrated and the Gary/Hammond market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in these markets would be small, and numerous competitors would remain in both markets.[22]

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

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

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[20] Deposit and market share data are as of June 30, 2018, 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).

[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] Fifth Third operates the 11th largest depository institution in the Chicago market, controlling deposits of approximately $10.4 billion, which represent approximately 2.7 percent of market deposits. MB Financial operates the eighth largest depository institution in that market, controlling deposits of approximately $15.1 billion, which represent approximately 3.9 percent of market deposits. On consummation of the proposal, Fifth Third would become the fourth largest depository organization in the market, controlling deposits of approximately $25.4 billion, which represent approximately 6.6 percent of market deposits. The HHI for the Chicago market would increase by 21 points to 943, and 168 competitors would remain in the market.

Fifth Third operates the fifth largest depository institution in the Gary/Hammond market, controlling deposits of approximately $1.0 billion, which represent approximately 6.7 percent of market deposits. MB Financial operates the 27th largest depository institution in that market, controlling deposits of approximately $8.3 million, which represent approximately 0.1 percent of market deposits. On consummation of the proposal, Fifth Third would remain the fifth largest depository organization in the market, controlling deposits of approximately $1.0 billion, which represent approximately 6.7 percent of market deposits. The HHI for the Gary/Hammond market would increase by 1 point to 1043, and 29 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 future prospects of the institutions involved, as well as the effectiveness of the institutions in combatting money laundering.[23] In its evaluation of the financial factor, 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.

Fifth Third, MB Financial, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a merger that is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.[24] The asset quality, earnings, and liquidity of Fifth Third Bank and MB Bank are consistent with approval, and Fifth Third appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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

Fifth Third, MB Financial, and their subsidiary depository institutions are each considered to be well managed. Fifth Third's directors and senior executive officers have knowledge of

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[23] 12 U.S.C. §§1842(c)(2), (5), and (6), and 1828(c)(5) and (11).

[24] Fifth Third would effect the holding company transaction by merging a newly formed subsidiary of Fifth Third ("Merger Subsidiary") with and into MB Financial, with MB Financial surviving the merger as a subsidiary of Fifth Third. At the time of the merger, each share of MB Financial common stock would be converted into a right to receive (i)1.45shares of Fifth Third common stock together with cash in lieu of any fractional shares and (ii) $5.54 in cash. Fifth Third has the financial resources to fund the cash portion of the obligation. At the time of the merger, each share of common stock of the Merger Subsidiary would be converted into one share of MB Financial common stock; these shares, which would be owned by Fifth Third, would constitute the only outstanding shares of common stock of MB Financial after the effective time of the merger. Each share of MB Financial preferred stock would remain issued and outstanding, and Fifth Third would not issue any newly created series of preferred stock to holders of MB Financial preferred stock or convert MB Financial preferred stock into any newly created series of Fifth Third preferred stock.

Immediately following the merger of Merger Subsidiary and MB Financial, MB Bank would merge with and into Fifth Third Bank, with Fifth Third Bank as the surviving entity. Each share of MB Bank common stock would be converted into newly issued shares of Fifth Third Financial Corporation, Cincinnati, Ohio, a mid-tier financial holding company of Fifth Third.

and experience in the banking and financial service sectors, and Fifth Third's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Fifth Third's plans for implementing the proposal. Fifth Third 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. Fifth Third would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Fifth Third's management has the experience and resources to operate the combined organization in a safe and sound manner, and Fifth Third plans to integrate MB Financial's existing management and personnel in a manner that augments Fifth Third's management.[25]

Based on all of the facts of record, including Fifth Third's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines 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 Fifth Third and MB Financial in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[26] In its evaluation, 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, and 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 operations,[27] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[28]

In addition, 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 public comments 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 Fifth Third Bank and MB Bank; the fair lending and compliance records of both banks; the supervi-

[25] On consummation, the number of directors on Fifth Third's board of directors would increase by two, and two individuals currently serving on the board of directors of MB Financial would join the board of Fifth Third. Corresponding changes would be made to the board of directors of Fifth Third Bank.

[26] 12 U.S.C. §§1842(c)(2) and 1828(c)(5).

[27] 12 U.S.C. § 2901(b).

[28] 12 U.S.C. § 2903.

sory views of the Federal Reserve Bank of Cleveland ("Reserve Bank"), the Office of the Comptroller of the Currency ("OCC"), the Consumer Financial Protection Bureau ("CFPB"), and other federal regulatory agencies; confidential supervisory information; information provided by Fifth Third; and the public comments on the proposal.

Public Comments on the Proposal

The Board received three comments on the proposal.[29] Two commenters objected to the proposal, alleging that Fifth Third Bank discriminated against residential mortgage borrowers in majority-minority neighborhoods in the Toledo, Ohio, Metropolitan Statistical Area ("Toledo MSA"), based on disparities in the bank's lending activity between LMI neighborhoods that are majority-minority and those that are predominantly white in the Toledo MSA.

One commenter alleged that Fifth Third Bank has engaged in a pattern of locating branches in the Toledo MSA in a manner that is designed to serve the banking and credit needs of predominantly white neighborhoods, to the detriment of majority-minority neighborhoods. This commenter also alleged that Fifth Third Bank has failed to employ individuals who reside in the communities the bank serves within the Toledo MSA[30] and asserted that Fifth Third Bank has served the credit needs of predominantly white neighborhoods significantly better than those of the majority-minority neighborhoods in the Toledo MSA.[31] In addition, this commenter asserted that Fifth Third Bank failed to adequately market its credit services to residents in majority-minority neighborhoods. In alleging that Fifth Third Bank has failed to meet the credit needs of the Toledo MSA, the commenter cited Fifth Third Bank's 2014 CRA evaluation, in which the bank received a "Needs to Improve" rating for the Lending Test in the Toledo MSA, and cited the bank's 2016 CRA evaluation, in which the bank's performance for the Lending and Investment tests in the Toledo MSA was found to be below the bank's overall performance on those tests in the state of Ohio.

Another commenter asserted that, between 2013-2017, there were wide disparities in Fifth Third Bank's residential real estate loan origination rates in LMI neighborhoods based on the racial composition of the neighborhoods. This commenter also asserted that, since

[29] One commenter requested that approval of the proposal be conditioned on Fifth Third Bank adopting a community benefits plan describing how it plans to meet the convenience and needs of its communities. 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., First Busey Corporation*, FRB Order 2019-01 at 11 n.30 (January10, 2019); *HarborOne Mutual Bancshares*, FRB Order No. 2018-18 at 10 n.26 (September 12, 2018); *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); *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.

[30] The commenter also alleged that Fifth Third Bank's practice of hiring minority loan officers in the Toledo MSA does not adequately reflect the racial composition of the community. A bank holding company or bank's internal employment practices, however, are outside the scope of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act or the Bank Merger Act. *See e.g., IBERIABANK*, FRB Order 2018-06 (February 21, 2018) at 9 n.22 (Bank Merger Act); *SunTrust Bank*, 86 *Fed. Res. Bull*. 65 (1999) at 66 n. 7 (Bank Merger Act); *Banc One Corporation*, 83 *Fed. Res. Bull*. 520 (1997) at 527 n. 34 (section 3 of the BHC Act).

[31] To support this assertion, the commenter provided information intended to show that: (1) loan originations to minority individuals and minority LMI individuals in the Toledo MSA decreased from 2014-2017, and (2) a discrepancy exists in Fifth Third Bank's lending in white LMI neighborhoods compared with majority-minority LMI neighborhoods in the Toledo MSA.

2003, the proportion of Fifth Third Bank's residential mortgage originations in majority-minority and LMI neighborhoods in the Toledo MSA has decreased significantly.

One commenter asserted that MB Bank improperly handled foreclosures on assets that the bank previously had acquired from the FDIC through the failed bank resolution process.[32]

Businesses of the Involved Institutions and Response to the Public Comments

Through its network of branches in ten states, Fifth Third Bank provides commercial, retail, and small business banking, as well as wealth management services to individual, corporate, and municipal customers. These products and services include a wide range of checking, savings, and money market accounts, as well as credit products, such as commercial loans and leases, mortgage loans, installment loans, auto loans, and credit cards.

MB Bank operates primarily in the Chicago metropolitan area and offers a broad range of financial services, primarily to small and middle-market businesses and individuals. MB Bank's primary lines of business include commercial banking, leasing, asset-based lending, retail banking, and wealth management.

In response to the comments, Fifth Third represents that it entered into a community benefits commitment in 2016 with the National Community Reinvestment Coalition ("NCRC") and 145 of the NCRC's member community organizations, including one of the commenters, addressing Fifth Third Bank's lending and investment practices, including in the Toledo MSA and particularly to LMI customers. In addition, Fifth Third represents that it has taken a leadership role in providing financial education and empowerment programs in all of the areas in which Fifth Third Bank operates.

