



Legal Developments: Fourth Quarter, 2020

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Cidade de Deus Cia. Comercial de Participações
Nova Cidade de Deus Participações S.A.
BBD Participações S.A.
Fundação Bradesco
Lecce Holdings S.A.
Banco Bradesco S.A.
Osasco, Brazil

Order Approving the Acquisition of a Bank
FRB Order No. 2020-06 (October 7, 2020)

Banco Bradesco S.A. (“Bradesco”), a foreign banking organization subject to the provisions of the Bank Holding Company Act of 1956 (“BHC Act”);¹ Bradesco’s parent companies, Cidade de Deus Cia. Comercial de Participações (“Cidade”), Nova Cidade de Deus Participações S.A. (“Nova Cidade”), BBD Participações S.A. (“BBD”), and Fundação Bradesco (“Fundação”); and a direct subsidiary of Bradesco, Lecce Holdings S.A. (“Lecce”) (collectively, “Applicants”), all of Osasco, Brazil, have requested the Board’s approval to become bank holding companies under section 3 of the BHC Act,² by acquiring all of the voting shares of BAC Florida Bank (“BAC Bank”), Coral Gables, Florida, a state nonmember bank.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 *Federal Register* 34395 (July 18, 2019)). 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.

Bradesco, with consolidated assets of approximately \$276.5 billion, is the third largest bank in Brazil based on asset size.⁴ Bradesco engages in retail and commercial banking and other financial activities throughout Brazil, including wealth management, insurance, and investment banking activities. Outside of Brazil, Bradesco operates in Argentina, the Cayman

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ Under the proposal, Applicants would initially acquire approximately 99 percent of the voting shares of BAC Bank, and shortly thereafter, an interim-bank subsidiary of Applicants (“Interim Bank”) would merge with and into BAC Bank, with BAC Bank as the surviving entity. Upon consummation of the transaction, BAC Bank would operate as Lecce’s direct, wholly owned subsidiary. The merger of Interim Bank into BAC Bank is subject to approval by the Federal Deposit Insurance Corporation (“FDIC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on June 16, 2020.

⁴ Asset and ranking data for Bradesco are as of June 30, 2020, and are based on the exchange ratio on that date.

Islands, Hong Kong, Luxembourg, Mexico, the United Kingdom, and the United States. Bradesco operates in the United States primarily through an uninsured, federally licensed branch in New York, New York; a representative office in Miami, Florida; and a licensed broker-dealer, Bradesco Securities, Inc. (“Bradesco Securities”), New York, New York.

Bradesco’s four parent companies (collectively, “Parent Companies”) together own, directly or indirectly, approximately 74 percent of the voting shares of Bradesco.⁵ Cidade, Nova Cidade, and BBD are non-operating companies, and their sole corporate purpose is to hold equity investments for their shareholders. Fundação is a private foundation that operates schools for students in Brazil. Bradesco and its Parent Companies are and would remain qualifying foreign banking organizations under the Board’s Regulation K and are treated as financial holding companies under section 4(l) of the BHC Act.⁶

BAC Bank, with consolidated assets of approximately \$2.3 billion, is the 423rd largest insured depository institution in the United States, controlling deposits of approximately \$1.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions⁷ in the United States.⁸ BAC Bank operates one deposit-taking office, which is located in Florida. BAC Bank is the 35th largest insured depository institution in Florida, with approximately \$1.9 billion in deposits, which represent 0.3 percent of the total amount of deposits of insured depository institutions in that state.⁹ On consummation of this proposal, Applicants’ U.S. operations would have assets that represent less than 1 percent of the total assets of insured depository institutions in the United States.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁰ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the 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 Applicants do not currently control a commercial bank in the United States, and Applicants and BAC Bank do not compete directly in any retail banking market. The Department of Justice has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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

⁵ The remaining 26 percent of Bradesco’s voting shares are publicly traded, and none of those shareholders own 5 percent or more of Bradesco’s voting shares. The Parent Companies also control Bradespar S.A., São Paulo, Brazil, a holding company with a non-controlling equity interest in a large mining company.

⁶ 12 CFR 211.23(a); 12 U.S.C. § 1843(l).

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

⁸ National asset and deposit data are as of June 30, 2020, unless otherwise noted.

⁹ State deposit data are as of June 30, 2019, unless otherwise noted.

¹⁰ 12 U.S.C. § 1842(c)(1)(A).

¹¹ 12 U.S.C. § 1842(c)(1)(B).

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, as well as the effectiveness of the institutions in combatting money laundering.¹² 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, if applicable. 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.

The capital levels of Applicants exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization.¹³ Applicants appear to have adequate resources to absorb the costs of the proposal and complete the integration of the institutions' operations. In addition, future prospects are consistent with approval.¹⁴

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Applicants' U.S. operations and BAC Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Applicants; the Board's supervisory experience and those of the other relevant bank supervisory agencies with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering ("AML") laws, as well as information provided by a commenter. The Board also has consulted with Banco Central do Brasil ("Central Bank"), the agency with primary responsibility for the supervision of Brazilian banks and other financial institutions, including Bradesco.

The Board also has considered Applicants' plans for implementing the proposal. Applicants have conducted comprehensive due diligence and are devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. The Board also has considered Applicants' plans to withstand the potential impact of near-term economic conditions. In general, Applicants plan to continue the existing business of BAC Bank with largely the same management in place at the bank. The manage-

¹² 12 U.S.C. § 1842(c)(2), (5), and (6). The Board has analyzed the effectiveness of Applicants' anti-money-laundering efforts in connection with the Board's assessment of whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.

¹³ The Board considered the total risk-based capital ratio, tier 1 risk-based capital ratio, common equity tier 1 risk-based capital ratio, and the ratio of tier 1 capital to total assets of Lecce, Bradesco, and each of the Parent Companies.

¹⁴ To effect the merger of Applicants' subsidiary Interim Bank into BAC Bank, the existing shares of BAC Bank would be canceled; shareholders of BAC Bank (other than Applicants) would receive cash for their canceled shares, based on an exchange ratio; and shares of Interim Bank would be converted into shares of BAC Bank. Applicants have the financial resources to effect the proposed transaction.

ment of Applicants and BAC Bank have the experience and resources to operate the combined organization in a safe and sound manner.¹⁵

Section 3 of the BHC Act also prohibits the Board from approving a proposal unless the applicant provides adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.¹⁶ The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Applicants have committed that, to the extent not prohibited by applicable law, they will make available to the Board such information on their operations and the operations of their affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act of 1978,¹⁷ and other applicable federal laws. Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable them or their affiliates to make such information available to the Board.

Based on all the facts of record, the Board determines that considerations related to the financial condition and managerial resources and future prospects of the organizations involved in the proposal, as well as access to information by the Board, are consistent with approval.

Supervision or Regulation on a Consolidated Basis

In evaluating this application, and as required by section 3 of the BHC Act, the Board considered whether Bradesco and its Parent Companies are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.¹⁸ The Board has long held that “the legal systems for supervision and regulation vary from country to country, and comprehensive supervision or regulation on a consoli-

¹⁵ A commenter expressed concern about Bradesco’s management and cited a May 2019 news article regarding Brazilian authorities’ anti-corruption efforts. The article stated that Brazilian prosecutors had issued arrest warrants for two Bradesco employees and were considering a civil lawsuit against Bradesco.

Bradesco asserts that the commenter has not provided information that reflects adversely on the competence of Bradesco’s management or the ability of Bradesco to operate BAC Bank in a safe and sound manner.

Bradesco represents that it has adopted and strictly implements rigorous compliance standards and observes high standards of conduct and ethics in its operations.

Bradesco and certain of its current and former executives entered into a commitment agreement with the Central Bank on May 29, 2020 (the “Agreement”), which among other things requires that Bradesco enhance its AML and foreign exchange procedures. Bradesco represents that the Agreement is pursuant to Brazilian law that allows for voluntary agreements only for nonmaterial supervisory matters.

The Board has considered the comments received and the Agreement as part of its review of Applicants’ managerial resources. For the reasons discussed above, management of the Applicants is considered to be satisfactory from a supervisory perspective.

¹⁶ 12 U.S.C. § 1842(c)(3)(A).

¹⁷ 12 U.S.C. § 3101 *et seq.*

¹⁸ 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign banking organization is subject to consolidated home country supervision under the standards set forth in Regulation K. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard under section 211.24 of Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular reports of examination, audit reports, or otherwise; (iii) obtain information on the dealings and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the

dated basis can be achieved in different ways.”¹⁹ In addition, the Board makes case-by-case, institution-specific determinations under the comprehensive supervision standard.²⁰

Bradesco

The Board previously has determined, in connection with applications involving Bradesco and other banks in Brazil, that those banks were subject to comprehensive supervision on a consolidated basis by their home country supervisor, the Central Bank.²¹ Bradesco continues to be supervised by the Central Bank on substantially the same terms and conditions. Based on all the facts of record, including consultation with the Central Bank, the Board determines that Bradesco continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

Bradesco’s Parent Companies

In evaluating this proposal, the Board also considered whether Bradesco’s Parent Companies are subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in their home country. In considering prior applications involving nonbank parent companies of foreign banks, the Board has stated that the system of comprehensive supervision or regulation may vary, depending on the nature of the acquiring company and the proposed investment.²²

Cidade, Nova Cidade, and BBD are private, non-operating companies that hold equity investments for their shareholders. Fundação is a private foundation that operates a large number of schools across Brazil and uses its investment in Bradesco to fund its educational initiatives. Fundação is subject to oversight by Brazilian authorities, including the Ministério Público (“MP”),²³ with respect to its educational initiatives and compliance with Brazilian laws regarding charitable foundations. The Parent Companies’ individual and combined equity holdings consist primarily of Bradesco stock. For the most part, the managers and board members of the Parent Companies also are managers and directors of Bradesco

The Parent Companies are subject to oversight by the Central Bank with respect to the contagion and reputational risks that the Parent Companies may pose to Bradesco and its financial affiliates through investments or other relationships. As part of this periodic review, the Central Bank analyzes whether the Parent Companies’ operations pose a risk of financial loss to Bradesco or its financial affiliates. Under Brazilian law, all transactions between Bradesco and its affiliates, including the Parent Companies, generally must be on arm’s-length terms. The Central Bank receives and reviews financial information about 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.

¹⁹ See e.g., *Banco de Creditoe Inversiones S.A.*, FRB Order No. 2015-25 (September 21, 2015) (“BCI-EJY Order”); *Industrial and Commercial Bank of China Limited*, FRB Order No. 2012-4 (May 9, 2012) (“ICBC-CIC Order”); and *China Investment Corporation*, 96 *Federal Reserve Bulletin* B31 (2010).

²⁰ See *BCI-EJY Order* and *ICBC-CIC Order*.

²¹ See Board Letter to Douglas Landy, Esq., Shearman & Sterling LLP (January 30, 2004). In addition, the Board previously has determined that other Brazilian banks were subject to comprehensive supervision on a consolidated basis by the Central Bank. See Board Letter to Bradley K. Sabel, Esq., Shearman & Sterling LLP (February 8, 2002), and Federal Reserve Bank of Atlanta Letter to Timothy J. Byrne, Esq., Shearman & Sterling LLP (November 7, 2019) (comprehensive consolidated supervision for Itaú Unibanco S.A.); *Banco do Brasil, S.A.*, 98 *Federal Reserve Bulletin* 1 (2012); and *Banco do Estado do Rio Grande do Sul S.A.*, 98 *Federal Reserve Bulletin* 39 (2012).

²² See *BCI-EJY Order* and *ICBC-CIC Order*.

²³ The MP is a public prosecutor’s office and has oversight over Fundação, focusing primarily on the use of the foundation’s resources.

Parent Companies in connection with the Central Bank’s annual risk and controls assessment of Bradesco and other supervised financial institutions. The Central Bank has legal authority to obtain additional information about the Parent Companies when appropriate. In addition, the MP and the Central Bank may share information about Fundação and its activities when appropriate. The Central Bank has a variety of tools to address risks that the Parent Companies may pose to the safety and soundness of Bradesco, including imposing additional capital requirements on Bradesco or restrictions on the bank’s operations.

The Board has taken into account that the Parent Companies’ proposed investment in BAC Bank would be indirect and through a foreign bank that is subject to consolidated supervision by the Central Bank. In addition, the Board has taken into account the structure and limited operations of the Parent Companies, including that their equity holdings consist primarily of Bradesco stock. Based on all the facts of record, the Board determines that the Parent Companies are subject to comprehensive supervision on a consolidated basis by their home country supervisor.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.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 Community Reinvestment Act of 1977 (“CRA”).²⁵ 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 records of compliance with consumer protection laws and regulations, which include their records of compliance with fair lending laws and regulations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution’s business model 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 BAC Bank;²⁸ the consumer compliance, including fair lending, record of BAC Bank; the super-

²⁴ 12 U.S.C. § 1842(c)(2).

²⁵ 12 U.S.C. § 2901 *et seq.*

²⁶ 12 U.S.C. § 2901(b).

²⁷ 12 U.S.C. § 2903.

²⁸ Bradesco’s New York branch is not authorized to take insured deposits and is not subject to the CRA.

visory views of the FDIC; confidential supervisory information; information provided by Applicants; and the public comments on the proposal.

Public Comments on the Proposal

A commenter objected to the proposal and alleged disparities in the number of home purchase loans made by BAC Bank to African Americans and Hispanics, as compared to Asians, in the New York City Metropolitan Statistical Area (“New York City MSA”), based on data that BAC Bank reported under the Home Mortgage Disclosure Act of 1975 (“HMDA”) for its 2017 mortgage-related lending activities.²⁹ In addition, the commenter asserted that BAC Bank denied 100 percent of home purchase applications from Hispanics in the New York City MSA based on the bank’s 2017 HMDA data. The commenter also alleged disparities in the number of home purchase loans made by BAC Bank to African Americans as compared to Whites in the Miami, Florida MSA, based on 2017 HMDA data. Furthermore, the commenter alleged that the proposal does not have a public benefit, including under the CRA, and that Bradesco plans to acquire BAC Bank to disproportionately serve affluent clients.

BAC Bank’s Business and Applicants’ Response to the Public Comments

BAC Bank offers a variety of products and services in the areas of personal banking, wealth management, corporate banking, institutional banking, and real estate financing. BAC Bank serves domestic and international customers, and, as previously noted, the bank’s sole deposit-taking office is located in Florida.

In response to the public comments, Bradesco asserts that the fair lending and CRA records of BAC Bank do not support a conclusion that the bank has engaged in improper lending practices. Bradesco represents that BAC Bank has procedures in place to ensure compliance with fair lending laws, including annual fair-lending training for BAC Bank employees and board members, as well as an annual test of the bank’s compliance with fair lending laws performed by auditors. In addition, Bradesco represents that it has a long record of serving the communities in which it operates and plans to continue BAC Bank’s efforts to serve its communities. Bradesco notes that BAC Bank received an overall “Satisfactory” rating on its most recent CRA performance evaluation.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution’s performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors. In this case, the Board considered the supervisory views of and information provided by the FDIC.³⁰ In addition, the Board considered information provided by Applicants and a commenter.

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 appli-

²⁹ 12 U.S.C. § 2801 *et seq.*

³⁰ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

³¹ 12 U.S.C. § 2906.

cations process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply 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 BAC 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 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 loans 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;³² (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.³³ 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.³⁴

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different races, ethnic groups, or genders 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 often not available from HMDA data.³⁵ Consequently, the Board evaluates such disparities in the context of other information regarding the lending record of an institution.

CRA Performance of BAC Bank

BAC Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of June 17, 2019 ("BAC Bank Evaluation").³⁶ The bank

³² Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

³³ *See* 12 CFR 228.22(b).

³⁴ *See* 12 CFR 228.21 *et seq.*

³⁵ 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.

³⁶ The BAC Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business loans as reported under CRA data collection requirements, from January 2016 through December 2018. The evaluation period for community development loans, investments, and services was May 11, 2016, through June 17, 2019.

received a “Low Satisfactory” rating for the Lending Test and “High Satisfactory” ratings for the Investment Test and Service Test.³⁷

Examiners found that BAC Bank’s overall lending levels reflected good responsiveness to the credit needs of the bank’s AA. Examiners determined that the bank’s geographic distribution of loans reflected adequate penetration throughout the bank’s AA and that the bank’s distribution of borrowers reflected adequate penetration among individual borrowers of different income levels. Examiners noted that the bank’s lending performance in moderate-income census tracts was generally below the demographic data and aggregate lending in all three years covered by the evaluation, but noted that the bank demonstrated a capacity and willingness to lend in these areas. Examiners found that BAC Bank was an active mortgage lender and that the bank’s volume of lending activity was good, given the intense competition for loans in the AA. Examiners also found that the bank made use of innovative and flexible lending practices to serve AA credit needs.

Examiners determined that BAC Bank’s level of qualified investments demonstrated good responsiveness to the credit and community development needs of the bank’s AA, when considering available investment opportunities and competition. Examiners noted that BAC Bank’s qualified investments and donations specifically responded to affordable housing, economic development, and community service needs within the bank’s AA. Examiners found that BAC Bank’s delivery systems were reasonably accessible to essentially all portions of the bank’s AA. Examiners noted that the services and business hours offered by BAC Bank did not vary in a way that inconvenienced certain portions of the bank’s AA, particularly LMI geographies or individuals. Examiners also noted that BAC Bank was a leader in providing community development services that benefitted organizations within the bank’s AA.

With respect to BAC Bank’s CRA performance in the Miami MD, an area of concern for the commenter, examiners found that the bank’s lending levels reflected good responsiveness to the MD’s credit needs. They also found that lending volume to LMI geographies and individuals in the MD was adequate. Examiners noted that BAC Bank used innovative and flexible lending practices in order to serve the needs of the Miami MD. Examiners found that the bank had a significant level of qualified investments and donations in the Miami MD and that the bank’s delivery systems were reasonably accessible to essentially all portions of the Miami MD.

Additional Supervisory Views

The Board has consulted with the FDIC and considered BAC Bank’s CRA and consumer compliance, including fair lending, records, as evidenced by the bank’s most recent consumer compliance and CRA examinations. The FDIC considered the public comments received by the Board in connection with its review of the bank merger application related to the proposal.

The Board has taken the foregoing consultation and examinations into account in evaluating the proposal, including in considering whether Applicants have the experience and resources to ensure that the combined organization would help meet the credit needs of the communities to be served following consummation of the proposed transaction.

³⁷ The BAC Bank Evaluation included a full-scope evaluation of the bank’s sole AA, which includes two metropolitan divisions (“MDs”) in Florida: the Miami-Miami Beach-Kendall, Florida MD (“Miami MD”) and the Fort Lauderdale-Pompano Beach-Deerfield Beach, Florida MD.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Applicants represent that, upon consummation of the proposed transaction, they generally would maintain BAC Bank's current product offerings. In addition, Applicants represent that BAC Bank's existing CRA and fair lending efforts would largely be continued or enhanced where appropriate following the acquisition.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the record of the relevant depository institution under the CRA, the institution's record of compliance with fair lending and other consumer protection laws, supervisory views of the FDIC, confidential supervisory information, information provided by Applicants, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board 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."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

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. In the United States, Applicants engage primarily in corporate banking activities through a U.S. branch and securities brokerage activities through Bradesco Securities. BAC Bank offers a variety of banking products and services, including those related to personal banking, wealth management, and corporate banking. Applicants have and, upon consummation of the proposal, would continue to have a small market share on a nationwide basis with respect to these products and services, and numerous competitors would remain. The combined organization in the United States

³⁸ 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).

would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would pose a significant risk to the financial system in the event of 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.

The Board also has considered potential spillover effects from Brazil that could increase risk to the financial stability of the United States banking or financial system. Given the relatively small size of the target, the Board believes that the proposed transaction would pose minimal risk to the stability of the United States banking or financial system.

Accordingly, based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

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

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

By order of the Board of Governors, effective October 7, 2020.

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

Ann E. Misback
Secretary of the Board

Bangor Bancorp, MHC Bangor, Maine

Order Approving the Acquisition of a Bank Holding Company FRB Order No. 2020-08 (October 22, 2020)

Bangor Bancorp, MHC (“Bangor”), Bangor, Maine, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire Damariscotta Bankshares, Inc. (“Damariscotta”), and thereby indirectly acquire Damariscotta’s subsidiary state nonmember bank, Damariscotta Bank & Trust Co. (“Damariscotta Bank”), both of Damariscotta, Maine. Following the proposed acquisition, Damariscotta Bank would be merged into Bangor’s state savings bank subsidiary, Bangor Savings Bank, Bangor, Maine.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (85 *Federal Register* 23353 (April 27, 2020)).⁴ The time for submitting comments has expired, and the Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act.

Bangor, with consolidated assets of approximately \$5.5 billion, is the 248th largest insured depository organization in the United States.⁵ Bangor controls approximately \$3.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Bangor controls Bangor Savings Bank, which operates in Maine, Massachusetts, and New Hampshire. Bangor Savings Bank is the third largest insured depository institution in Maine, controlling deposits of approximately \$3.3 billion, which represent 10.5 percent of the total deposits of insured depository institutions in that state.⁶

Damariscotta, with consolidated assets of approximately \$205.0 million, is the 2747th largest insured depository organization in the United States. Damariscotta controls approximately \$166 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Damariscotta controls Damariscotta Bank, which operates only in Maine. Damariscotta Bank is the 23rd largest insured depository institution in Maine, controlling deposits that represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Bangor would become the 241st largest insured depository organization in the United States, with consolidated assets of approximately \$5.7 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Bangor would control total consolidated deposits of approximately \$3.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Maine, Bangor would remain the third largest insured depository organization, controlling deposits of approxi-

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of Damariscotta Bank into Bangor Savings Bank is subject to approval by the Federal Deposit Insurance Corporation (“FDIC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

⁴ 12 CFR 262.3(b).

⁵ Asset data are as of June 30, 2020, and deposit data are as of June 30, 2019, unless otherwise noted.

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

mately \$3.5 billion, which represent 11.0 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.⁷ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.⁸

Bangor and Damariscotta have subsidiary banks that compete directly in two banking markets in Maine. 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 Bangor would control;⁹ 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”);¹⁰ the number of competitors that would remain in each market; and other characteristics of each market.

Banking Market 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 Rockland-Camden, Maine, banking market.¹¹ On consummation of the proposal, the Rockland-Camden banking market would remain highly concentrated as measured by the HHI, according to the concentration

⁷ 12 U.S.C. § 1842(c)(1)(A).

⁸ 12 U.S.C. § 1842(c)(1)(B).

⁹ Local deposit and market share data are as of June 30, 2019, 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).

¹⁰ In applying the DOJ Bank Merger Guidelines issued in 1995 (*see* <https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995>), the Board looks to the DOJ’s Horizontal Merger Guidelines issued in 1992 and amended in 1997, for the characterization of a market’s concentration. *See* <https://www.justice.gov/atr/horizontal-merger-guidelines-0>. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹¹ The Rockland-Camden banking market is defined as Appleton, Camden, Criehaven, Cushing, Hope, Isle au Haut, North Haven, Owls Head, Rockland city, Rockport, St. George, South Thomaston, Thomaston, Union, Vinalhaven, Warren, and Washington townships; Matinicus Isle plantation; and Muscle Ridge Islands unorganized territory, all in Knox County, Maine; Hibberts Gore township in Lincoln County, Maine; and Lincolnville township in Waldo County, Maine.

measures applied by the Board. The change in the HHI would be small, and numerous competitors would remain in the market.¹²

Banking Market Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Belfast, Maine, banking market (“Belfast banking market”) warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines and Board precedent when using initial competitive screening data.

Bangor Savings Bank is the largest depository institution in the Belfast banking market, controlling approximately \$199.9 million in deposits, which represent 52.9 percent of market deposits.¹³ Damariscotta Bank is the smallest depository institution in the market, controlling approximately \$17.8 million in deposits, which represent 4.7 percent of market deposits. On consummation of the proposal, Bangor Savings Bank would remain the largest depository institution in the Belfast banking market, controlling approximately \$217.7 million in deposits, which would represent approximately 57.6 percent of market deposits. The HHI in this market would increase 498 points, from 3895 to 4393.

To mitigate the potentially adverse competitive effects of the proposal in the Belfast banking market, Bangor has committed to divest Damariscotta’s only branch in the market, accounting for a total of approximately \$16.6 million in deposits, to a competitively suitable institution.¹⁴ After accounting for the divestiture and Bangor’s commitment to rebook any residual deposits not included in the divestiture outside the Belfast banking market, on consummation of the proposal Bangor would control 53.1 percent of deposits in the Belfast banking market and the HHI would be 3916.

Conclusion Regarding Competitive Effects

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal, taking into consideration the proposed branch divestiture in the Belfast banking market, would not likely have a significantly adverse effect on competition in that 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.

¹² Bangor operates the fourth largest depository institution in the Rockland-Camden market, controlling approximately \$67.1 million in deposits, which represent 4.0 percent of market deposits. Damariscotta operates the sixth largest depository institution in the market, controlling deposits of approximately \$41.7 million, which represent 2.5 percent of market deposits. On consummation of the proposed transaction, Bangor would remain the fourth largest depository organization in the market, controlling deposits of approximately \$108.8 million, which represent 6.5 percent of market deposits. The HHI for the Rockland-Camden market would increase by 20 to 4762, and eight competitors would remain in the market.

¹³ The Belfast banking market is defined as Belfast, Belmont, Brooks, Frankfort, Freedom, Islesboro, Jackson, Knox, Liberty, Monroe, Montville, Morrill, Northport, Searsport, Searsport, Stockton Springs, Swanville, Thorndike, Unity, and Waldo townships in Waldo County, Maine; and Unity unorganized territory in Kennebec County, Maine.