Fifth Third asserts that Fifth Third Bank has sought to increase lending in majority-minority and LMI neighborhoods in the Toledo MSA. Fifth Third acknowledges that, in 2017, the number of the bank's residential mortgage originations in majority-minority neighborhoods in the Toledo MSA decreased slightly, but asserts that the decline was smaller than the overall decline in the bank's mortgage loan originations throughout the Toledo MSA. Fifth Third represents that Fifth Third Bank provides a number of non-lending and non-investment services in the Toledo MSA through employee volunteering.

With respect to Fifth Third Bank's branch locations in the Toledo MSA, Fifth Third represents that the bank routinely evaluates and reviews the location and distribution of its branches and is willing to meet with the commenters to discuss the financial needs of neighborhoods in the Toledo MSA.

In response to a commenter's allegation that Fifth Third Bank's residential mortgage lending in majority-minority and LMI neighborhoods was lower than in predominantly white neighborhoods in the Toledo MSA, Fifth Third asserts that the data cited by the commenter show that Fifth Third Bank has actually increased its residential mortgage originations in LMI and majority-minority neighborhoods as compared to predominantly white neighborhoods. Fifth Third represents that Fifth Third Bank has increased overall access to mortgage credit in majority-minority and LMI neighborhoods in the Toledo MSA. Fifth Third represents that the bank's credit card issuance in majority-minority

[32] The commenter asserts that these foreclosed assets are subject to loss sharing agreements with the FDIC. The Board believes that these allegations are not within the Board's limited jurisdiction to adjudicate and do not relate to factors that the Board may consider when reviewing an application under the BHC Act or the Bank Merger Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

neighborhoods has steadily increased since 2013 as a percentage of the bank's total credit card originations in the Toledo MSA, and the bank has created a new personal line of credit product specifically designed to address the needs of borrowers in areas in which households may be experiencing legacy effects of the financial crisis and are subject to negative equity.

In response to the contention that Fifth Third Bank fails to adequately market its credit services in majority-minority neighborhoods in the Toledo MSA, Fifth Third asserts that the loan application data cited by the commenter do not necessarily support that conclusion. Fifth Third also represents that Fifth Third Bank began an affirmative marketing strategy focusing on residential mortgage lending in majority-minority neighborhoods in 2018.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal financial supervisors, which in this case are the Reserve Bank for Fifth Third Bank and the OCC for MB Bank.[33] In addition, the Board considers information provided by the applicant and by public commenters.

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 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"),[35] in addition to small business, small farm, and community development loan data collected and reported under 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

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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 12 U.S.C. § 2801 *et seq*.

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. 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 availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[37]

The Board is concerned when publicly reported 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 the publicly reported data.[38] Consequently, the Board evaluates such data disparities in the context of other information regarding the lending record of the institution.

CRA Performance of Fifth Third Bank

Fifth Third Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the Reserve Bank, as of November 28, 2016 ("Fifth Third Bank Evaluation").[39] The bank received "Outstanding" ratings for the Lending Test and the Investment Test and a "High Satisfactory" rating for the Service Test.[40]

Examiners found that Fifth Third Bank originated a substantial majority of its loans inside its AAs and that the bank's overall lending activity reflected excellent responsiveness to the credit needs of its AAs. Examiners noted that the bank's small loans to businesses reflected excellent geographic penetration through the bank's AAs. In addition, examiners found the bank's distribution of product lines by income level of the borrower to be excellent and the bank's distribution of loans to businesses with different revenue sizes to be good. Examiners noted that the bank had a good record of serving the credit needs of low-income individuals and areas and of very small businesses. Examiners further noted

[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] 12 CFR 228.21 *et seq*.

[38] 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.

[39] The Fifth Third Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated from January 1, 2014, through June 30, 2016. The evaluation period for community development loans, investments, and services was January 1, 2014, through June 30, 2016.

[40] The Fifth Third Bank Evaluation included full-scope evaluations of the Chicago-Naperville-Elgin, Illinois-Indiana-Wisconsin Combined Statistical Area ("CSA"); Cincinnati, Ohio-Kentucky-Indiana MSA; Evansville, Indiana-Kentucky MSA; Huntington-Ashland, West Virginia-Kentucky-Ohio MSA; Louisville-Jefferson County, Kentucky-Indiana MSA; South Bend-Elkhart-Mishawaka, Indiana, Michigan CSA; Orlando-Deltona-Daytona Beach, Florida CSA; Tampa-St. Petersburg-Clearwater, Florida MSA; Atlanta-Sandy Springs-Roswell, Georgia MSA; Southern Illinois Non-MSA AA; Indianapolis-Carmel-Muncie, Indiana CSA; Southern Indiana Non-MSA AA; Lexington-Fayette, Kentucky MSA; Detroit-Warren-Ann Arbor CSA; Grand Rapids-Wyoming-Muskegon, Michigan CSA; St. Louis, Missouri MSA; Charlotte-Concord-Gastonia, North Carolina MSA; Cleveland-Akron-Canton, Ohio CSA; Columbus, Ohio MSA; Pittsburgh, Pennsylvania, MSA; Nashville-Davidson-Murfreesboro-Franklin, Tennessee, MSA; and Charleston, West Virginia MSA. Limited-scope evaluations were conducted in the bank's remaining AAs, including the Toledo MSA, an area of concern for two commenters.

that the bank was a leader in making community development loans and made extensive use of flexible lending practices in serving credit needs in its AAs.

In Ohio, Fifth Third Bank's performance under the Lending Test was rated "Outstanding." In the Toledo MSA, examiners found that the bank's lending performance was below Fifth Third Bank's performance for the state overall. However, examiners found the level of community development loans in the Toledo MSA to be good and noted a low level of lending gaps (*i.e.*, census tracts in which the bank had provided no loans) in the Toledo MSA.

With respect to the Investment Test, examiners found that Fifth Third Bank's level of qualified community development investments and grants was excellent, and the bank often was in a leadership role in providing community development investments and grants. Examiners found that a majority of Fifth Third Bank's qualified community development investments by amount and number supported affordable housing, and many of Fifth Third Bank's tax credit projects had either sustained or been the catalyst for neighborhood revitalization projects.

In Ohio, Fifth Third Bank's performance under the Investment Test was rated "Outstanding." In the Toledo MSA, examiners found the bank's investment performance to be below the bank's performance for the state overall. However, examiners noted that investment activity in the Toledo MSA was good, and the weaker performance primarily was due to a lower level of qualified investments and contributions relative to Fifth Third Bank's operational presence in the Toledo MSA.

With respect to the Service Test, examiners found that the bank's retail delivery systems were accessible to all geographies and individuals of different income levels and businesses of different revenue sizes within the bank's AAs. Examiners noted that the bank's record of opening and closing banking centers had not adversely affected the accessibility of the bank's delivery systems. Examiners found that the bank's banking services and hours did not vary in a way that inconvenienced any portion of the bank's AAs. Examiners also found that the bank was a leader in providing community development services.

In Ohio, Fifth Third Bank's performance under the Service Test was rated "High Satisfactory." In the Toledo MSA, examiners found that the bank's service performance was consistent with Fifth Third Bank's performance for the state overall. Examiners noted that retail services were good in the Toledo MSA and that the bank's stronger performance in the Toledo MSA relative to two other AAs in Ohio was primarily due to greater accessibility of delivery systems in lower-income geographies. Examiners found that the bank's level of qualified community development services was excellent in the Toledo MSA.

Fifth Third Bank's Efforts since the Fifth Third Bank Evaluation

Fifth Third states that, since the Fifth Third Bank Evaluation, Fifth Third Bank has continued to build upon its successful history of community engagement and lending under the CRA. Fifth Third represents that the bank recently created a position focused on small business lending and has hired bankers to focus on LMI markets. In addition, Fifth Third represents that the bank partnered with the National Development Council to offer a certification to community development housing professionals with the goal of accelerating the capacity and production of affordable housing developers. Fifth Third asserts that the bank has launched or expanded several financial education programs for students and adults. Fifth Third also asserts that the bank has made significant progress under its 2016 community benefits plan, which includes specific goals for mortgage lending, small business lending, and community development lending and investments.

CRA Performance of MB Bank

MB Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of January 17, 2017 ("MB Bank Evaluation").[41] The bank received "Outstanding" ratings for the Lending Test and the Investment Test and a "High Satisfactory" rating for the Service Test.[42]

Examiners found that MB Bank's overall lending activity reflected excellent responsiveness to the credit needs of the bank's AAs. Examiners noted that the bank's community development loans were effective in helping the bank address AA credit needs. In the Chicago MD MMSA, the bank's largest AA, examiners found that the geographic penetration of the bank's loans throughout the AA was excellent.

Examiners found that the bank had an overall excellent level of qualified community development investments that were responsive to AA needs. Examiners found that bank branches were reasonably accessible to people and geographies of different income levels. In the Chicago MD MMSA, examiners found that MB Bank had invested in affordable housing for and provided community services to LMI individuals and invested in stabilization and revitalization efforts for LMI geographies. Examiners also noted that community development services were effective in addressing and responsive to AA needs.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the Reserve Bank regarding Fifth Third Bank's CRA and fair lending records and with the Reserve Bank and CFPB regarding the bank's consumer compliance record. The Board also consulted with the OCC regarding MB Bank's CRA and fair lending records and with the OCC and CFPB regarding MB Bank's consumer compliance record. The Board has considered the results of the most recent CRA and consumer compliance examinations of Fifth Third Bank and MB Bank, which included a review of the banks' compliance risk-management programs and compliance with consumer protection laws and regulations.

The Board has taken the foregoing consultations and examinations into account in evaluating the proposal, including in considering whether Fifth Third has the experience and resources to ensure that Fifth Third Bank helps to meet the credit needs of the communities to be served following consummation of the proposed transaction.

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. Fifth Third represents that, as a result of the transaction, MB Bank customers would benefit from Fifth Third Bank's broader payments, wealth and asset management, capital markets, retail and commercial banking services, as well as the bank's technological capabilities and ability to make larger credit commitments. In addition, Fifth Third Bank customers would gain access to certain products and services offered by MB Bank, including small ticket leasing and prepaid card products. Fifth Third

[41] The MB Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated between January 1, 2013, and December 31, 2015. The evaluation period for community development loans, investments, and services was August 13, 2013, through December 31, 2016.

[42] The MB Bank Evaluation included full-scope evaluations of the Chicago-Naperville-Arlington Heights Metropolitan Division Multistate Metropolitan Statistical Area ("Chicago MD MMSA"); the LaSalle County, Illinois, Non-MSA AA; and the Philadelphia, Pennsylvania, MD AA. Limited-scope evaluations were performed in the Lake County, Illinois-Kenosha County, Wisconsin MD AA; the Gary, Indiana MD AA; and the Elgin, Illinois MD AA. MB Bank no longer operates in Pennsylvania.

Bank represents that it does not expect to discontinue any products or services following consummation of the transaction. Further, Fifth Third represents that customers of both banks would have access to an expanded network of branches and ATMs as a result of the transaction.

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; supervisory views of the Reserve Bank, OCC and CFPB; confidential supervisory information; information provided by Fifth Third: 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 determines that the convenience and needs factor is consistent with approval.

Financial Stability

Section 3 of the BHC Act and the Bank Merger Act require the Board to consider a proposal's "risks to the stability of the United States banking or financial system."[43]

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.[44] 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.[45]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. Fifth Third and MB Financial both offer a range of retail, commercial, and wealth management banking products and services. Fifth Third has, and as a result of the proposal would continue to have, small-to-moderate market shares in these products and services on a nationwide basis. Following the transaction, substitute providers would be readily available for the critical financial services provided by the combined organization, and the acquisition would not materially heighten the organization's interconnectedness with other firms or markets within the United States banking or financial system. The acquisition would not have meaningful effects on the cross-border activities of the acquirer or lead to changes in the institution's organizational structure, complexity, or unique characteristics that would complicate its resolution.

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[43] 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

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

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

In light of all the facts and circumstances, this transaction would not 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

Fifth Third Bank has applied under section 9 of the FRA to establish branches at the current main office and branches of MB Bank.[46] The Board has assessed the factors it is required to consider when reviewing an application under that section, including Fifth Third Bank's financial condition, management, capital, actions in helping to meet the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.[47] For the reasons discussed in this order, the Board determines that those factors 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. 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 Fifth Third 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 by the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective March 6, 2019.

Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governor Bowman; Governor Brainard abstained.

Margaret McCloskey Shanks
Deputy Secretary of the Board

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[46] 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may retain any branch following a merger that, under state law, may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12U.S.C. §36(b)(2) and (c). In addition, under section44 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. §1831u(d). Upon consummation, all of Fifth Third Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/21.4 (2018); Ind. Code Ann. § 28-2-13-19 (2018).

[47] *See* 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposal, Fifth Third Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

Appendix

Branches to Be Established by Fifth Third Bank

Illinois Branches

1. 388 South Main Street, Bartlett, Illinois 60103
2. 1500 Roosevelt Road, Broadview, Illinois 60155
3. 5750 West 87th Street, Burbank, Illinois 60459
4. 925 Burnham Avenue, Calumet City, Illinois 60409
5. One East Wacker Drive, Chicago, Illinois 60601
6. 2 South Lasalle Street, Chicago, Illinois 60603
7. One South Wacker Drive, Chicago, Illinois 60606
8. 932 W. Randolph Street, Chicago, Illinois 60607
9. 800 West Madison Street, Chicago, Illinois 60607
10. 1618 W. 18th Street, Chicago, Illinois 60608
11. 4644 South Bishop Street, Chicago, Illinois 60609
12. 363 West Ontario Street, Chicago, Illinois 60610
13. 33 W Huron, Chicago, Illinois 60610
14. 3604 North Southport Avenue, Chicago, Illinois 60613
15. 3959 North Lincoln Avenue, Chicago, Illinois 60613
16. 2401 North Halsted Street, Chicago, Illinois 60614
17. 3030 East 92nd Street, Chicago, Illinois 60617
18. 3940 North Damen Avenue, Chicago, Illinois 60618
19. 2973 N. Milwaukee Ave, Chicago, Illinois 60618
20. 820 North Western Avenue, Chicago, Illinois 60622
21. 936 North Western Avenue, Chicago, Illinois 60622
22. 1554 West North Avenue, Chicago, Illinois 60622
23. 1624 West Division Street, Chicago, Illinois 60622
24. 2420 West Lawrence Avenue, Chicago, Illinois 60625
25. 4800 North Western Avenue, Chicago, Illinois 60625
26. 8300 West Belmont Avenue, Chicago, Illinois 60634
27. 6422 West Archer Avenue, Chicago, Illinois 60638
28. 5670 North Milwaukee Avenue, Chicago, Illinois 60646
29. 2004 North Western Avenue, Chicago, Illinois 60647
30. 3179 North Clark Street, Chicago, Illinois 60657
31. 5918 N. Broadway, Chicago, Illinois 60660
32. 600 W. Plainfield Road, Countryside, Illinois 60525
33. 550 East Sibley Boulevard, Dolton, Illinois 60419
34. 14121 Chicago Street, Dolton, Illinois 60419
35. 450 East Higgins Road, Elk Grove Village, Illinois 60007
36. 356 Park Avenue, Glencoe, Illinois 60022
37. 2823 B Pfingsten Road, Glenview, Illinois 60026
38. 18301 South Halsted, Glenwood, Illinois 60425
39. 2345 West 183rd Street, Homewood, Illinois 60430
40. 401 North La Grange Road, La Grange Park, Illinois 60526
41. 1151 State Street, Lemont, Illinois 60439
42. 4010 West Touhy Ave, Lincolnwood, Illinois 60712
43. 6401 North Lincoln Avenue, Lincolnwood, Illinois 60712
44. 9147 Waukegan Road, Morton Grove, Illinois 60053
45. 6201 Dempster Street, Morton Grove, Illinois 60053
46. 15 East Prospect Avenue, Mount Prospect, Illinois 60056
47. 7557 Oakton St, Niles, Illinois 60714
48. 7557 West Oakton Street, Niles, Illinois 60714
49. 7222 West Cermak Road, North Riverside, Illinois 60546

50. 1090 Willow Road, Northbrook, Illinois 60062
51. 15533 Cicero Avenue, Oak Forest, Illinois 60452
52. 9701 South Cicero Avenue, Oak Lawn, Illinois 60453
53. 9101 West 159th Street, Orland Hills, Illinois 60477
54. 700 West Euclid Avenue, Palatine, Illinois 60067
55. 7727 Lake Street, River Forest, Illinois 60305
56. 6111 North River Road, Rosemont, Illinois 60018
57. 1199 East Higgins Road, Schaumburg, Illinois 60173
58. 4356 Oakton Street, Skokie, Illinois 60076
59. 4400 Oakton Street, Skokie, Illinois 60076
60. 4801 W Golf Rd, Skokie, Illinois 60077
61. 100 West Higgins Road, South Barrington, Illinois 60010
62. 16145 South State Street, South Holland, Illinois 60473
63. 475 East 162nd Street, South Holland, Illinois 60473
64. 18299 S Harlem Ave, Tinley Park, Illinois 60477
65. 16039 S Harlem Ave, Tinley Park, Illinois 60477
66. 16700 South Harlem Avenue, Tinley Park, Illinois 60477
67. 9561 W. 171st Street, Tinley Park, Illinois 60487
68. 125 McHenry Road, Wheeling, Illinois 60090
69. 777 West Army Trail Road, Addison, Illinois 60101
70. 2992 Indian Trail Road, Aurora, Illinois 60502
71. 1230 Mark Street, Bensenville, Illinois 60106
72. 485 West Army Trail Road, Bloomingdale, Illinois 60108
73. 7000 S County Line Road, Burr Ridge, Illinois 60527
74. 8300 South Madison, Burr Ridge, Illinois 60527
75. 2401 75th Street, Darien, Illinois 60561
76. 990 North York Road, Elmhurst, Illinois 60126
77. One Yorktown, Lombard, Illinois 60148
78. 1145 South Main Street, Lombard, Illinois 60148
79. 1400 16th Street, Oak Brook, Illinois 60523
80. 4685 Winfield, Warrenville, Illinois 60555
81. 212 South West Street, Wheaton, Illinois 60187
82. 700 West Fabyan, Batavia, Illinois 60510
83. 2607 Lincoln Highway, Saint Charles, Illinois 60175
84. 581 Elm Place, Suite 110, Highland Park, Illinois 60035
85. 459 South Rand Road, Lake Zurich, Illinois 60047
86. 3196 West Route 60, Mundelein, Illinois 60060
87. 1620 North Milwaukee Avenue, Vernon Hills, Illinois 60061
88. 455 South Weber Road, Bolingbrook, Illinois 60490
89. 1100 East Exchange Avenue, Crete, Illinois 60417
90. 20825 S. Lagrange Rd., Frankfort, Illinois 60423
91. 13900 South Bell Road, Homer Glen, Illinois 60491