¹⁴ As a condition of consummation of the proposed merger, Bangor has committed that it will execute, before consummation of the proposed merger, a sales agreement with a competitively suitable banking organization. Bangor also has committed to complete the divestiture within 180 days after consummation of the proposed transaction. In addition, Bangor has committed that, if the proposed divestiture is not completed within the 180-day period, Bangor would transfer the unsold branches to an independent trustee, who would be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. *See, e.g., BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); and United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).* Further, Bangor has committed that any residual deposits retained from the Damariscotta branch in the Belfast banking market will be reassigned to one or more of Bangor’s branches located in a different banking market.

Based on all of the facts of record, including the proposed divestiture, and for the reasons explained above, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which Bangor and Damariscotta compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, as well as the effectiveness of the institutions in combatting money laundering.¹⁵ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the impact of the proposed funding of the transaction. 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.

Bangor, Damariscotta, 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 acquisition structured as a cash purchase.¹⁶ The capital, asset quality, earnings, and liquidity of Bangor and Damariscotta are consistent with approval, and Bangor and Damariscotta appear 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 are considered consistent with approval. In reaching these conclusions, the Board also has considered Bangor's plans to withstand the potential impact of near-term economic conditions.

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 Bangor, Damariscotta, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Bangor; 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.

¹⁵ 12 U.S.C. § 1842(c)(2), (5), and (6).

¹⁶ Bangor would effect the holding company acquisition by merging a newly formed subsidiary of Bangor ("Merger Subsidiary") with and into Damariscotta, with Damariscotta surviving the merger as a subsidiary of Bangor. Following the merger of Merger Subsidiary into Damariscotta, Damariscotta would liquidate and dissolve into Bangor. At the time of the merger of Damariscotta into Bangor, each share of Damariscotta common stock would be converted into a right to receive cash. Damariscotta Bank would then merge with and into Bangor Savings Bank, with Bangor Savings Bank as the surviving entity. Bangor has the financial resources to effect the proposed transaction.

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

The Board also has considered Bangor's plans for implementing the proposal. Bangor 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 addition, Bangor's management has the experience and resources to operate the combined organization in a safe and sound manner.

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.¹⁷ In its evaluation, 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"). The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,¹⁸ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁹

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. 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 Bangor Savings Bank and Damariscotta Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, and information provided by Bangor.

¹⁷ 12 U.S.C. § 1842(c)(2).

¹⁸ 12 U.S.C. § 2901(b).

¹⁹ 12 U.S.C. § 2903.

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 relevant federal supervisors, which in this case is the FDIC with respect to both Bangor Savings Bank and Damariscotta Bank.²⁰

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²¹ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply 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 Bangor Savings Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975,²² automated loan reports, and other reports generated by the institution, in order to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is evaluated based on the institution's (1) loan-to-deposit ratio and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; (2) percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment areas ("AAs"); (3) record of lending to, and, as appropriate, engaging in other lending-related activities for, borrowers of different income levels and businesses and farms of different sizes; (4) geographic distribution of loans; and (5) record of taking action, if warranted, in response to written complaints about the institution's performance in helping to meet credit needs in the bank's AAs.²³ 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.²⁴ Small institutions, such as Damariscotta Bank, are subject only to the Lending Test described above.²⁵

CRA Performance of Bangor Savings Bank

Bangor Savings Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of October 29, 2018 ("Bangor Savings Bank

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

²¹ 12 U.S.C. § 2906.

²² 12 U.S.C. § 2801 *et seq.*

²³ See 12 CFR 228.22(b).

²⁴ See 12 CFR 228.21 *et seq.*

²⁵ 12 CFR 228.26(a).

Evaluation”).²⁶ Bangor Savings Bank received an “Outstanding” rating for each of the Lending, Investment, and Service Tests.

Examiners found that Bangor Savings Bank’s lending levels reflected excellent responsiveness to AA credit needs. Examiners noted that the bank’s geographic distribution of loans reflected excellent penetration throughout the bank’s AAs. Examiners found that the bank’s lending to borrowers reflected excellent penetration among retail customers of different income levels and business customers of different sizes, given the product lines offered by the institution. Examiners noted that the bank made extensive use of innovative and flexible lending practices in order to serve AA credit needs. In addition, examiners found that the bank is a leader in making community development loans.

Examiners found that Bangor Savings Bank had an excellent level of qualified community development investments and donations. Examiners noted that the bank exhibited excellent responsiveness to credit and community economic development needs. Examiners also noted that the bank made significant use of innovative and complex investments to support community development initiatives.

Examiners found that Bangor Savings Bank’s delivery systems were readily available to all portions of the bank’s AAs. Examiners noted that the services and business hours offered by Bangor Savings Bank did not vary in a way that inconvenienced customers in its AAs, particularly LMI geographies or individuals. Examiners also noted that the bank was a leader in providing community development services, which benefited organizations throughout its AAs, including organizations focused on small business development, financial education, and programs for youth.

CRA Performance of Damariscotta Bank

Damariscotta Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of December 7, 2015 (“Damariscotta Bank Evaluation”).²⁷ Damariscotta Bank received a “Satisfactory” rating for the Lending Test.

Examiners found that Damariscotta Bank’s loan-to-deposit ratio was reasonable given the bank’s size and financial condition as well as the credit needs of its AA. Examiners noted that the bank made a substantial majority of the sampled home mortgage and small business loans in its AA. Examiners found that the distribution of borrowers reflected a reasonable penetration of loans among businesses of different sizes and retail customers of different income levels.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Bangor represents that consummation of the proposal would provide an expanded branch and ATM network to Bangor Saving Bank’s and Damariscotta Bank’s existing customers. In addition, Bangor represents that the

²⁶ The Bangor Savings Bank Evaluation was conducted using Large Institution CRA Examination Procedures. FDIC examiners reviewed home mortgage and small business lending data, community development loans, community development investments and services, as well as innovative and flexible lending practices, from July 28, 2015, through October 29, 2018. The Bangor Savings Bank Evaluation covered Bangor Savings Bank’s six AAs located in the states of Maine and New Hampshire. The Bangor Savings Bank Evaluation included a full-scope review of four of these AAs. A limited-scope review was conducted in the remaining two AAs.

²⁷ The Damariscotta Bank Evaluation was conducted using the Interagency Small Institution CRA Examination Procedures. Examiners reviewed home mortgage and business lending data from February 9, 2009, through December 7, 2015. The Damariscotta Bank Evaluation reviewed the bank’s activities in its sole AA, comprising 14 census tracts in mid-coastal Maine.

proposal would create a stronger financial institution that would provide better service to the communities served by Bangor Savings Bank and Damariscotta 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 Bangor, as well as 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

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.”²⁸

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.²⁹ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.³⁰

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.³¹

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 commer-

²⁸ 12 U.S.C. § 1842(c)(7).

²⁹ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

³¹ 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.

cial banking activities.³² The pro forma organization would not have cross-border activities or 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 Bangor with all the conditions imposed in this order and on any commitments made to the Board in connection with the proposal. The Board's approval is also conditioned on receipt by Bangor of all required regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective October 22, 2020.

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

Ann E. Misback
Secretary of the Board

³² Bangor and Damariscotta both offer a range of retail and commercial banking products and services. Bangor 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.

**Bern Bancshares, Inc.
Bern, Kansas**

*Order Approving an Increase in Ownership of a Bank Holding Company
FRB Order No. 2020-09 (December 8, 2020)*

Bern Bancshares, Inc. (“Bern”), Bern, Kansas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to increase its ownership interest from 6.38 percent to 6.74 percent of the voting shares of UBT Bancshares, Inc. (“UBT”), Marysville, Kansas. UBT controls United Bank & Trust (“UBT Bank”), Marysville, Kansas, a state member bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (85 *Federal Register* 60469 (September 25, 2020)).³ The time for submitting comments has expired, and the Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act.

Bern, with consolidated assets of approximately \$104.3 million, is the 4,053rd largest insured depository organization in the United States.⁴ Bern controls approximately \$80.1 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Bern controls State Bank of Bern (“Bern Bank”), Bern, Kansas, a state nonmember bank, which operates only in Kansas. Bern is the 160th largest insured depository organization in Kansas, controlling deposits of approximately \$81.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁵

UBT, with consolidated assets of approximately \$728.8 million, is the 1,207th largest insured depository organization in the United States. UBT controls approximately \$549.7 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. UBT controls UBT Bank, which operates only in Kansas. UBT is the 37th largest insured depository organization in Kansas, controlling deposits of approximately \$458.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Noncontrolling Investment

Bern has stated that it does not propose to control or exercise a controlling influence over UBT as a result of the proposal. Under the BHC Act, a company controls a bank or another company if (1) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company; (2) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or (3) the Board determines that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.⁶ The Board’s Regulation Y sets forth presumptions for determining when one company generally would be considered to exercise

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 CFR 262.3(b).

⁴ National asset, deposit, ranking, and market share data are as of June 30, 2020, unless otherwise noted. State deposit, ranking, and market share data are as of June 30, 2019, unless otherwise noted.

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

⁶ 12 U.S.C. § 1841(a)(2).

a controlling influence over another company for purposes of the BHC Act.⁷ The presumptions generally are based on a combination of control over voting securities and the presence of other significant relationships that may facilitate control, such as director interlocks, business relationships, and limiting contractual rights.

As a result of the proposal, Bern would acquire up to 6.74 percent of UBT's voting shares. When combined with this ownership interest, Bern's other relationships with UBT would not trigger any of the Regulation Y presumptions of control.⁸ Furthermore, because Bern also would control less than 10 percent of the outstanding securities of each class of voting securities of UBT, Bern would trigger the Regulation Y presumption that it does not control UBT or UBT Bank.⁹ Based on these considerations and all the facts of record, it does not appear that Bern would control UBT or UBT Bank.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁰ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the 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

Bern and UBT have subsidiary banks that compete directly in two banking markets in Kansas. 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 Bern would control;¹² 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");¹³ the number of

⁷ See 12 CFR part 225, subpart D.

⁸ 12 CFR 225.32. The Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank. See, e.g., *First Citizens Bancshares, Inc.*, FRB Order No. 2017-01 (2017) (acquiring up to 9.0 percent of the voting shares of a bank); *Penn Bancshares, Inc.*, 92 *Federal Reserve Bulletin* C37 (2006) (acquiring up to 24.89 percent of the voting shares of a bank); *Sun Banks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985) (acquiring up to 15 percent of the voting shares of a bank).

⁹ 12 CFR 225.33(a)(1)-(2).

¹⁰ 12 U.S.C. § 1842(c)(1)(A).

¹¹ 12 U.S.C. § 1842(c)(1)(B).

¹² Local deposit and market share data are as of June 30, 2019, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹³ In applying the DOJ Bank Merger Guidelines issued in 1995 (see <https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995>), the Board looks to the DOJ's Horizontal Merger Guidelines issued in 1992 and amended in 1997, for the characterization of a market's concentration. See <https://www.justice.gov/atr/horizontal-merger-guidelines-0>. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (see <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>), 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.

competitors that would remain in each market; other characteristics of each market; and the noncontrolling nature of the proposed investment.

Banking Market 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 Nemaha County/Brown County, Kansas, banking market (“Nemaha County/Brown County banking market”).¹⁴ If Bern and UBT were considered a combined organization on consummation of the proposal, the Nemaha County/Brown County banking market would remain highly concentrated as measured by the HHI, according to the concentration measures applied by the Board. The change in the HHI would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in the market.¹⁵

Banking Market Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Marshall County, Kansas, banking market (“Marshall County banking market”)¹⁶ warrant a detailed review. If Bern and UBT were considered a combined organization on consummation, the concentration levels in this market would exceed the thresholds in the DOJ Bank Merger Guidelines and Board precedent when using initial competitive screening data.

The Board previously has stated that noncontrolling interests in directly competing depository institutions may raise competitive issues under the BHC Act. The Board has noted that a company need not acquire control of another company to lessen competition between them substantially and has recognized that a significant reduction in competition can result from the sharing of nonpublic financial information between two organizations that are not under common control.¹⁷ Accordingly, the Board examines the specific facts of each case to determine whether a minority investment in a competitor would result in significant adverse competitive effects in a banking market.¹⁸

Bern operates the seventh largest depository institution in the Marshall County banking market, controlling approximately \$37.4 million in deposits, which represent 5.0 percent of market deposits. UBT operates the second largest depository institution in the market, controlling approximately \$182.2 million in deposits, which represent 24.3 percent of market deposits. If considered a combined organization on consummation of the proposal, Bern and UBT would be the second largest depository organization in the Marshall County banking market, controlling approximately \$219.7 million in deposits, which would

¹⁴ The Nemaha County/Brown County banking market is defined as Nemaha County, Kansas; and Brown County, Kansas (minus the towns of Everest and Horton).

¹⁵ Bern operates the seventh largest depository institution in the Nemaha County/Brown County banking market, controlling approximately \$38.6 million in deposits, which represent 3.9 percent of market deposits. UBT operates the third largest depository institution in the market, controlling approximately \$168.0 million in deposits, which represent 17.0 percent of market deposits. If considered a combined organization on consummation of the proposal, Bern and UBT would become the second largest depository organization in the market, controlling approximately \$206.7 million in deposits, which represent 20.9 percent of market deposits. The HHI would increase by 134 to 2083, and eight competitors would remain in the market.