Indiana Branch

92. 1218 Sheffield Avenue, Dyer, Indiana 46311

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Legal Developments: Second Quarter, 2019

Orders Issued Under Bank Holding Company Act

Order Issued Under Section 3 of the Bank Holding Company Act

Ameris Bancorp
Moultrie, Georgia

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2019-08 (June 10, 2019)

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 Fidelity Southern Corporation ("FSC") and thereby indirectly acquire FSC's state nonmember bank subsidiary, Fidelity Bank, both of Atlanta, Georgia. Fidelity Bank would be merged into Ameris's state nonmember bank subsidiary, Ameris Bank, Moultrie, Georgia.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 *Federal Register* 3445 (February 12, 2019)).[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 \$11.7 billion, is the 136th largest insured depository organization in the United States. Ameris controls approximately \$9.6 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 8th largest insured depository organization in Georgia, controlling deposits of approximately \$5.3 billion, which represent 2.1 percent of the total deposits of insured depository institutions in that state.[6] Ameris is the 30th largest insured depository organization in Florida, controlling deposits of approximately \$2.6 billion, which represent 0.5 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 Fidelity Bank into Ameris Bank was approved by the Federal Deposit Insurance Corporation ("FDIC") on May 6, 2019, 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 data are as of March 31, 2019, and national deposit data are as of December 31, 2018, unless otherwise noted.

6 State deposit data are as of June 30, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

FSC, with consolidated assets of approximately $4.8 billion, is the 234th largest insured depository organization in the United States. FSC 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. FSC controls Fidelity Bank, which operates in Georgia and Florida. FSC is the 15th largest insured depository organization in Georgia, controlling deposits of approximately $3.3 billion, which represent 1.3 percent of the total deposits of insured depository institutions in that state. FSC is the 54th largest insured depository organization in Florida, controlling deposits of approximately $0.8 billion, 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 104th largest insured depository organization in the United States, with consolidated assets of approximately $16.5 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Ameris would control total consolidated deposits of approximately $13.6 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 6th largest insured depository organization, controlling deposits of approximately $8.6 billion, which represent 3.4 percent of the total deposits of insured depository institutions in the state. In Florida, Ameris would become the 26th largest insured depository organization, controlling deposits of approximately $3.5 billion, which represent 0.6 percent of total deposits of insured depository institutions in the state.

Interstate 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 that is well capitalized and well managed 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 would be prohibited under state law.[7] Section 3(d) also provides that the Board (1) 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] (2) must take into account the record of the applicant under the Community Reinvestment Act of 1977 ("CRA")[9] and the applicant's record of compliance with applicable state community reinvestment laws;[10] and (3) may not approve an application pursuant to section 3(d) if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States[11] or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[12]

[7] 12 U.S.C. § 1842(d)(1)(A). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of each company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. *See* 12 U.S.C. § 1841(o)(4)(C).

[8] 12 U.S.C. § 1842(d)(1)(B).

[9] 12 U.S.C. § 2901 *et seq*.

[10] 12 U.S.C. § 1842(d)(3).

[11] 12 U.S.C. § 1842(d)(2)(A).

[12] 12 U.S.C. § 1842(d)(2)(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* 12U.S.C.§1841(o)(4)-(7).

For purposes of the BHC Act, the home state of Ameris is Georgia, and Fidelity Bank is located in Florida and Georgia. Ameris is well capitalized and well managed under applicable law. Fidelity Bank has been in existence for more than five years, and Ameris Bank has a "Satisfactory" rating under the CRA.

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. Florida does not impose a limit on the total amount of in-state deposits that a single banking organization may control. Georgia imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[13] In Georgia, the combined organization would control less than 30 percent of the total amount of in-state deposits. The Board has considered all other requirements under section 3(d) of the BHC Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by section 3(d) from approving the proposal.

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]

Ameris Bank and Fidelity Bank compete directly in the Atlanta Area, Georgia, banking market ("Atlanta market"); the Jacksonville Area, Florida, banking market ("Jacksonville market"); the Saint Augustine Area, Florida, banking market ("St. Augustine market"); and the Tallahassee Area, Florida, banking market ("Tallahassee market").[16] The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits in insured depository institutions in each market ("market deposits") that Ameris would control;[17] 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");[18] the number of competitors that would remain in each market; and other characteristics of each market.

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[13] Ga. Code § 7-1-628.3(a).

[14] 12 U.S.C. § 1842(c)(1)(A).

[15] 12 U.S.C. § 1842(c)(1)(B).

[16] 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. 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 St. Augustine market is defined as St. Johns County, Florida (minus the towns of Fruit Cover, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, Switzerland, and Hastings). The Tallahassee market is defined as Gadsden, Jefferson, Leon, and Wakulla counties, Florida.

[17] Local deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group,* 75 *Federal Reserve Bulletin* 386 (1989); and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[18] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concen-

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Atlanta, Jacksonville, St. Augustine, and Tallahassee 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.[19] The Atlanta, St. Augustine, and Tallahassee markets would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in the Atlanta market would be small, and numerous competitors would remain in the market.[20] The change in the HHI in the St. Augustine market would be less than 200 points, and 12 competitors would remain in the St. Augustine market.[21] The HHI in the Tallahassee market would remain unchanged, and 17 competitors would remain in the market.[22]

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 determines that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Atlanta, Jacksonville, St. Augustine, or Tallahassee markets or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

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trated 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 https://www.justice.gov/opa/pr/2010/August/10-at-938.html.

[19] Ameris operates the 6th largest depository institution in the Jacksonville market, controlling approximately $1.1 billion in deposits, which represent 2.2 percent of market deposits. FSC operates the 14th largest depository institution in the same market, controlling deposits of approximately $318.7 million, which represent approximately 0.6 percent of market deposits. On consummation of the proposed transaction, Ameris would remain the 6th largest depository organization in the market, controlling deposits of approximately $1.4 billion, which represent approximately 2.8 percent of market deposits. The HHI for the Jacksonville market would increase by 3 points to 2709, and 33 competitors would remain in the market.

[20] Ameris operates the 18th largest depository institution in the Atlanta market, controlling approximately $1.3 billion in deposits, which represent 0.8 percent of market deposits. FSC operates the 10th largest depository institution in the same market, controlling deposits of approximately $3.2 billion, which represent approximately 1.9 percent of market deposits. On consummation of the proposed transaction, Ameris would become the 7th largest depository organization in the market, controlling deposits of approximately $4.5 billion, which represent approximately 2.7 percent of market deposits. The HHI for the Atlanta market would increase by 3 points to 1551, and 79 competitors would remain in the market.

[21] Ameris operates the 4th largest depository institution in the St. Augustine market, controlling approximately $288.2 million in deposits, which represent 14.0 percent of market deposits. FSC operates the 6th largest depository institution in the same market, controlling deposits of approximately $133.7 million, which represent 6.5 percent of market deposits. On consummation of the proposal, Ameris would become the largest depository institution in the market, controlling deposits of approximately $421.9 million, which represent 20.4 percent of market deposits. The HHI for the St. Augustine market would increase by 181 points to 1455.

[22] Ameris operates the 13th largest depository institution in the Tallahassee market, controlling approximately $125.0 million in deposits, which represent 1.6 percent of market deposits. FSC operates the 17th largest depository institution in the same market, controlling approximately $11.6 million in deposits, which represent 0.2 percent of market deposits. On consummation of the proposal, Ameris would remain the 13th largest depository institution, controlling $136.6 million in deposits, which represent 1.7 percent of market deposits. The HHI for the Tallahassee market would remain 1036.

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.[23] 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, FSC, and their subsidiary depository institutions 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 primarily as a stock exchange, with a subsequent merger of the subsidiary depository institutions.[24] The asset quality, earnings, and liquidity of both Ameris Bank and Fidelity 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, FSC, 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.

Ameris, FSC, 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

[23] 12 U.S.C. § 1842(c)(2), (5), and (6).