¹⁶ The Marshall County banking market is defined as Marshall County, Kansas; and Washington County, Kansas (minus the town of Clifton).

¹⁷ See, e.g., *City Holding Company*, 96 *Federal Reserve Bulletin* B21 (2010); *SunTrust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990).

¹⁸ See, e.g., *First Citizens Bancshares, Inc.*, FRB Order No. 2017-01 (2017); *City Holding Company*, 96 *Federal Reserve Bulletin* B21 (2010); *Passumpsic Bancorp.*, 92 *Federal Reserve Bulletin* C175 (2006); *BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052 (1995); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37 (1993); *SunBanks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985).

represent approximately 29.3 percent of market deposits. The HHI in this market would increase 242 points, from 2053 to 2295.

Although the proposal would exceed the DOJ Bank Merger Guidelines if treated as a full merger between Bern and UBT, the Board has considered additional factors that indicate the proposal is not likely to have a significantly adverse effect, or mitigate the concern that the proposal would have a significantly adverse effect, on competition in the Marshall County banking market. As discussed above, Bern would not control UBT or UBT Bank upon consummation of the proposal. In addition, Bern has committed not to acquire, or seek to acquire, any confidential or nonpublic financial information about the activities of UBT or UBT Bank in the Marshall County banking market that is not available to all of UBT's shareholders. These limitations on Bern's access to information significantly reduce the potential that Bern could influence the behavior of UBT or change its own behavior in an anti-competitive way based on advance or confidential knowledge about the plans, operations, or policies of UBT Bank in the Marshall County banking market. Furthermore, even if Bern and UBT were considered a combined organization on consummation of the proposal, ten competitors would remain in the Marshall County banking market, including one competitor with more than 34 percent of market deposits and another with more than 11 percent of market deposits.

Conclusion Regarding Competitive Effects

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in the Nemaha County/Brown County banking market, the Marshall County banking 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 all of the facts of record, including the limited and noncontrolling nature of Bern's investment and Bern's commitment not to acquire, or seek to acquire, confidential or nonpublic financial information about or from UBT or UBT Bank regarding their activities in the Marshall County banking market, and for the reasons discussed above, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which Bern and UBT compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, as well as the effectiveness of the institutions in combatting money laundering.¹⁹ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the impact of the proposed funding of the transaction. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in

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

the proposal in light of their financial and managerial resources and the proposed business plan.

Bern, UBT, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Bern would increase its ownership interest in UBT as a result of stock repurchases by UBT, which would not require Bern to expend any financial resources. The capital, asset quality, earnings, and liquidity of Bern and UBT are consistent with approval. Bern and UBT appear to have adequate resources to absorb the related costs of the proposal. In addition, future prospects are considered consistent with approval. In reaching these conclusions, the Board also has considered Bern's plans to withstand the potential impact of near-term economic conditions.

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

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

Based on all of the facts of record, including Bern's supervisory record and managerial and operational resources, 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 record of effectiveness of Bern and UBT in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁰ In its evaluation, 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").²¹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,²² and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²³

²⁰ 12 U.S.C. § 1842(c)(2).

²¹ 12 U.S.C. § 2901 *et seq.*

²² 12 U.S.C. § 2901(b).

²³ 12 U.S.C. § 2903.

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers 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 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 Bern Bank and UBT Bank, the fair lending and compliance records of both banks, the supervisory views of the Federal Deposit Insurance Corporation ("FDIC") and the Federal Reserve Bank of Kansas City ("Reserve Bank"), confidential supervisory information, and information provided by Bern.

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 relevant federal supervisors, which in this case are the FDIC with respect to Bern Bank and the Reserve Bank with respect to UBT Bank.²⁴

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²⁵ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test") and a community development test ("Community Development Test") to evaluate the performance of an intermediate small bank, such as UBT Bank, in helping to meet the credit needs of the communities it serves. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975,²⁶ automated loan reports, and other reports generated by the institution, in order to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is evaluated based on the institution's (1) loan-to-deposit ratio and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; (2) percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment areas ("AAs"); (3) record of lending to, and, as appropriate, engaging in other lending-related activities for, borrowers of different income levels and businesses and farms of different sizes; (4) geographic distribution of loans; and (5) record of taking action, if warranted, in response to written complaints about the institution's performance in helping to meet

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

²⁵ 12 U.S.C. § 2906.

²⁶ 12 U.S.C. § 2801 *et seq.*

credit needs in the bank's AAs.²⁷ The Community Development Test evaluates the number and amounts of the institution's community development loans and qualified investments; the extent to which the institution provides community development services; and the institution's responsiveness through such activities to community development lending, investment, and service needs.²⁸ Small institutions, such as Bern Bank, are subject only to the Lending Test.²⁹

CRA Performance of Bern Bank

Bern Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of February 4, 2019 ("Bern Bank Evaluation").³⁰ The bank received a "Satisfactory" rating for the Lending Test.

Examiners found that Bern Bank's loan-to-deposit ratio was reasonable given the institution's size and financial condition and the credit needs of the bank's sole AA. Examiners also found that the bank made a substantial majority of its small farm and small business loans inside its AA. Examiners noted that the bank's geographic distribution of loans reflected reasonable dispersion throughout the bank's AA. Examiners found that the bank's distribution of loans reflected reasonable penetration among farms and businesses of different sizes. Examiners also noted that the bank had not received any CRA-related complaints since its previous evaluation.

CRA Performance of UBT Bank

UBT Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of June 24, 2019 ("UBT Bank Evaluation").³¹ UBT Bank received "Satisfactory" ratings for the Lending Test and the Community Development Test.

Examiners found that UBT Bank's average net loan-to-deposit ratio was more than reasonable given the bank's size, financial condition, and the credit needs of the bank's AAs. Examiners also found that the bank originated a substantial majority of its loans within the its AAs. Examiners noted that the geographic distribution of loans reflected reasonable dispersion of lending throughout the bank's AAs and that the bank's lending reflected a reasonable penetration among individuals of different income levels and businesses and farms of different revenue sizes.

Examiners found that UBT Bank's community development activity reflected adequate responsiveness to the community development needs of the bank's AAs.

²⁷ See 12 CFR 228.26(b).

²⁸ See 12 CFR 228.26(c).

²⁹ 12 CFR 228.26(a).

³⁰ The Bern Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed small farm and small business loans from February 19, 2013, through February 4, 2019. The Bern Bank Evaluation included a full-scope review of the bank's sole AA, which consists of Marshall and Nemaha Counties in Kansas; Pawnee County, Nebraska; and the western half of Richardson County, Nebraska.

³¹ The UBT Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. Examiners reviewed home mortgage loans originated between January 1, 2016, and December 31, 2017, and small business and small farm loans originated between July 1, 2018, and December 31, 2018. The UBT Bank Evaluation included a full-scope review of the bank's Northeast Kansas AA and a limited-scope review of the bank's Riley County Metropolitan AA.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Bern represents that consummation of the proposal would not affect the products and services offered by Bern Bank or UBT 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 Bern, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on this consideration, 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.”³²

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³³ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.³⁴

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.³⁵

³² 12 U.S.C. § 1842(c)(7).

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

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

³⁵ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

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 passive increase of a noncontrolling interest in the target institution. The proposal involves a target that has less than \$10 billion in total assets, and, if Bern and UBT were combined, the pro forma organization would have less than \$100 billion in total assets. Both the acquirer and the target are predominantly engaged in retail and commercial banking activities.³⁶ The hypothetical pro forma organization would have no 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 hypothetical 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 Bern with all the conditions imposed in this order and the commitment referenced above concerning Bern's access to information regarding UBT and UBT Bank. The Board's approval is also conditioned on receipt by Bern of all required regulatory approvals. For purposes of this action, the conditions and commitment are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective December 8, 2020.

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

Ann E. Misback
Secretary of the Board

³⁶ Bern and UBT both offer a range of retail and commercial banking products and services. Bern 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.

Order Issued Under International Banking Act

Allfunds Bank S.A.U.
Madrid, Spain

*Order Approving the Establishment of a Representative Office
FRB Order No. 2020-07 (October 20, 2020)*

Allfunds Bank S.A.U. (“Allfunds”), Madrid, Spain, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in Miami, Florida (the “Miami 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 Miami, Florida (*Miami Herald*, May 22, 2020). The time for submitting comments has expired, and the Board has considered all comments received.

Allfunds, with total assets of approximately \$2.5 billion, is a Spanish bank providing clearing, settlement, and administration services through a platform offered to financial services firms, including banks, wealth managers, broker-dealers, insurance companies, fund managers, and pensions.² Allfunds is the largest investment fund administration platform in Europe based on assets under administration (“AuA”), with over \$615 billion AuA.³ Its foreign operations include subsidiary companies in Brazil, Luxembourg, and Switzerland; branches in Italy, Singapore, and the United Kingdom; and representative offices in Brazil, Chile, Colombia, and the United Arab Emirates.

Allfunds is an indirect wholly owned subsidiary of LHC4 (UK) Limited (“LHC4” – total assets of \$2.3 billion), London, United Kingdom. LHC4, a holding company, holds Allfunds through Liberty Partners, S.L.U. (“Liberty”), Madrid, Spain.⁴

The Miami Representative Office would act as a liaison with U.S. clients and prospective clients of Allfunds. The Miami Representative Office also would market and solicit new business for banking products and technological services provided by Allfunds.⁵

¹ 12 U.S.C. § 3107(a).

² Asset data are as of December 31, 2019.

³ AuA and ranking data are as of May 20, 2020.

⁴ LHC4’s largest shareholder is LHC1 Limited (“LHC1”), which indirectly owns and controls LHC4 through two wholly owned intermediaries, LHC2 Limited and LHC3 Plc, all of Saint Helier, Jersey. LHC1 is jointly held by Hellmann & Friedman and its affiliates (“H&F”), San Francisco, California, and Eiffel Investment Pte Ltd. (“Eiffel”), Singapore. Eiffel is an investment vehicle of GIC Special Investments Pte Ltd., a direct subsidiary of GIC (Ventures) Pte Ltd., Singapore, which is owned by the Minister for Finance of the Government of Singapore. H&F and Eiffel each indirectly control Allfunds. LHC4’s second largest shareholder, with 22.5 percent of its voting shares is BNP Paribas S.A. (“BNPP”), Paris, France. BNPP’s interest in LHC4 is held through BNP Paribas Securities Services and BNP Paribas Asset Management, both of Paris, France. LHC4’s sole remaining shareholder is Credit Suisse Group AG, which holds its shares through its bank subsidiary Credit Suisse AG (“Credit Suisse”), both of Zürich, Switzerland.

⁵ A representative office may engage in representational and administrative functions in connection with the banking activities of a foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank’s head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

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.⁶ The Board also considers additional standards set forth in the IBA and Regulation K.⁷

In the case of an application to establish a representative office, the Board has by rule determined that the supervision standard may be met if the Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities and the operating record of the applicant bank.⁸ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities. This application has been considered under the lesser standard.

As a foreign bank, Allfunds engages directly in the business of banking outside the United States. Allfunds 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 Allfunds is supervised by Banco de España (“Bank of Spain”) under the Single Supervisory Mechanism (“SSM”). The SSM is a system of financial supervision composed of the European Central Bank (“ECB”) and the national competent authorities of participating European Union Member states by which specific tasks are distributed between the ECB and the national competent authorities. Under the SSM framework, the ECB has direct prudential supervisory responsibility over “significant institutions,” while the national competent authorities have direct prudential supervisory responsibility over “less significant institutions,” subject to the oversight of the ECB.⁹ A common prudential regulatory framework applies to banks supervised under the SSM, including those supervised by the national competent authorities as less significant institutions. Through its oversight func-

⁶ 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings and relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination. 12 CFR 211.24(c)(1).

⁷ 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).

⁸ See 12 CFR 211.24(c) and (d)(2).

⁹ With respect to both significant institutions and less significant institutions, the national competent authorities retain authority over supervisory matters that were not transferred to the SSM, including consumer protection and the prevention of money laundering and terrorist financing.

tion, the ECB aims to ensure that the supervisory activities carried out by national competent authorities are in line with high supervisory standards, with a view toward fostering consistency of supervisory outcomes within the SSM.¹⁰

Under the SSM, Allfunds is a “less significant institution” and is subject to direct prudential supervision by the Bank of Spain under the oversight of the ECB. The Board has previously assessed the SSM, including in determining that the ECB and Bank of Spain exercise comprehensive supervision over certain Spanish banks designated as “significant institutions” under this framework.¹¹ The SSM framework has not changed materially since it was last considered by the Board.¹² The Board has previously found that Allfunds’ parent foreign banks—Credit Suisse and BNPP—are subject to comprehensive supervision on a consolidated basis, and home country supervision of the parent foreign banks meets the standards required for establishment of a representative office.¹³

Based on all the facts of record, it has been determined that Allfunds, Credit Suisse, and BNPP are subject to a supervisory framework that is consistent with the current and proposed activities of the Miami Representative Office, taking into account the nature of such activities.

The following additional standards set forth in the IBA and Regulation K have also been considered: (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.¹⁴

Spain is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, Spain has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Spain, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their operations, including foreign branches. The Bank of Spain enforces those requirements with respect to Spanish banks, including Allfunds. Allfunds has policies and procedures to comply with these laws and regulations. These policies and procedures are monitored by government entities, including the Bank of Spain, which is responsible for anti-money-laundering compliance.

¹⁰ Where necessary, the ECB may decide to directly supervise any less significant institution to ensure that high supervisory standards are applied consistently.

¹¹ See *Abanca Corporación Bancaria, S.A.*, FRB Order 2018-20 (September 28, 2018) and Board letter to Rita Milazzo dated August 1, 2017 (finding comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.).

¹² See e.g., *Abanca Corporación Bancaria, S.A.*, FRB Order 2018-20 (September 28, 2018); *Nordea Bank Abp.*, FRB Order 2018-16 (August 3, 2018); *Deutsche Pfandbriefbank AG*, FRB Order 2018-01 (January 3, 2018); *ING Bank N.V.*, FRB Order 2017-27 (October 20, 2017); Board letter to Rita Milazzo dated August 1, 2017 (finding comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.); and *Unione di Banche Italiane, S.p.A.*, FRB Order 2017-11 (April 13, 2017).

¹³ See *Credit Suisse*, 85 *Federal Reserve Bulletin* 68 (January 1999); *BNP Paribas*, 91 *Federal Reserve Bulletin* 51 (Winter 2005). See also Federal Reserve Bank of New York letter to Phillip G. Feigen dated January 31, 2020 (finding supervision consistent with the activities of the proposed representative office for Banque Transatlantique); and *Banque SYZ SA*, FRB Order 2016-09 (June 23, 2016).

¹⁴ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

Allfunds appears to have the experience and capacity to support the Miami Representative Office. Allfunds has several representative offices in South America and the Middle East and operates branches and subsidiaries in six countries. In addition, Allfunds has established controls and procedures for the Miami Representative Office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration Allfunds' record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, it has been determined that financial and managerial factors are consistent with approval of Allfunds' application to establish the Miami Representative Office.

Allfunds has committed to make available to the Board such information on the operations of Allfunds 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,¹⁵ and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, Allfunds 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 Bank of Spain may share information on Allfunds' 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 Allfunds has provided adequate assurances of access to any necessary information that the Board may request. In addition, the Bank of Spain has no objection to the establishment of the Miami Representative Office.

Whether Allfunds' proposal would present a risk to the stability of the United States has also been considered. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of Allfunds in its home country; the scope of Allfunds' 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 Allfunds 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, it has been determined that 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 Allfunds, Allfunds' application to establish the Miami 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.¹⁶ Should any restrictions on access to information on the operations or activities of Allfunds and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Allfunds or its affiliates with applicable federal statutes, the Board may require termination of any of Allfunds' direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Allfunds with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹⁷ 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.

¹⁵ 12 U.S.C. § 1841 *et seq.*

¹⁶ 12 CFR 265.7(d)(12).

¹⁷ The Board's authority to approve the establishment of the Miami Representative Office parallels the continuing authority of the State of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Florida or its agent, the Florida Office of Financial Regulation, to license the Miami 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 20, 2020.

Margaret McCloskey Shanks
Deputy Secretary of the Board



Legal Developments: First Quarter, 2021

Orders Issued Under Federal Reserve Act

Regions Bank
Birmingham, Alabama

*Order Approving the Establishment of a Branch
FRB Order No. 2021-01 (February 8, 2021)*

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 H² to establish a branch at Farm to Market Road 423 (West University Drive), just south of Highway 380, Frisco, Texas.³

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

Regions Financial Corporation, with total consolidated assets of \$145.4 billion, is the 30th largest depository organization in the United States, controlling approximately \$118.7 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Regions Bank operates in 15 states through numerous 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 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

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 in a state in which the bank is situated, if such establishment and operation is authorized under applicable state law. *See* 12 U.S.C. § 36(c)(2). Regions Bank has branches in Texas and is therefore permitted to establish additional branches under the laws of Texas. *See* Tex. Fin. Code Ann. § 203.006.

⁴ 12 CFR 262.3(b).

⁵ Total assets, national asset ranking, and national deposit data are as of September 30, 2020, and state deposit data are as of June 30, 2020, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

⁶ In Texas, Regions Bank is the 22nd largest depository organization, controlling approximately \$5.4 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.

⁷ 12 CFR 208.6(b).

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 application in light of these factors and the public comment received on the proposal.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Region 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 branch 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, 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 determines 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 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 the institutions’ 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

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).

¹³ 12 U.S.C. § 2903.

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 institution's business model, marketing and outreach plans, and plans after consummation, as well as 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, as of December 31, 2017, none of Regions Bank's branches in the Dallas-Fort Worth metropolitan area were in low-income census tracts and that, compared with other non-credit-card small business lenders in Dallas, Regions Bank made fewer small business loans to businesses with under \$1 million in annual revenue. The commenter asserts that Regions Bank should increase the percentage of home loans extended to African Americans, as well as to individuals in low-income census tracts, and should increase the number of small businesses loans to minorities and to businesses in low-income census tracts. The commenter also notes that the recent CRA performance evaluation of Regions Bank indicated that the bank made a low level of community development loans in Dallas under the lending test ("Lending Test"), and received a rating of "low satisfactory" under the service test ("Service Test") for the state of Texas.¹⁴

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; online banking; and wealth management services.

In responding to the commenter, Regions Bank notes that, among its 18 branches in the Dallas and Fort Worth assessment areas ("AAs"), 27.8 percent of Regions Bank's branches are in LMI census tracts. Regions Bank further represents that seven of its 18 branches in these AAs, or 38.9 percent, are in majority-minority census tracts. Additionally, Regions Bank asserts that, in the two years since its last CRA performance evaluation, it has made a number of home mortgage loans and CRA small business/small farm loans in LMI census tracts and to borrowers and small businesses/small farms in majority-minority census tracts. As discussed below, Regions Bank further asserts that it has significantly increased its community development lending and investments since the time period covered by its last CRA performance evaluation two years ago.

¹⁴ As described in more detail below, the Lending Test and the Service Test are two of the three tests used by federal financial supervisors to evaluate the performance of large insured depository institutions, such as Regions Bank, under the CRA.

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 performance 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 any 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, an investment test ("Investment Test"), and a Service Test to evaluate the performance of large insured depository institutions, such as Regions Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),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 evaluated 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;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

¹⁵ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 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 March 4, 2019 (“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 reflected the bank’s willingness to originate loans that are responsive to the residential and small business credit needs of its AAs. Examiners found that the overall geographic distribution of Regions Bank’s HMDA-reportable and small business loans reflected good penetration in LMI geographies. Examiners noted that Regions Bank’s overall distribution of HMDA-reportable loans among borrowers of different income levels and its overall distribution of small business loans to businesses of different sizes were good. In addition, examiners found that the bank’s geographic distribution of small business lending across AAs was good and that its HMDA-reportable lending by geography was adequate. Examiners also found that the bank made an adequate level of community development loans and that the bank’s community development lending activity was adequately responsive to the community development needs throughout its AAs.

Examiners rated Regions Bank’s performance in Texas under the Lending Test as “High Satisfactory.” Examiners found that the geographic distribution of the bank’s loans in Texas reflected adequate penetration through the bank’s AAs. Examiners noted that Regions Bank’s distribution of loans by borrower income reflected adequate penetration among borrowers of different income levels and businesses of different sizes. Further, examiners found that the bank made an excellent level of community development loans in Texas. In the Dallas AA, the area of concern for the commenter, examiners noted that, although Regions Bank had made a low level of community development loans in Dallas, the bank’s lending levels in Dallas were adequate.

Examiners found that, overall, Regions Bank’s investments demonstrated good responsiveness to community development needs. Examiners rated the bank’s performance in Texas under the Investment Test as “Outstanding.” Examiners considered Regions Bank’s community development activity to be responsive to community development needs in Texas. Examiners noted that the bank made a significant level of qualified community development investments in the Dallas AA.

Examiners found that Regions Bank’s retail delivery systems were reasonably accessible to geographies and individuals of different income levels. Examiners noted that the bank’s banking services and business hours did not vary in a way that inconveniences the bank’s AAs, including LMI geographies and individuals. Examiners also found that the bank’s overall record of opening and closing branch offices generally did not adversely affect the accessibility of the bank’s delivery systems, including to LMI geographies and individuals. Moreover, examiners found that the bank provided a relatively high level of community development services throughout its AAs.

Examiners rated Regions Bank’s service performance in Texas as “Low Satisfactory.” Examiners found that the bank’s retail service performance was adequate in Texas. Exam-

²¹ The Regions Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA-reportable loans and small business loans originated by the bank between January 1, 2016, and December 31, 2017. Examiners also reviewed community development loans, investments, and services from April 1, 2016, through December 31, 2018.

²² Regions Bank’s AAs are set forth in the Appendix.

iners noted that, overall, the bank's services and hours of operations in Texas did not vary in a way that inconvenienced the bank's AAs, including LMI geographies and/or LMI individuals. Examiners found that the bank provided an adequate level of community development services that benefitted LMI residents and small businesses in Texas. Additionally, examiners concluded that, in the Dallas AA, the bank's overall service performance was stronger than the bank's statewide service performance.

Regions Bank's Efforts since the Regions Bank Evaluation

Regions Bank represents that, since 2019, it has made over \$55 million in community development loans in the Dallas and Fort Worth AAs. The bank also represents that it has made over \$77 million in CRA investments since the last CRA evaluation period. Regions Bank asserts that it has made 1,710 small business and small farm loans in the Dallas and Fort Worth areas since 2018, of which 32.6 percent were made to businesses located in LMI census tracts and 48.9 percent were made to businesses located in majority-minority census tracts. Regions Bank represents that, in response to the COVID-19 pandemic, it originated 542 Paycheck Protection Program loans to assist its small business customers in the Dallas and Fort Worth AAs. The bank asserts that it has contributed \$150,000 to organizations providing technical assistance to small businesses impacted by the COVID-19 pandemic. Regions Bank represents that it has made 1,157 home mortgage loans in the Dallas and Fort Worth AAs since 2018.²³ In addition, the bank represents that it has provided over 1,100 community development service hours from 2019 through the second quarter of 2020 in the Dallas and Fort Worth AAs.

Additional Supervisory Considerations

In addition to the Regions Bank Evaluation, the Board has considered the results of recent consumer compliance examinations conducted by Reserve Bank examiners, including supervisory reviews of Regions Bank's record of compliance with applicable fair lending laws. 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 branch would provide a broad range of financial services, products, and financial education to the community it serves. In addition, Regions Bank represents that the branch would include enhanced technology and expanded services.

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 determines that the convenience and needs factor is consistent with approval.

²³ Regions Bank represents that it has made a significant number of home mortgage loans to minority borrowers in the Dallas and Fort Worth AAs.

Conclusion

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

By order of the Board of Governors,²⁴ effective February 8, 2021.

Michele Taylor Fennell
Deputy Associate Secretary of the Board

Appendix

The Regions Bank Evaluation included a full-scope review of the bank's AAs within the following: Birmingham, Alabama, Metropolitan Statistical Area ("MSA"); Huntsville, Alabama, MSA; Little Rock, Arkansas, MSA; Miami, Florida, MSA; Tampa, Florida, MSA; Atlanta, Georgia, MSA; Decatur, Illinois, MSA; Indianapolis, Indiana, MSA; Des Moines, Iowa, MSA; Southwest Kentucky; New Orleans, Louisiana, MSA; Jackson, Mississippi, MSA; Southeast Missouri; Charlotte, North Carolina, MSA; Greenville, South Carolina, MSA; Nashville, Tennessee, MSA; Houston, Texas, MSA; Augusta, Georgia-South Carolina Multistate MSA; Chattanooga, Georgia-Tennessee Multistate MSA; Columbus, Georgia-Alabama Multistate MSA; Memphis, Tennessee-Mississippi-Arkansas Multistate MSA; St. Louis, Missouri-Illinois Multistate MSA; and Texarkana, Texas-Arkansas Multistate MSA.

Limited-scope reviews were conducted in numerous AAs, including in the following states: Alabama; Arkansas; Florida; Georgia; Illinois; Indiana; Iowa; Kentucky; Louisiana; Mississippi; Missouri; North Carolina; South Carolina; and Tennessee; as well as in the following AAs in Texas: Austin, Texas, MSA; Cass, Texas; Dallas, Texas, MSA; Fort Worth, Texas, MSA; Longview, Texas, MSA; Nacogdoches-Angelina-Anderson, Texas; and Tyler, Texas, MSA.

²⁴ Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Bowman, Brainard and Waller.

Simmons Bank Pine Bluff, Arkansas

Order Approving the Establishment of a Branch FRB Order No. 2021-02 (February 8, 2021)

Simmons Bank, a state member bank subsidiary of Simmons First National Corporation (“Simmons Corporation”), both of Pine Bluff, Arkansas, has requested the Board’s approval under section 9 of the Federal Reserve Act (“FRA”)¹ and the Board’s Regulation H² to establish a branch at 8319 Preston Road, Dallas, 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 comment received in light of the factors specified in the FRA.