[24] As part of the proposed transaction, each share of FSC's common stock would be converted into the right to receive 0.8 shares of Ameris common stock together with cash in lieu of any fractional shares. Ameris has the financial resources to effect the proposed transaction.

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 plans to integrate FSC's existing management and personnel in a manner that augments Ameris's management.[25]

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 determines 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 FSC 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.[26] In its evaluation, 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 these communities. 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,[27] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[28]

In addition, 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 public comments on the proposal. The Board also may consider the 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 Ameris Bank and Fidelity 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.

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25 On consummation, the number of directors on Ameris's board of directors would increase by five, and five individuals currently serving on the board of directors of FSC would join the board of Ameris. Corresponding changes would be made to the board of directors of Ameris Bank. In addition, the current chairman and chief executive officer ("CEO") of FSC would become the executive chairman of Ameris and Ameris Bank, and the current president of FSC and CEO of Fidelity Bank would become the president of Ameris and the CEO of Ameris Bank.

26 12 U.S.C. § 1842(c)(2).

27 12 U.S.C. § 2901(b).

28 12 U.S.C. § 2903.

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 in the rate of denials for home mortgage applications from, African Americans and Hispanics as compared to whites in Atlanta, Georgia, based on 2017 data that Ameris reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").[29] The commenter also alleged, based on 2016 and 2017 HMDA data, disparities in the number of home improvement loans Ameris Bank made to African Americans and Latinos as compared to whites in Jacksonville, Florida.[30]

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.

Fidelity Bank offers a variety of consumer and business loan and deposit products, as well as related wealth management services, through its branches in Georgia and Florida. Fidelity Bank's products and services include real estate loans, auto loans, home equity lines of credit, business loans, and checking and savings 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.

With respect to the commenter's allegations about Ameris Bank's disparate home mortgage lending practices in Atlanta, Ameris argues that its distribution of mortgage loans among African Americans and Latinos in Atlanta is generally comparable to the population demographics. Ameris also asserts that it is among the top 10 percent of lenders originating mortgages to African Americans in Atlanta. In addition, with respect to the commenter's allegations about Ameris Bank's disparate home improvement lending practices in Jacksonville, Ameris asserts that Ameris Bank does not actively market home improvement loans and receives only a small number of applications in Jacksonville.

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[29] 12 U.S.C. § 2801 *et seq*. This commenter made similar allegations based on 2016 HMDA data, and those allegations previously were considered by the Board in connection with its May 9, 2018, approval of Ameris's application to acquire Atlantic Coast Financial Corporation and its June 13, 2018, approval of Ameris's application to acquire Hamilton State Bancshares, Inc. *See Ameris Bancorp*, FRB Order No. 2018-12 at 11 (May 9, 2018); *Ameris Bancorp*, FRB Order No. 2018-14 at 8 (June 13, 2018).

[30] The commenter also alleged that Ameris has engaged in predatory collection of overdraft fees and expressed concern over Ameris's allegedly conflicting statements regarding the intended location of its headquarters. The allegation regarding Ameris's overdraft fee collection practices also previously was considered by the Board in its May 9, 2018, approval of Ameris's application to acquire Atlantic Coast Financial Corporation and its June 13, 2018, approval of Ameris's application to acquire Hamilton State Bancshares, Inc. *See Ameris Bancorp*, FRB Order No. 2018-12 at 11 (May 9, 2018); *Ameris Bancorp*, FRB Order No. 2018-14 at 8 (June 13, 2018). The statements about the location of Ameris's headquarters are outside of the statutory factors that the Board is authorized to consider when reviewing an application or notice under section 3 of the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and the supervisory views of the relevant federal supervisor, which in this case is the FDIC with respect to both institutions.[31] In addition, the Board considers information provided by the applicant and by public commenters.

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 ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") to evaluate the performance of large insured depository institutions, such as Ameris Bank and Fidelity 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 the 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;[33] (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.[34] The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.[35]

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

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31 *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48,506, 48,548 (July 25, 2016).

32 12 U.S.C. § 2906.

33 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).

34 *See* 12 CFR 228.22(b).

35 *See* 12 CFR 228.21 *et seq*.

information critical to an institution's credit decisions is not available from HMDA data.[36] Consequently, the Board evaluates such data disparities 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").[37] The bank received "High Satisfactory" ratings for the Lending Test and the Service Test and a "Low Satisfactory" rating for the Investment Test.[38]

Examiners found that the bank's lending levels reflected good responsiveness to the needs of the bank's AAs 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 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 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 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 the delivery systems of Ameris Bank 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 the bank's 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

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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 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; 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.

[38] The Ameris Bank Evaluation reviewed the bank's activities in each of its 22 AAs throughout Georgia, Florida, Alabama, and South Carolina.

reported a significant volume of loans to first-time homebuyers in 2018. Ameris also represents that Ameris Bank participates in federal loan programs tailored to assist LMI individuals and first-time homebuyers.

CRA Performance of Fidelity Bank

Fidelity Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of May 27, 2015 ("Fidelity Bank Evaluation").[39] The bank received "Low Satisfactory" ratings for the Lending Test and Investment Test and a "High Satisfactory" rating for the Service Test.[40]

Examiners concluded that Fidelity Bank's lending performance reflected adequate responsiveness to the credit needs in the bank's AAs but that a small percentage of the loans were originated in the bank's AAs. Examiners found that the geographic distribution of the bank's home mortgage and consumer loans reflected a poor dispersion throughout the bank's AAs but found that the geographic distribution of the bank's small business loans reflected an adequate dispersion throughout the bank's AAs. Examiners determined that the bank's borrower profile revealed poor penetration among home mortgage customers of different income levels and businesses of different sizes but adequate penetration of consumer loans among certain borrowers of different income levels. Examiners noted that the bank had an adequate level of qualified community development investments and that the bank showed 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 and a fair lending review of the bank's residential lending.

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

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 Fidelity Bank would benefit from the technical expertise and resources that Ameris Bank has developed. Ameris further represents that Ameris

[39] The Fidelity Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage, small business, and consumer loans from January 1, 2013, through December 31, 2014.

[40] Examiners conducted full-scope reviews of the bank's AAs in Georgia and Florida and the Atlanta Metropolitan Statistical Area ("MSA") AA, as well as a limited-scope review in the Jacksonville MSA AA. Due to Fidelity Bank's limited activity and time operating in the bank's four other AAs, the Fidelity Bank Evaluation did not include evaluations of the Georgia Non-MSA AA, Gainesville, Florida MSA AA, Deltona-Daytona Beach-Ormond Beach, Florida MSA AA, and Orlando-Kissimmee-Sanford, Florida MSA AA.

Bank would provide a substantially similar suite of retail and commercial banking services and products as those provided by Fidelity Bank. In addition, Ameris asserts that Ameris Bank would provide Fidelity Bank customers access to products and services through a branch network and loan production offices spanning a much larger footprint, as well as enhanced online and mobile banking platforms and access to treasury services. Ameris contends that Ameris Bank would strive to maintain a strong working relationship with city and county governments in the former Fidelity 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 indicates 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 fair lending and other 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 determines that the convenience and needs factor is consistent with approval.

Financial Stability

Section 3 of the BHC Act requires 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."[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 on the broader economy.[43]

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,

41 12 U.S.C. § 1842(c)(7).

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 2012-2 (February 14, 2012).

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 total assets and a pro forma organization of less than $100 billion in total assets. Both the acquirer and the target are predominantly engaged in retail 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.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.[46] 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

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44 *See People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

45 Ameris and FSC 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.

46 The commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any proposal unless the appropriate supervisory authorities for the acquiring bank or bank to be acquired make a timely written recommendation of disapproval of the application. 12U.S.C. §1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also, 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 the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

In addition, the commenter requested an extension of the comment period for the proposal. The Board's rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter's request for additional time to comment does not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board determines not to extend the comment period.

deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective June 10, 2019.

Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Brainard and Bowman.

Michele Taylor Fennell
Assistant Secretary of the Board

Order Issued Under Section 4 of the Bank Holding Company Act, the Bank Merger Act, and the Federal Reserve Act

Texas Independent Bancshares, Inc.
Texas City, Texas

Order Approving the Acquisition of a Savings and Loan Holding Company, the Acquisition of a Federal Savings Bank, the Merger of Depository Institutions, and the Establishment of Branches
FRB Order No. 2019-10 (June 27, 2019)

Texas Independent Bancshares, Inc. ("TIB"), Texas City, 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 sections 4(c)(8) and 4(j) of the BHC Act[2] to acquire Preferred Bancshares, Inc. ("Preferred"), Houston, Texas, a savings and loan holding company, and thereby indirectly acquire Preferred Bank, Houston, Texas, a federal savings bank. Following the proposed acquisition, Preferred would be merged into TIB.[3]

In addition, TIB's subsidiary state member bank, Texas First Bank, Texas City, Texas, has requested the Board's approval to merge with Preferred Bank, pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"),[4] with Texas First Bank as the surviving entity. Texas First Bank also has applied under section 9 of the Federal Reserve Act ("FRA")[5] to establish and operate branches at the main office and branches of Preferred Bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (84 *Federal Register* 11789 (March 28, 2019)) and has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[6] The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in 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.

TIB, with consolidated assets of approximately $1.1 billion, is the 703rd largest insured depository organization in the United States. TIB controls approximately $966.9 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] TIB controls Texas First Bank, which operates solely in Texas. Texas First Bank is the 73rd largest insured depository organization in Texas, controlling deposits of approximately $948.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8]

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. §§ 1843(c)(8) and (j).

3 TIB has formed a merger subsidiary that would merge with Preferred, with Preferred as the surviving entity. Preferred would then merge into TIB.

4 12 U.S.C. § 1828(c).

5 12 U.S.C. § 321; *see* 12 CFR 208.6. These locations are listed in the Appendix.

6 12 CFR 262.3(b).

7 Consolidated asset data are as of December 31, 2018. Nationwide asset ranking and deposit data are as of December 31, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

8 State asset ranking and deposit data are as of June 30, 2018, unless otherwise noted.

Preferred, with consolidated assets of approximately $282.3 million, is the 2,359th largest insured depository organization in the United States, controlling approximately $237.9 million in deposits. Preferred controls Preferred Bank, which operates solely in Texas. Preferred Bank is the 205th largest insured depository institution in Texas, controlling deposits of approximately $251.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, TIB would become the 577th largest insured depository organization in the United States, with consolidated assets of approximately $1.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. TIB would control total 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 Texas, TIB would become the 60th largest depository organization, controlling deposits of approximately $1.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions.

Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[9] The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4(c)(8) of the BHC Act.[10] TIB has committed that all of the activities of Preferred and its subsidiaries would 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 Preferred Bank "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[11] As part of its evaluation, the Board reviews the financial and managerial resources and the future prospects of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the proposal.[12] The Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[13]

In addition, in every case under the Bank Merger Act, the Board must take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the competitive effects of the proposal in the relevant markets, the convenience and needs of the communities to be served, the institutions' records of compliance with anti-money-laundering laws, and the risk of the proposal to the stability of the United States banking or financial system.[14]

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

10 12 CFR 225.28(b)(4)(ii).

11 12 U.S.C. § 1843(j)(2)(A).

12 *See* 12 CFR 225.26; *see, e.g., 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* C183 (2006).

13 12 U.S.C. § 2901 *et seq*.

14 The proposal does not raise interstate issues under section 4(c)(8) of the BHC Act because Texas is the home state of TIB and is where Preferred Bank's home office is located. *See* 12 U.S.C. § 1843(i)(8).

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[15] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.[16] In addition, 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 record.[17]

TIB and Preferred compete directly in the Houston, Texas, banking market.[18] The Board has considered the competitive effects of the proposal in this banking market in light of the facts of record. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits of insured depository institutions in the market ("market deposits") that TIB would control;[19] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[20] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Houston, Texas, banking market. On consummation of the proposal, the Houston, Texas, banking market would remain highly concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The HHI in this market would decrease slightly, and numerous competitors would remain in the market.[21]

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15 12 U.S.C. § 1828(c)(5)(A).

16 12 U.S.C. § 1828(c)(5)(B).

17 12 U.S.C. § 1843(j)(2)(A).

18 The Houston, Texas, banking market is defined as Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller counties, all in Texas.

19 Local deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent.

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

21 TIB operates the 24th largest depository institution in the Houston, Texas, banking market, controlling approximately $904.6 million in deposits, which represent less than 1 percent of market deposits. For purposes of the HHI analysis, Preferred operates the 62nd largest depository institution in the same market and is treated as controlling approximately $125.6 million in deposits (*i.e.,* actual deposits weighted at 50 percent), which represent less than 1 percent of market deposits. On consummation of the proposed transaction, TIB would become the 23rd largest depository institution in the Houston, Texas, banking market, controlling deposits of approximately $1.2 billion, which represent less than 1 percent of market deposits. The HHI for the Houston, Texas, banking market would decrease by 2 points to 2148, and 91 competitors would remain in the market. For purposes of the competitive analysis, once a savings association is acquired by a bank holding company, the Board weights the deposits controlled by the savings association at 100 percent, similar to a commercial bank.

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 have a significantly adverse effect on competition in any relevant banking market, including the Houston, Texas, 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 Houston, Texas, 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 proposals under the Bank Merger Act and section 4 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[22] 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.

TIB and Preferred are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.[23] The asset quality, earnings, and liquidity of TIB and Preferred are consistent with approval, and TIB 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 TIB, Preferred, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by TIB, the Board's supervisory experiences with TIB and Preferred and those of other relevant bank supervisory agencies with the organizations,

[22] 12 U.S.C. §§ 1843(j)(4); 1828(c)(5) and (11).

[23] To effect the holding company merger, a wholly owned subsidiary of TIB formed to facilitate the transaction would merge with Preferred, with Preferred as the surviving entity ("First-Step Merger"). At the effective time of the First-Step Merger, the shareholders of Preferred would receive a cash payment for their stock. Immediately thereafter, Preferred would merge with TIB, with TIB as the surviving entity. Preferred Bank would then merge with and into Texas First Bank, with Texas First Bank as the surviving entity. TIB has the financial resources to effect the proposed transaction.

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

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

The Board also has considered TIB's plans for implementing the proposal. TIB 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. TIB would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, TIB's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and TIB plans to integrate Preferred's existing management and personnel in a manner that augments TIB's management.[24]

Based on all the facts of record, including TIB's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines 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 TIB and Preferred in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served.[25] In addition, 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.[26] 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, and 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,[27] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[28]

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other charac-

[24] On consummation, two individuals currently serving as senior management officials of Preferred and Preferred Bank would become senior management officials of TIB and Texas First Bank.

[25] 12 U.S.C. § 1828(c)(5)(B).

[26] 12 U.S.C. § 1843(j)(2).

[27] 12 U.S.C. § 2901(b).

[28] 12 U.S.C. § 2903.

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Texas First Bank and Preferred Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Dallas ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC"); confidential supervisory information; information provided by TIB; and the public comment received on the proposal.

Public Comment on the Proposal

One commenter objected to the proposal, alleging that Texas First Bank discriminates against African Americans and "redlines" African American neighborhoods in Houston, Texas.[29] Specifically, the commenter alleged that Texas First Bank has denied African American individuals and African American-owned businesses equal access to capital and credit by heavily concentrating its branches in predominantly white neighborhoods and its banking services to white individuals and white-owned businesses in Houston. The commenter also alleged that Texas First Bank disfavors certain African American neighborhoods in Houston with respect to its lending, marketing, and community development activities and in other respects.

Businesses of the Involved Institutions and Response to Comments

Texas First Bank is a regional banking franchise headquartered in Texas City, Texas. It is a full-service bank that offers a wide range of financial services, with a focus on loans and deposit services to small- and middle-market commercial businesses. Texas First Bank's lending portfolio primarily consists of small business, commercial real estate, commercial and industrial, and one-to-four family residential real estate loans, with a limited residential mortgage and consumer loan portfolio. Preferred Bank, a federal savings bank with five branches in Texas, offers a full range of loans and deposit services to its customers, with a focus on residential real estate lending.

TIB disputes the commenter's allegations and asserts that approval of the proposed transaction is warranted based on the banks' CRA performance evaluations and Texas First Bank's lending activities and responsiveness to community development needs in Houston. TIB asserts that Texas First Bank has consistently met the requirements of the CRA and is committed to continuing to meet the goals of the CRA after consummation of the transaction. TIB notes that as part of Texas First Bank's CRA performance evaluation, examiners found that the bank's efforts to meet the credit needs of LMI communities were satisfactory.

[29] Redlining is the practice of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which a credit seeker resides or will reside or in which a property to be mortgaged is located. *See* Interagency Fair Lending Examination Procedures (August 2009), available at https://www.ffiec.gov/pdf/fairlend.pdf.

The commenter also criticized Texas First Bank's activities and operations in Dallas, Texas, an area in which the bank does not have operations.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers the institutions' most recent CRA evaluation, as well as other information and supervisory views from the appropriate federal supervisors, which in this case are the Reserve Bank and the OCC.[30] In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[31] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test") and a community development test ("Community Development Test") to evaluate the performance of an intermediate small bank, such as Texas First 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 ("HMDA"),[32] 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 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;[33] (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.[34] The Community Development Test evaluates the number and amounts of an institution's community development loans and qualified investments; the extent to which the institution provides community development services; and the institution's responsiveness to community development lending, investment, and service needs.[35] Small banks, such as Preferred Bank, are subject to the Lending Test only.

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

31 12 U.S.C. § 2906.

32 12 U.S.C. § 2801 *et seq*.

33 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).

34 *See* 12 CFR 228.22(b).

35 12 CFR 228.26(c).