Simmons Corporation, with total assets of \$21.4 billion, is the 93rd largest depository organization in the United States, controlling approximately \$16.2 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Simmons Bank operates in seven states through numerous branches, and the bank’s main office is in Pine Bluff, Arkansas.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 application in light of these factors and the public comment received on the proposal.

Financial, Managerial, and Other Supervisory Considerations

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

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* 12 U.S.C. § 36(c)(2). Simmons Bank has branches in Texas and is permitted to establish additional branches under the laws of Texas. *See* Tex. Fin. Code Ann. § 203.006.

⁴ 12 CFR 262.3(b).

⁵ Total assets, national asset ranking, and national deposit data are as of September 30, 2020, and state deposit data are as of June 30, 2020, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

⁶ In Texas, Simmons Bank is the 48th largest depository organization, controlling approximately \$2.1 billion in deposits, which represent less than 1 percent 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).

visory information, publicly reported and other financial information, information provided by Simmons Bank, and the comment received on the proposal. Simmons Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Simmons Bank are consistent with approval, and Simmons 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 Simmons Bank's proposed investment in the branch and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.¹⁰

In considering Simmons 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 Simmons Bank and the bank's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws. Simmons Bank is considered to be well managed. Simmons 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 Simmons Bank's management, financial history and condition, capital adequacy, compliance with applicable banking and consumer protection laws, and future earnings prospects, as well as the effectiveness of Simmons 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 the institutions' 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 institution's business model, marketing and outreach plans, and plans after consummation, and any other information the Board deems relevant.

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.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Simmons Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Simmons Bank, and the public comment received on the proposal.

Public Comment on the Proposal

One commenter objected to the proposal, alleging that, based on data reported in 2018 and 2019 by Simmons Bank under the Home Mortgage Disclosure Act of 1975 (“HMDA”),¹⁴ in the Dallas, Texas, assessment area (“AA”), the bank made a low percentage of home loans to minorities, particularly to African Americans. The commenter also asserted, based on this data, that the bank’s lending was low in LMI areas in the Dallas AA in comparison to middle- and upper-income areas in the Dallas AA. The commenter further alleges that, compared to other non-credit-card small business lenders in the Dallas AA, Simmons Bank made fewer small business loans to businesses with under \$1 million in annual revenue. The commenter contends that the Southern Dallas area lacks adequate banking services and calls on Simmons Bank to locate the branch in Southern Dallas and, more broadly, to take steps to address inequality in Dallas.¹⁵

Business of the Applicant and Response to Comment

Simmons Bank offers an array of commercial and consumer loan and deposit products 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; liquidity management products and services; credit cards; correspondent banking services; online banking; and treasury and wealth management services.

In responding to the commenter, Simmons Bank refers to its satisfactory CRA examination record. Simmons Bank notes that it did not enter the Dallas, Texas, market until 2018, when it acquired another institution in the market. The bank further notes that its deposit share in the Dallas market was only 0.11 percent as of June 30, 2020. Simmons Bank states that it is committed to expanding its footprint in the Dallas market and that the bank is working toward establishing a branch in an LMI census tract in the southern portion of the City of Dallas. Simmons Bank asserts that, since entering the Dallas AA, it has introduced a product suite that is designed to meet the needs of LMI individuals and communities in the Dallas AA and includes mortgage, home improvement, and low-cost checking account products. Additionally, the bank asserts that over half of its charitable giving budget for the Dallas AA went to organizations located in South Dallas.

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 performance evaluation, as well as other information and supervisory views from the relevant federal supervisor, which in this case is the Federal Reserve Bank of St. Louis (“Reserve Bank”).¹⁶ In addition, the Board considers information provided by the applicant and by any public commenters.

¹⁴ 12 U.S.C. § 2801 *et seq.*

¹⁵ The comment refers to “Southern Dallas.” Simmons Bank’s response to the comment refers to “South Dallas,” as well as to the “southern portion of the City of Dallas.” Accordingly, this Order uses the terminology expressed by the commenter and Simmons Bank, respectively.

¹⁶ 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.¹⁷ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, the Board and the other 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 Simmons Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the HMDA,¹⁸ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is evaluated 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;¹⁹ (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.²⁰ 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.²¹

CRA Performance of Simmons Bank

Simmons Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of January 6, 2020 ("Simmons Bank Evaluation").²² The bank received a "Low Satisfactory" rating for the Lending Test and a "High Satisfactory" rating for each of the Investment Test and Service Test.²³

¹⁷ 12 U.S.C. § 2906.

¹⁸ 12 U.S.C. § 2801 *et seq.*

¹⁹ 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).

²⁰ *See* 12 CFR 228.22(b).

²¹ *See* 12 CFR 228.21 *et seq.*

²² The Simmons Bank Evaluation was conducted using Large Institution CRA Examination Procedures. In general, examiners reviewed HMDA-reportable loans, small business loans, and small farm loans reported by the bank from January 1, 2017, through December 31, 2018. For the AAs the bank entered by acquisition during the review period, the review was limited to HMDA- and CRA-reportable loan activity for the year in which the acquisition took place. Accordingly, for all AAs in Texas, Oklahoma, and Colorado, as well as the Nonmetropolitan Statewide Area in Kansas, loan activity was assessed for the time period from January 1, 2018, through December 31, 2018.

Examiners determined that Simmons Bank's overall lending levels reflected good responsiveness to the credit needs of the bank's AAs and that the bank's geographic distribution of loans reflected adequate penetration throughout its AAs. Examiners found that a high percentage of Simmons Bank's loans were made within the bank's AAs. Examiners also found that the bank's distribution of HMDA reportable loans based on borrower income reflected good penetration among customers of different income levels and that the bank's distribution of small business and small farm loans by revenue size reflected good penetration among businesses and farms of different sizes. Examiners noted that the bank made a relatively high level of community development loans. Examiners also noted that the bank made use of innovative and flexible lending products in meeting the credit needs of its AAs.

In the Dallas AA, the area of concern for the commenter, examiners determined that Simmons Bank's lending levels reflected adequate responsiveness to credit needs. Examiners found that the geographic distribution of loans reflected adequate penetration throughout the Dallas AA. Examiners determined that the bank's distribution of loans to borrowers of different income levels and to businesses of different sizes reflected adequate penetration in the Dallas AA.

Examiners found that Simmons Bank's HMDA reportable loans to low-income borrowers slightly exceeded the level of lending by peer institutions in the Dallas AA in 2018. Examiners also found that the bank's distribution of HMDA loans to low-income borrowers was adequate. Examiners determined that the bank's HMDA lending to moderate-income borrowers exceeded the aggregate lending level by peer institutions in the Dallas AA in 2018, and that the bank's distribution of HMDA loans to moderate-income borrowers was good. Overall, examiners considered the bank's performance in these loan categories to be good in the Dallas AA.

In evaluating Simmons Bank's small business loans in the Dallas AA for 2018, examiners found the percentage of loans that Simmons Bank made to businesses with annual revenues of \$1 million or less slightly exceeded the percentage of loans made by peer institutions. Examiners also found that the bank's distribution of small business loans reflected adequate performance.

Examiners noted that the bank did not have any branches in southern Dallas County and that there were conspicuous lending gaps in LMI geographies in the Dallas AA. However, examiners found that this concern was somewhat mitigated by the bank's small branch network in the Dallas AA and its recent entry into the Dallas market. Examiners noted that

In general, the evaluation period for community development lending, investments, and services was from May 1, 2017, through January 5, 2020. However, certain community development lending activities of the institutions Simmons Bank acquired during the review period also were considered by examiners – specifically, activities occurring from the earliest of the dates of the respective acquired institutions' previous CRA performance evaluations, or May 1, 2017. In addition, community development investments made before May 1, 2017, but still outstanding as of January 5, 2020, were also considered. The evaluation period for retail branching services was from May 1, 2017, through January 5, 2020.

²³ The Simmons Bank Evaluation included a full-scope review of the following areas: Little Rock-North Little Rock, Arkansas, Combined Statistical Area ("CSA"); Arkansas Nonmetropolitan Statewide Area ("NonMSA"); Western Tennessee NonMSA; Nashville-Davidson-Murfreesboro-Franklin, Tennessee MSA; Jackson, Tennessee MSA; Missouri NonMSA; Springfield, Missouri MSA; St. Louis, Missouri-Illinois Multistate MSA; Dallas-Fort Worth-Arlington, Texas, MSA ("Dallas AA"); Oklahoma City, Oklahoma MSA; Oklahoma NonMSA; Wichita, Kansas MSA; Denver-Aurora-Lakewood, Colorado MSA; and Kansas City, Kansas-Missouri Multistate MSA. Limited-scope reviews were conducted in Simmons Bank's remaining AAs within the following areas: Fayetteville-Springdale-Rogers, Arkansas MSA; Jonesboro-Paragould, Arkansas CSA; Fort Smith, Arkansas-Oklahoma MSA; Hot Springs, Arkansas MSA; Eastern Tennessee NonMSA; Knoxville, Tennessee MSA; Memphis, Tennessee-Mississippi-Arkansas MSA; Joplin, Missouri MSA; San Antonio-New Braunfels, Texas MSA; Austin-Round Rock-Georgetown, Texas MSA; Texas NonMSA; Tulsa-Broken Arrow-Owasso, Oklahoma MSA; and Kansas NonMSA.

Simmons Bank had implemented an action plan to address its lack of lending in southern Dallas County, including targeted marketing and outreach activities. Examiners also noted the bank's plan to open a branch in the area. Examiners determined that Simmons Bank made a relatively high level of community development loans in the Dallas AA.

Examiners found that Simmons Bank made a significant level of community development investments and grants throughout its AAs and that the bank made an excellent level of qualified community development investments and grants in the Dallas AA in particular. Examiners determined that the bank's investments and grants demonstrated an adequate responsiveness to credit and community development needs throughout the bank's AAs.

Examiners rated the bank's performance in Texas under the Investment Test as "Outstanding," which examiners noted was a reflection of the bank's performance in the Dallas AA. Examiners noted that the bank's largest investments were made in several multifamily affordable housing developments in the Dallas AA and in mortgage-backed securities that finance affordable housing loans to LMI individuals in Dallas. Examiners noted that the bank had donated to various community development organizations, including homeless shelters, food banks, nonprofit organizations providing health and educational services to LMI individuals, and affordable housing organizations in the Dallas AA.

Examiners found that Simmons Bank's service delivery systems were reasonably accessible to geographies and individuals of different income levels in the bank's AAs. However, examiners also found that the bank's service delivery systems were unreasonably inaccessible to portions of the Dallas AA. Examiners noted that the bank's record of opening and closing branches during the review period had not impacted the accessibility of its banking services to LMI geographies and/or individuals in the Dallas AA. Examiners determined that the bank's hours and services did not vary in a way that inconvenienced any portion of the bank's AAs, including LMI geographies or individuals. Examiners found that the bank provided a relatively high level of community development services throughout its AAs. Examiners also found that the bank provided an adequate level of community development services in Texas, including in the Dallas AA.

Simmons Bank's Efforts since the Simmons Bank Evaluation

Simmons Bank represents that it has made CRA-eligible community development loans in the South Dallas area during the past year to create affordable housing and support LMI jobs. As noted above, Simmons Bank also represents that, since entering the Dallas market, it has introduced a set of products designed to meet the needs of LMI individuals and communities in the market. Specifically, Simmons Bank represents that, in late 2019 and early 2020, it led a digital marketing campaign for an affordable home improvement loan product that targeted certain zip codes with identified CRA needs, including majority-minority areas in the Dallas AA. Simmons Bank notes that it recently launched an affordable mortgage product that provides flexible credit guidelines and permissible seller contributions and does not require a down payment or private mortgage insurance. Simmons Bank states that this mortgage product is designed to benefit both low-to-moderate income borrowers and borrowers in majority-minority census tracts. Simmons Bank also states that it has launched an extensive marketing campaign, which includes targeted advertising on radio stations and in newspapers that have high levels of minority listeners or readers. Simmons Bank asserts that it has increased its engagement with community organizations in the Dallas area since the previous CRA evaluation and recently formed a working group to develop and deploy products to serve the needs of underserved communities and borrowers in Dallas.

Additional Supervisory Considerations

In addition to the Simmons Bank Evaluation, the Board has considered the most recent consumer compliance examination and fair lending record of Simmons Bank and consulted with the Reserve Bank regarding the bank's CRA, consumer compliance, and fair lending records. The Board also has considered Simmons Bank's supervisory record with the Consumer Financial Protection Bureau.

With respect to the examiners' finding in the Simmons Bank Evaluation that Simmons Bank's service delivery systems were unreasonably inaccessible to portions of the Dallas AA, the Board has considered that this may be attributable, in part, to the bank's recent entry into the Dallas, Texas, market through an acquisition in 2018. The Board has also considered Simmons Bank's commitment to, and steps toward, establishing a branch facility in an LMI census tract in the southern portion of the city of Dallas in 2021, which may help address this concern.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Simmons Bank represents that the proposed branch would allow the bank to better serve the needs of the Dallas community by providing banking services at an additional location. Simmons Bank further represents that it has developed and deployed a strategy to enhance its CRA performance, including a plan to establish a branch facility in an LMI census tract in southern Dallas this year.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA record of Simmons Bank, the bank's records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Simmons 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 application should be, and hereby is, approved. The Board's approval is specifically conditioned on compliance by Simmons 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 this application is also subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank, acting under authority delegated by the Board.