CRA Performance of Texas First Bank

The Reserve Bank assigned Texas First Bank an overall rating of "Satisfactory" at its most recent CRA performance evaluation, as of July 11, 2016 ("Texas First Bank Evaluation").[36] The bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test.[37]

Examiners found that Texas First Bank made a substantial majority of its home mortgage loans and small business loans in its two AAs. Examiners determined that the bank had a reasonable penetration of loans among borrowers of different income levels and that the distribution of HMDA loans to LMI borrowers was reasonable, given the high levels of competition, housing costs, and income in the AAs. Examiners found that the bank had a reasonable penetration of lending to businesses of different sizes, especially given the local competition. Examiners further found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout the bank's AAs. Examiners noted that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and the credit needs of its AA. Examiners concluded that the bank did a reasonable job of meeting the small business needs of its AAs.

Examiners found that that Texas First Bank's performance under the Community Development Test demonstrated excellent responsiveness to the community development needs of its AAs, considering the capacity, loan demand, and available lending opportunities in those areas.

In the Texas City AA, an area of concern to the commenter, examiners found that the geographic distribution of Texas First Bank's loans reflected a reasonable distribution throughout the AA. Examiners determined that the distribution of Texas First Bank's loans among LMI geographies reflected reasonable dispersion throughout the Texas City AA. Overall, examiners found that the distribution of Texas First Bank's borrowers within the Texas City AA reflected reasonable penetration among individuals of different income levels and businesses of different sizes.

Examiners determined that Texas First Bank demonstrated excellent responsiveness to the community development needs of the Texas City AA through qualified investments and social services targeted to LMI individuals in the community. Examiners noted that the bank provided community development services through its branches, 40 percent of which were located in LMI areas.

Texas First Bank's Activities Since the Texas First Bank Evaluation

TIB represents that Texas First Bank continues to build upon its strong CRA performance. TIB represents that Texas First Bank has originated a majority of its home mortgage and small business loans within its AAs. TIB notes that the bank increased its loan-to-deposit ratio to almost 65 percent as of March 31, 2019, with a quarterly average of around

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[36] The Texas First Bank Evaluation was conducted using the CRA Intermediate Small Bank Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and commercial loans, giving greater weight to the commercial lending portfolio because it represented the largest volume of the bank's lending efforts. Examiners reviewed HMDA lending data reported by the institution for the period January 1, 2013, through December 31, 2015. Examiners also reviewed a sample of commercial loans originated by Texas First Bank between July 1, 2015, and December 31, 2015. The evaluation period for community development was the period since Texas First Bank's previous CRA evaluation, dated February 4, 2013.

[37] Examiners reviewed Texas First Bank's two AAs: the Texas City AA, which consisted of Brazoria, Chambers, Galveston, Harris, and Liberty counties; and five of nine counties comprising the Houston-The Woodlands-Sugar Land, Texas Metropolitan Statistical Area (MSA); and the Beaumont County AA, which consisted of Harden and Jefferson counties and two of four counties comprising the Beaumont-Port Arthur, Texas MSA.

59 percent since the previous CRA evaluation. Moreover, TIB asserts that Texas First Bank has provided community development investments and community development loans within its AAs, as well as community development loans throughout Texas.

CRA Performance of Preferred Bank

The OCC assigned Preferred Bank an overall rating of "Satisfactory" at its most recent CRA performance evaluation, as of March 10, 2015 ("Preferred Bank Evaluation").[38]

Examiners found that Preferred Bank maintained a reasonable loan-to-deposit ratio compared with the ratios of similarly situated banks. Examiners also found that a substantial majority of Preferred Bank's loans were made within the bank's single AA. Examiners considered the distribution of loans to reflect reasonable penetration among borrowers of different income levels and businesses of different sizes. Examiners determined that the overall geographic distribution of Preferred Bank's loans reflected outstanding dispersion for business loans in the bank's AA but poor dispersion in LMI census tracts for residential mortgage loans. Examiners noted that Preferred Bank offered lines of credit for construction projects and working capital in response to the community's credit needs.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Texas First 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 Preferred 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 Texas First Bank and Preferred Bank, into account in evaluating the proposed transaction, including in considering whether TIB has the experience and resources to ensure that Texas First 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. TIB 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 Texas First Bank and Preferred Bank each presently conduct business, including credit products and services that help fulfill the needs of LMI demographics. For example, TIB represents that consumer loans presently offered to Texas First Bank customers would be expanded to the customer base of Preferred Bank and that the single-family loan portfolio of Preferred Bank would be expanded to include the customer base of Texas First Bank.

[38] The Preferred Bank Evaluation was conducted using the CRA Small Bank Examination Procedures. Examiners reviewed lending data for the period January 1, 2013, through December 31, 2014, giving more weight to business loans, which comprised the largest volume of the bank's loans. Examiners reviewed Preferred Bank's sole AA, which consisted of Harris, Montgomery, and Fort Bend counties in the Houston-The Woodlands-Sugar Land, Texas MSA.

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 TIB, the public comment on the proposal, and the potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that the convenience and needs factor is consistent with approval.

Financial Stability

The Bank Merger Act and section 4 of the BHC Act require the Board to consider a proposal's "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 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 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.[43] The pro forma organization would have minimal cross-

[39] 12 U.S.C. §§ 1843(j)(2)(A) and 1828(c)(5).

[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 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.

[43] TIB and Preferred primarily offer a range of retail and commercial banking products and services. TIB 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.

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.

Weighing of Public Benefits of the Proposal

As noted above, in connection with a proposal under section 4 of the BHC Act, the Board is required to "consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system."[44] As discussed above, the Board has considered that the proposed transaction would provide greater services, product offerings, and geographic scope to customers of Preferred Bank. In addition, the acquisition would ensure continuity and strength of service to those customers.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order, is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, and for the reasons discussed above, the Board concludes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience to the public, financial stability, and other factors weighs in favor of approval of this proposal. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.[45]

Establishment of Branches

Texas First Bank has applied under section 9 of the FRA to establish branches at the current locations of Preferred Bank.[46] The Board has assessed the factors it is required to consider when reviewing an application under that section, including Texas First 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.[47] For the reasons discussed in this order, the Board determines that those factors are consistent with approval.

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[44] 12 U.S.C. § 1843(j)(2).

[45] 12 U.S.C. § 1843(j)(2)(A).

[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. *See* 12 U.S.C. § 36(d).

[47] 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposed transaction, Texas First Bank's investments in bank premises would remain within the legal requirements of 12 CFR 208.21.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by TIB and Texas First 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 acquisition of Preferred and Preferred Bank may occur immediately. The merger of Preferred Bank and Texas First Bank may not be consummated before the 15th calendar day after the effective date of this order, and the acquisition and merger may not be consummated 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 June 27, 2019.

Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Brainard and Bowman.

Michele Taylor Fennell
Assistant Secretary of the Board

Appendix

Branches to Be Established by Texas First Bank

1. 11757 Katy Freeway, Suite 100, Houston, Texas 77079
2. 16522 Stuebner Airline Road, Spring, Texas 77379
3. 4648 Beechnut Street, Houston, Texas 77096
4. 3000 Research Forest Drive, Suite 190, The Woodlands, Texas 77381
5. 1192 W. Dallas, Suite A, Conroe, Texas 77301

Order Issued Under Federal Reserve Act

Frost Bank
San Antonio, Texas

Order Approving the Establishment of Branches
FRB Order No. 2019-09 (June 20, 2019)

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 ten branches in Texas, as set forth in Appendix A.[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 comment received in light of the factors specified in the FRA.

Cullen/Frost Bankers, Incorporated, with total assets of $32.4 billion, is the 64th largest depository organization in the United States, controlling approximately $27.2 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] Frost Bank operates through 143 branches located in Texas, and the bank's main office is in San Antonio, Texas.[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 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 the bank's 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 branch applications in light of these factors and the public comment received on the proposal.

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1 12 U.S.C. § 321.

2 12 CFR part 208.

3 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. *See* 12 U.S.C. § 321. A national bank may establish and operate a de novo branch within a state in which the bank is situated, if such establishment and operation is authorized under applicable state law. *See* 12U.S.C.§36(c)(2).Frost Bank only has branches in Texas and is permitted to establish additional branches under the laws of Texas. *See* Tex.Fin.CodeAnn. § 203.006.

4 12 CFR 262.3(b).

5 Total assets, national asset ranking, and national deposit data are as of December 30, 2018, and state deposit data are as of June 30, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

6 In Texas, Frost Bank is the 6th largest depository organization, controlling approximately $26.1 billion in deposits, which represent approximately 3.1percent of the total amount of deposits of insured depository institutions in that state.

7 12 CFR 208.6(b).

8 12 U.S.C. § 2901 *et seq*.

9 12 CFR 208.21(a).

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Frost Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Frost Bank, and the comment received 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 proposed investment in the branches and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.[10]

In considering Frost Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, 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, 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 consistent with approval.