By order of the Board of Governors,²⁴ effective February 8, 2021.

Michele T. Fennell
Deputy Associate Secretary of the Board

²⁴ Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Bowman, Brainard and Waller.



Legal Developments: Second Quarter, 2021

Orders Issued Under Bank Holding Company Act

VeraBank, Inc.
Henderson, Texas

*Order Approving the Acquisition of a Bank
FRB Order No. 2021-03 (April 9, 2021)*

VeraBank, Inc. (“VBI”), Henderson, 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 Act² to acquire 100 percent of the voting shares of Panola National Bank (“Panola Bank”), Carthage, Texas.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (86 *Federal Register* 7870 (February 2, 2021)).³ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

VBI, with consolidated assets of approximately \$3.0 billion, is the 363rd largest insured depository organization in the United States.⁴ VBI controls approximately \$2.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. VBI controls VeraBank, N.A. (“VeraBank”), Henderson, Texas, which operates in Texas only. VeraBank is the 39th largest insured depository organization in Texas, controlling deposits of approximately \$2.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁵

Panola Bank, with total assets of approximately \$125.7 million, is the 3823rd largest insured depository organization in the United States. Panola Bank controls approximately \$110.8 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Panola Bank operates in Texas only. Panola Bank is the 329th largest insured depository organization in Texas, controlling deposits of approximately \$108.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, VBI would become the 347th largest insured depository organization in the United States, with consolidated assets of approximately \$3.1 billion,

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 CFR 262.3(b).

⁴ National asset, deposit, and market-share rankings are as of December 31, 2020, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

⁵ State deposit data and rankings are as of June 30, 2020.

which would represent less than 1 percent of the total assets of insured depository organizations in the United States. VBI would control total consolidated deposits of approximately \$2.7 billion, which would represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Texas, VBI would remain the 38th largest insured depository organization, controlling deposits of approximately \$2.6 billion, which would represent less than 1 percent of the total deposits of insured depository institutions in the state.

Competitive Considerations

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

VeraBank and Panola Bank compete directly in the Longview, Texas, banking market.⁸ 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 in insured depository institutions in the market (“market deposits”) that VBI would control;⁹ 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 (“DOJ”) Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁰ 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 Longview banking market. On consummation of the proposal, the Longview banking market would remain unconcentrated as measured by the HHI, according to the concentration measures applied

⁶ 12 U.S.C. § 1842(c)(1)(A).

⁷ 12 U.S.C. § 1842(c)(1)(B).

⁸ The Longview banking market is defined as Gregg, Harrison, Marion, and Upshur counties, and the northern two-thirds of Rusk County, all in Texas.

⁹ Local deposit and market share data are as of June 30, 2020, 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).

¹⁰ In applying the DOJ Bank Merger Guidelines issued in 1995 (*see* <https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995>), the Board looks to the DOJ’s Horizontal Merger Guidelines issued in 1992 and amended in 1997, for the characterization of a market’s concentration. *See* <https://www.justice.gov/atr/horizontal-merger-guidelines-0>. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>), 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.

by the Board. The change in HHI would be small, and numerous competitors would remain in the market.¹¹

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 Longview banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, the effectiveness of the institutions in combatting money laundering, and any public comments on the proposal.¹² In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the impact of the proposed funding of the transaction and any 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.

VBI, VeraBank, and Panola Bank are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank acquisition that is structured primarily as a cash purchase.¹³ The capital, asset quality, earn-

¹¹ VeraBank operates the 2nd largest depository institution in the Longview banking market, controlling approximately \$1.1 billion in deposits, which represent 17.1 percent of market deposits. Panola Bank operates the 24th largest depository institution in the market, controlling deposits of approximately \$14.5 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, VeraBank would remain the 2nd largest depository organization in the market, controlling deposits of approximately \$1.1 billion, which represent 17.4 percent of market deposits. The HHI for the Longview banking market would increase by eight points to 1072, and 24 competitors would remain in the market.

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

¹³ VeraBank would effect the acquisition by forming an interim national bank, Bullfrog Interim Bank, National Association ("Interim Bank"). Interim Bank would merge with and into Panola Bank, with Panola Bank surviving the merger as a subsidiary of VBI. At the time of the merger, each share of Panola Bank common stock would be cancelled and converted into a right to receive cash. Immediately following the acquisition, VeraBank would continue to operate Panola Bank as a separate standalone bank. VBI has represented that it intends to merge Panola Bank with and into VeraBank at some time after the first merger is consummated. The bank mergers would be subject to approval by the Office of Comptroller of the Currency ("OCC") under section 18(c) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c). VBI has the financial resources to effect the proposed acquisition and mergers.

ings, and liquidity of VBI are consistent with approval, and VBI 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 are considered consistent with approval. In reaching these conclusions, the Board also has considered VBI's plans to withstand the potential impact of near-term economic conditions.

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 VBI, VeraBank, and Panola Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by VBI; 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.

VBI, VeraBank, and Panola Bank are considered to be well managed. VBI's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and VBI's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered VBI's plans for implementing the proposal. VBI 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 addition, VBI's management has the experience and resources to operate the resulting organization in a safe and sound manner.

Based on all of the facts of record, including VBI's supervisory record, managerial and operational resources, and plans for operating the combined organization after consummation, the Board determined 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 VBI, VeraBank, and Panola Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.¹⁴ 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 Community Reinvestment Act of 1977 ("CRA").¹⁵ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,¹⁶ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁷

¹⁴ 12 U.S.C. § 1842(c)(2).

¹⁵ 12 U.S.C. § 2901 *et seq.*

¹⁶ 12 U.S.C. § 2901(b).

¹⁷ 12 U.S.C. § 2903.

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and 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 VeraBank and Panola Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC, confidential supervisory information, information provided by VBI, and the public comment received on the proposal.

Public Comment on the Proposal

The Board received one comment on the proposal. The commenter objected to the proposal on the basis that VeraBank allegedly made more home loans in Texas to White borrowers than it did to African American borrowers, and that VeraBank denied African American borrowers at a higher rate than it denied White borrowers, based on data reported by VeraBank under the Home Mortgage Disclosure Act of 1975 ("HMDA").¹⁸

Businesses of the Involved Institutions and Response to the Public Comment

Through VeraBank's branches in Texas, VBI offers consumer and commercial loan and deposit products, wealth management services, and business banking products. These products and services include a wide range of checking, savings, and money market accounts, as well as credit products, such as home equity, automobile, boat, farm, construction, and commercial loans. Through its branches in Texas, Panola Bank offers a variety of commercial and consumer loan products, including commercial and home mortgage lending. Panola Bank also provides a variety of deposit services, including checking, savings, and money market deposit accounts, individual retirement accounts, and certificates of deposit, as well as business checking and merchant card services. Both banks offer internet banking and mobile banking services.

In response to the comment, VBI represents that VeraBank's denial of certain loans is based on the bank's credit underwriting process and is not the result of any racial bias or discrimination. VBI also represents that the bank has a comprehensive fair lending program to ensure compliance with fair lending laws and regulations. VBI represents that VeraBank engages in comparative file reviews that analyze decisions made on similar applications and compare decisions made on applications by minorities to those by non-minorities. VBI represents that this comparative file review helps ensure that the bank's credit decisions are based on the credit quality of the applicant and not on a prohibited basis.

According to VBI, VeraBank supports many nonprofits and community service activities, and the bank's employees are active in promoting such services. VBI notes that VeraBank has a wholly owned community development organization, VeraBank Community Devel-

¹⁸ 12 U.S.C. § 2801 *et seq.* The commenter also stated that the Board should consider VeraBank's performance under the Paycheck Protection Program ("PPP") because of a decline in applications received between the first and second rounds of the PPP. An allegation of a decline in PPP lending without additional support does not address the limited factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

opment Corporation, that funds mortgage loans to LMI individuals and in LMI communities, including non-HMDA reportable mortgages made to African American borrowers.

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. The Board considers the supervisory views of relevant federal supervisors, which in this case is the OCC with respect to both VeraBank and Panola Bank.¹⁹ 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.²⁰ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

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 large banks, such as VeraBank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the 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 evaluated 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;²¹ (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.²² 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.²³ Small institutions, such as Panola Bank, are subject only to the Lending Test described above.²⁴

¹⁹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48,506, 48,548 (July 25, 2016).

²⁰ 12 U.S.C. § 2906.

²¹ 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).

²² See 12 CFR 228.22(b).

²³ See 12 CFR 228.21 *et seq.*

²⁴ 12 CFR 228.26(a).

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial, ethnic, or gender 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 may not be available from public HMDA data.²⁵ Consequently, the Board evaluates such disparities in the context of other information regarding the lending record of an institution.

CRA Performance of VeraBank

VeraBank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of April 27, 2020 ("VeraBank Evaluation").²⁶ The bank received a "High Satisfactory" rating on the Lending and Investment Tests and an "Outstanding" rating on the Service Test.²⁷

Examiners found that a high percentage of VeraBank's loans were extended in the bank's AAs. Examiners determined that VeraBank exhibited good geographic distribution of loans in its AAs and excellent distribution of loans among individuals of different income levels and business of different sizes. Examiners found that VeraBank's community development lending had a significantly positive impact on the overall lending test for the non-MSA, and found the bank to be a leader in making community development loans.

Examiners found that VeraBank had an adequate overall level of qualified community development investments and grants, and made substantial community development-qualified investments in statewide and regional areas. Examiners determined that VeraBank exhibited adequate responsiveness to credit and community economic development needs, and the bank's qualified investments, donations, and grants were responsive to needs in its AAs.

Examiners concluded that VeraBank's retail service performance in the non-MSA and Longview AA was excellent. Examiners found that the bank was a leader in providing community development services. Examiners determined that the bank's service delivery systems were readily accessible to geographies and individuals of different income levels in the institution's AAs.

CRA Performance of Panola Bank

Panola Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of February 3, 2020 ("Panola Bank Evaluation").²⁸ The bank received a "Satisfactory" rating for the Lending Test.²⁹

²⁵ 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.

²⁶ The VeraBank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loan data from January 1, 2017, through December 31, 2019. Examiners also reviewed community development activities from April 10, 2017, through December 31, 2019.

²⁷ The VeraBank Evaluation involved a full-scope review of the bank's activities in the Longview, Texas, metropolitan statistical area ("MSA") and the non-MSA AAs comprised of Anderson, Angelina, Henderson, Limestone, Navarro, Marion, Titus, and Walker counties; and limited-scope reviews of the Austin, Bryan–College Station, Killeen–Temple–Fort Hood, and Tyler AAs.

²⁸ The Panola Bank Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed home mortgage and consumer loan data from January 1, 2017, through December 31, 2019.

²⁹ The Panola Bank Evaluation reviewed the bank's activities in Harrison County (MSA) and Panola County (non-MSA).

Examiners found that the geographic distribution of the bank's loans reflected excellent dispersion throughout the bank's AAs. Examiners found that Panola Bank's average net loan-to-deposit ratio was reasonable given the bank's asset size, financial condition, and the credit needs of the bank's AAs. Examiners noted that a substantial majority of the small business and home mortgage loans reviewed were extended within the bank's AAs. Examiners determined that the distribution of loans to businesses of different revenue sizes and individuals of different income levels in the bank's AAs was reasonable.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the OCC regarding the CRA, consumer compliance, and fair lending records of VeraBank. The Board also considered the results of the most recent consumer compliance examinations of VeraBank and Panola Bank, which included reviews of the banks' compliance 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 VBI has the experience and resources to ensure that the VeraBank and Panola Bank would help 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. VBI represents that customers of VeraBank and Panola Bank would benefit from the combined strengths of the resulting organization. VBI asserts that the banks would leverage the greater resources of the resulting organization to enhance product offerings, customer service, and community involvement. VBI also represents that, with the exception of balloon mortgages, which are currently offered by Panola Bank, VBI does not anticipate discontinuing or making significant modifications to any existing products or services of the banks following consummation of the proposal.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by VBI, 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 considerations are consistent with approval.

Financial Stability Considerations

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."³⁰

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of

³⁰ 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.³¹ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.³²

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, generally are not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³³

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in 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.³⁴ The pro forma organization 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 VBI with all the conditions imposed in this order and on any commitments made to the Board in connection with the proposal. The Board's approval also is conditioned on receipt by VBI of all required regulatory approvals. For purposes of this action,

³¹ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³² For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

³³ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

³⁴ VeraBank and Panola Bank offer a range of retail and commercial banking products and services. VBI has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

the 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 April 9, 2021.