Based on this review and all the facts of record, the Board determines 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 these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.[11] In its evaluation, the Board places particular emphasis on the record of the relevant depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[12] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank branching proposals.[13]

In addition, the Board considers the bank's overall compliance record, including with respect to fair lending. 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

[10] 12 CFR 208.21(a).
[11] 12 CFR 208.6(b)(3).
[12] 12 U.S.C. § 2901(b).
[13] 12 U.S.C. § 2903.

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

Public Comment on the Proposal

One commenter objected to the proposal, alleging that Frost Bank discriminates against African Americans and "redlines" African American neighborhoods in Houston and Dallas, both in Texas.[14] Specifically, the commenter alleged that Frost Bank has denied African American individuals and African American-owned businesses equal access to capital and credit by heavily concentrating its branches in predominantly white neighborhoods and its banking services to white individuals and white-owned businesses in Houston and Dallas. The commenter also alleges that Frost Bank disfavors certain African American neighborhoods in Houston and Dallas with respect to its branching activities and in other respects.

Business of the Applicant and Response to Comment

Frost Bank offers a broad range of retail and commercial banking products to consumers and businesses through its network of branches. The products and services include commercial, residential, agricultural, and consumer loans; personal checking and savings accounts; business checking and savings accounts; business credit cards and correspondent banking; and wealth management services.

In response to the commenter's allegations, Frost Bank asserts that it is committed to providing consistent, long-term support to the communities in which Frost Bank operates through the establishment of a branch distribution network that is designed to serve the financial needs of all segments of each community. Frost Bank represents that, prior to the decision to open, relocate, or close a branch, the bank considers the impact to the local community and the overall regional distribution network in order to ensure maintenance or enhancement of access to majority-minority neighborhoods. Frost Bank further asserts that it offers all of its products and services without regard to any prohibited basis and is committed to fair and equal treatment of all of its existing and prospective customers. Frost Bank represents that it has safeguards in place to prevent illegal discrimination, including the establishment of a comprehensive fair lending program to conduct fair lending risk assessments and fair lending monitoring. Frost Bank further represents that it engages in a comprehensive marketing and outreach program to serve the needs of historically underserved areas. Additionally, Frost Bank asserts that it has made a number of community development loans in majority-minority census tracts; in zip codes identified in the comment as being underserved "Black neighborhoods" in Dallas County; and in Harris County in Houston, Texas.

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[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.

Record of Performance under the CRA

In evaluating the CRA performance of the involved institution, the Board generally considers the institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal supervisor, which in this case is the Federal Reserve Bank of Dallas ("Reserve Bank").[15] In addition, the Board considers information provided by the applicant and by public commenters.

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 a lending test ("Lending Test"), an investment test ("Investment Test"), and a service test ("Service Test") to evaluate the performance of a large insured depository institution, such as Frost Bank, in helping to meet the credit needs of the communities it serves. The Lending Test specifically evaluates an 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"),[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 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;[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.[19] The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.[20]

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

[16] 12 U.S.C. § 2906.

[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 $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).

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

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

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 August 13, 2018 ("Frost Bank Evaluation").[21] The bank received an "Outstanding" rating for the Investment Test, and a "High Satisfactory" rating for each of the Lending Test and the Service Test.[22]

Examiners found that Frost Bank's overall lending activity reflected good responsiveness to the credit needs in all of the bank's AAs and that the overall geographic distribution of the bank's loans reflected excellent penetration throughout the AAs. In addition, examiners found that the distribution of the bank's home mortgage borrowers reflected adequate penetration among borrowers of different income levels and that the bank's distribution of small business lending reflected adequate penetration among businesses of different revenue sizes. Examiners further found that the bank originated a substantial majority of its loans inside its AAs. Examiners noted that the bank is a leader in making community development loans; such loans were made for a variety of purposes, including for multifamily housing; and the majority of community development loans were for affordable housing and community services to LMI individuals or LMI areas.

In both the Houston and Dallas AAs, the two areas of concern for the commenter, examiners determined that Frost Bank's lending levels reflected good responsiveness to the AAs' credit needs. In addition, examiners found that the geographic distribution of the bank's loans reflected excellent penetration in the Houston AA and reflected good penetration in the Dallas AA. Examiners determined that the bank's distribution of loans to borrowers of different income levels and to businesses of different revenue sizes reflected good penetration in the Houston AA and reflected adequate penetration in the Dallas AA. Examiners determined that Frost Bank's community development lending was excellent in both the Houston and Dallas AAs and noted that the bank was a leader in community development lending in both AAs.

Examiners found that Frost Bank's investments demonstrated excellent responsiveness to the most pressing credit and community development needs throughout the bank's AAs. In addition, 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, and was often in a leadership position throughout all of its AAs, including in the Houston and Dallas AAs. Examiners noted that the bank had invested in companies that made loans to small business owners with limited access to traditional bank credit, Ginnie Mae mortgage-backed securities targeted to LMI borrowers, and general obligation bonds targeted to school districts in which over 75 percent of the students were economically disadvantaged. In both the Houston and Dallas AAs, examiners found that the bank exhibited excellent responsiveness to credit and community development needs through its investment activities, which included investments in and donations to organizations involved primarily in affordable housing initiatives.

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[21] The Frost Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business lending activities reported by the bank from January 31, 2015, through December 31, 2017. The evaluation period for community development lending, investments, and services was from January 1, 2015, through December 31, 2017. Retail branching activity was reviewed for the period of January 1, 2015, through August 13, 2018.

[22] The Frost Bank Evaluation included a full-scope review of the bank's AAs within the following areas: Corpus Christi, Texas, Metropolitan Statistical Area ("MSA"); Dallas-Plano-Irving, Texas, Metropolitan Division ("Dallas AA"); Houston-The Woodlands-Sugar Land, MSA ("Houston AA"); and San Antonio-New Braunfels, Texas, MSA. Limited-scope reviews were conducted in Frost Bank's remaining AAs within the following areas: Austin-Round Rock-San Marcos, Texas, MSA; Brownsville-Harlingen, Texas, MSA; Fort Worth-Arlington, Texas, Metropolitan Division; McAllen-Edinburg-Mission, Texas, MSA; Midland, Texas, MSA; and Odessa, Texas, MSA.

Examiners found that Frost Bank's retail delivery systems were readily accessible to geographies and individuals of different income levels within the bank's AAs. Examiners further found that Frost Bank provided a relatively high level of community development services throughout its AAs. Examiners noted that the bank's record of opening and closing branches during the review period generally did not adversely affect the accessibility of banking services to LMI geographies and/or individuals. Examiners also noted that the bank's banking services and business hours did not vary in a way that inconvenienced any portion of the bank's AAs, including LMI geographies and individuals. Moreover, examiners determined that Frost Bank was a leader in providing community development services throughout its AAs and that community development services were excellent in all ten of the bank's AAs, including the Houston and Dallas AAs.

Frost Bank's Efforts since the Frost Bank 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 continued to make 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 in Houston and Dallas. 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 available government programs and services in its AAs, including in Houston and Dallas.

Additional Supervisory Considerations

In addition to the Frost Bank Evaluation, the Board has considered the results of a 2017 examination of Frost Bank's compliance with the requirements of the Fair Housing Act, which included a redlining review of the bank's ten AAs, including those in Houston and Dallas. The review included an evaluation of the bank's redlining risk for each of those markets with respect to the bank's designation of assessment areas and lending, branching, marketing, and outreach activities. In addition, the Board has considered Frost Bank's supervisory record with the Consumer Financial Protection Bureau.

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. Frost Bank asserts that the proposed branches would provide economic benefits and a broad range of financial services to the markets to be served and enable the bank to reach more consumers and businesses. Frost Bank further represents that, because of the branch expansion activity in the Houston area, Frost Bank is adding a second Community Development Officer to work closely with local agencies and community organizations within designated communities to ensure adequate coverage of CRA-service-related activities in the Houston AA.

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 records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Frost Bank, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that the convenience and needs factor is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved.[23] The Board's approval is specifically conditioned on compliance by Frost 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 this 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 these applications is also subject to the establishment of the proposed branches within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank, acting under authority delegated by the Board.

By order of the Board of Governors, effective June 20, 2019.

Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Brainard and Bowman.

Michele Taylor Fennell
Assistant Secretary of the Board

Appendix A
Branches to Be Established by Frost Bank

Houston-The Woodlands-Sugar Land MSA Branches:

- 19961 US Highway 59, Humble, Texas 77338
- South Mason Road and Mason Access Road, Katy, Texas 77450
- 201 South FM 270, League City, Texas 77573
- 10420 Louetta Road, Suite 120, Houston, Texas 77070

[23] 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. Notices of the applications were published in the relevant newspapers of general circulation in accordance with the requirements of and for the period set forth in 12 CFR 208.6(a)(3). 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.

- 2200 North Frazier Street, Conroe, Texas 77303
- 3500 Little York Road, Suite B1, Houston, Texas 77093
- 8350 Long Point Road, Houston TX 77055

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- 501 South Shoreline Boulevard, Corpus Christi, Texas 78401
- 7444 South Padre Island Drive, Corpus Christi, Texas 78412

McAllen-Edinburg-Mission MSA Branches:

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