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

Michele Taylor Fennell
Deputy Associate Secretary of the Board

The PNC Financial Services Group, Inc.
Pittsburgh, Pennsylvania

PNC Bancorp, Inc.
Wilmington, Delaware

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2021-04 (May 14, 2021)

The PNC Financial Services Group, Inc. (“PNC Financial”), Pittsburgh, Pennsylvania, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire BBVA USA Bancshares, Inc. (“BBVA Bancshares”), Houston, Texas,³ a bank holding company, and thereby indirectly acquire BBVA Bancshares’ state member bank subsidiary, BBVA USA (“BBVA Bank”), Birmingham, Alabama.⁴ In addition, PNC Financial’s subsidiary, PNC Bancorp, Inc. (“PNC Bancorp,” and together with PNC Financial, “PNC”), Wilmington, Delaware, a bank holding company, has requested the Board’s approval under section 3 of the BHC Act to acquire BBVA Bank. Following the proposed acquisition, BBVA Bank would be merged with and into PNC’s subsidiary bank, PNC Bank, National Association (“PNC Bank”), Wilmington, Delaware.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (86 *Federal Register* 539 (January 6, 2021)).⁶ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

PNC, with consolidated assets of approximately \$466.9 billion, is the 12th largest insured depository organization in the United States.⁷ PNC controls approximately \$365.4 billion in consolidated deposits, which represent approximately 2.1 percent of the total amount of deposits of insured depository institutions in the United States.⁸ PNC controls PNC Bank, which operates in 23 states and the District of Columbia.⁹ PNC is the seventh largest insured depository organization in Alabama, controlling deposits of approximately \$3.2 billion, which represent 2.5 percent of the total deposits of insured depository institutions in that state. PNC is the 11th largest insured depository organization in Florida, controlling deposits of approximately \$13.5 billion, which represent 1.9 percent of the total deposits of insured depository institutions in that state. PNC is the 400th largest insured depository organization in Texas, controlling deposits of approximately \$60 million, which

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ BBVA Bancshares is a wholly owned subsidiary of Banco Bilbao Vizcaya Argentaria, S.A. (“BBVA”), Madrid, Spain.

⁴ In addition, PNC would acquire certain nonbanking operations of BBVA Bancshares that are permissible for financial holding companies. *See* 12 U.S.C. § 1843(k).

⁵ The merger of BBVA Bank into PNC Bank, which is not expected to occur for some time following PNC’s acquisition of BBVA Bancshares, is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act.

⁶ 12 CFR 262.3(b).

⁷ Consolidated asset and national deposit, ranking, and market-share data are as of December 31, 2020, and state deposit, ranking, and market-share data are as of June 30, 2020, unless otherwise noted.

⁸ In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

⁹ PNC Bank currently operates branches in Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. PNC Bank also has branches in Toronto, Canada, and Nassau, the Bahamas.

represent less than 1 percent of the total deposits of insured depository institutions in that state.

BBVA Bancshares, with consolidated assets of approximately \$102.8 billion, is the 40th largest insured depository organization in the United States. BBVA Bancshares controls approximately \$85.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. BBVA Bancshares controls BBVA Bank, which operates in Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas. BBVA Bancshares is the second largest insured depository organization in Alabama, controlling deposits of approximately \$20.7 billion, which represent 16.0 percent of the total deposits of insured depository institutions in that state. BBVA Bancshares is the 22nd largest insured depository organization in Florida, controlling deposits of approximately \$5.7 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. BBVA Bancshares is the sixth largest insured depository organization in Texas, controlling deposits of approximately \$44.2 billion, which represent 3.2 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, PNC would become the seventh largest insured depository organization in the United States, with consolidated assets of approximately \$556.1 billion, which represent 2.0 percent of the total amount of assets of insured depository institutions in the United States. PNC would control total consolidated deposits of approximately \$451.3 billion, which represent 2.6 percent of the total deposits of insured depository institutions in the United States. In Alabama, PNC would become the second largest insured depository organization, controlling deposits of approximately \$23.9 billion, which represent 18.5 percent of the total deposits of insured depository institutions in that state. In Florida, PNC would become the eighth largest insured depository organization, controlling deposits of approximately \$19.2 billion, which represent 2.7 percent of the total deposits of insured depository institutions in that state. In Texas, PNC would become the sixth largest insured depository organization, controlling deposits of approximately \$44.3 billion, which represent 3.2 percent of the total deposits of insured depository institutions in that state.

Factors Governing Board Review of the Transaction

The BHC Act sets forth the factors that the Board is required to consider when reviewing the merger of bank holding companies or the acquisition of banks.¹⁰ These factors include the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the effectiveness of the involved institutions in combatting money-laundering activities; the convenience and needs of the communities to be served, including the records of performance under the Community Reinvestment Act of 1977 (“CRA”)¹¹ of the insured depository institutions involved in the transaction; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the U.S. banking or financial system. For proposals involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits as a percentage of the total deposits controlled by insured depository institutions in the United States and in relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act.¹²

¹⁰ See 12 U.S.C. § 1842.

¹¹ 12 U.S.C. § 2901 *et seq.*

¹² 12 U.S.C. § 1842(d).

Interstate and Deposit Cap Analyses

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company 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.¹³ 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 target bank has not been in existence for the lesser of the state statutory minimum period of time or five years;¹⁴ (2) must take into account the record of the applicant under the CRA and the applicant's record of compliance with applicable state community reinvestment laws;¹⁵ 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 10 percent of the total deposits of insured depository institutions in the United States 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 the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.¹⁶

For purposes of the BHC Act, the home state of PNC Financial and PNC Bancorp is Pennsylvania. BBVA Bank is located in Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas. PNC is well capitalized and well managed under applicable law, and PNC Bank has an "Outstanding" rating under the CRA.¹⁷ In addition, BBVA Bank has been in existence for more than five years.

On consummation of the proposed transaction, PNC would control 2.6 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Of the states in which PNC and BBVA Bancshares have overlapping banking operations, Alabama and Florida impose a 30 percent limit and Texas imposes a 20 percent limit on the total amount of in-state deposits that a single banking organization may control.¹⁸ The combined organization would control approximately 18.5 percent of the total amount of deposits of insured depository institutions in Alabama, 2.7 percent in Florida, and 3.2 percent in Texas. 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 is not precluded under section 3(d) of the BHC Act 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

¹³ 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 such 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).

¹⁴ 12 U.S.C. § 1842(d)(1)(B).

¹⁵ 12 U.S.C. § 1842(d)(3).

¹⁶ 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 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).

¹⁷ 12 U.S.C. § 2901 *et seq.* There are no applicable state community reinvestment laws that would apply to PNC Bank or PNC.

¹⁸ *See* Ala. Code § 5-13B-23(b); Fla. Stat. § 658.2953; Tex. Fin. Code § 203.004.

banking in any relevant market.¹⁹ 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.²⁰

PNC and BBVA Bancshares have subsidiary banks that compete directly in 14 banking markets in Alabama, Florida, and Texas. 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 the markets (“market deposits”) that PNC would control;²¹ 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 (“DOJ”) Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²² the number of competitors that would remain in each 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 each of the banking markets in which PNC Bank and BBVA Bank compete. On consummation of the proposal, four banking markets would remain highly concentrated, and 10 banking markets would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in these markets is consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in each of these banking markets.²³

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

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which PNC and BBVA Bancshares compete

¹⁹ 12 U.S.C. § 1842(c)(1)(A).

²⁰ 12 U.S.C. § 1842(c)(1)(B).

²¹ Local deposit and market-share data are as of June 30, 2020, 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).

²² In applying the DOJ Bank Merger Guidelines issued in 1995 (*see* <https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995>), the Board looks to the DOJ’s Horizontal Merger Guidelines issued in 1992, and amended in 1997, for the characterization of a market’s concentration. *See* <https://www.justice.gov/atr/horizontal-merger-guidelines-0>. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

²³ These banking markets and the competitive effects of the proposal in these markets are described in the [Appendix](#).

directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, the effectiveness of the institutions in combatting money laundering, and any public comments on the proposal.²⁴ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the impact of the proposed funding of the transaction. 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.

PNC, BBVA Bancshares, 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 acquisition that is structured as a cash purchase.²⁵ The capital, asset quality, earnings, and liquidity of PNC and BBVA Bancshares are consistent with approval, and PNC and BBVA Bancshares appear 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 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 PNC, BBVA Bancshares, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by PNC; 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.

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

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

²⁵ PNC would effect the acquisition by acquiring and merging BBVA Bancshares with and into PNC Financial, with PNC Financial as the survivor. Shortly thereafter, PNC Financial would contribute all the shares of BBVA Bank to PNC Bancorp. PNC has represented that it intends to merge BBVA Bank with and into PNC Bank at some time after the holding company transaction. PNC has the financial resources to effect the proposed acquisition.

sectors, and PNC's risk-management program appears consistent with approval of this expansionary proposal.

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board 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 The CRA also 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 institution's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of PNC Bank and BBVA Bank; the fair lending and compliance records of both banks; the supervisory views of the OCC, the Federal Reserve Bank of Atlanta, and the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by PNC; and the public comments received on the proposal.

²⁶ 12 U.S.C. § 1842(c)(2).

²⁷ 12 U.S.C. § 2901(b).

²⁸ 12 U.S.C. § 2903.

Summary of Public Comments

The Board received comments from 116 commenters, all of whom expressed support for the proposal. In general, these commenters asserted that PNC provides valuable support to their communities, including with respect to small businesses, minority businesses, charitable donations, community development grants and investments, and financial literacy programs for low-income and minority communities. Commenters asserted that the proposal would provide expanded opportunities for community groups, LMI persons, and small businesses. Many commenters also praised PNC Bank's community outreach efforts and support for community programs and initiatives, including volunteer activity by PNC employees.

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 from relevant federal supervisors,²⁹ which in this case are the OCC for PNC Bank and the Federal Reserve Bank of Atlanta for BBVA Bank. 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 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 large insured depository institutions, such as PNC Bank and BBVA Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),³¹ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's 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;³² (4) the

²⁹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

³⁰ 12 U.S.C. § 2906.

³¹ 12 U.S.C. § 2801 *et seq.*

³² Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *see, e.g.*, 12 CFR 228.22(b)(3).

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.³³ 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.³⁴

CRA Performance of PNC Bank

PNC Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of March 19, 2018 ("PNC Bank Evaluation").³⁵ PNC Bank received "Outstanding" ratings for each of the Lending, Investment, and Service Tests.

With respect to the Lending Test, examiners found that PNC Bank's overall lending levels reflected excellent responsiveness to the credit needs of its AAs. According to examiners, the bank's geographic distribution of home mortgage loans and small business loans reflected excellent penetration throughout the bank's AAs. Examiners also found that PNC Bank's lending to borrowers reflected excellent penetration among businesses of different sizes, as well as retail customers of different incomes. Examiners noted that PNC Bank originated an excellent level of community development loans. Examiners also noted that the bank's community development loans were effective in addressing community credit needs.

With respect to the Investment Test, examiners found that PNC Bank's qualified investments were effective and responsive in addressing community credit needs. Examiners noted that PNC Bank made extensive use of innovative or complex investments to support community development initiatives.

With respect to the Service Test, examiners found that PNC Bank's branches and alternative delivery systems were accessible to geographies and individuals of different income levels and responsive in providing services across all portions of the bank's AAs. Examiners found that PNC Bank's community development services were effective and responsive in addressing community needs. Examiners also found that PNC Bank conducted or supported a high number of community development services.

³³ See 12 CFR 228.22(b).

³⁴ See 12 CFR part 228, subpart B.

³⁵ The PNC Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage lending data, other CRA data (small loans to businesses and farms), and retail services from January 1, 2012, through December 31, 2016, as well as community development activity from July 9, 2012, to December 31, 2016. The PNC Bank Evaluation covered PNC Bank's 138 AAs located in 17 states and 15 multistate metropolitan statistical areas ("MMAs"). The states are as follows: Alabama; Delaware; Florida; Georgia; Illinois; Indiana; Kentucky; Maryland; Michigan; New Jersey; North Carolina; Ohio; Pennsylvania; South Carolina; Virginia; West Virginia; and Wisconsin. The MMAs are as follows: Allentown-Bethlehem-Easton, Pennsylvania-New Jersey; Charlotte-Concord-Gastonia, North Carolina-South Carolina; Chicago-Naperville-Elgin, Illinois-Indiana-Wisconsin; Cincinnati, Ohio-Kentucky-Indiana; Cumberland, MD-WV; Huntington-Ashland, West Virginia-Kentucky-Ohio; Louisville-Jefferson County, Kentucky-Indiana; Myrtle Beach-Conway-North Myrtle Beach, South Carolina-North Carolina; New York-Newark-Jersey City, New York-New Jersey-Pennsylvania; Philadelphia-Camden-Wilmington, Pennsylvania-New Jersey-Delaware-Maryland; Salisbury, Maryland-Delaware; St. Louis, Missouri-Illinois; Virginia Beach-Norfolk-Newport News, Virginia-North Carolina; Washington-Arlington-Alexandria, DC-Virginia-Maryland-West Virginia; and Youngstown-Warren-Boardman, Ohio-Pennsylvania. The PNC Bank Evaluation included a full-scope review of one or more AAs in every state and an MMA where PNC Bank had an office. In total, 36 AAs were subject to a full-scope review, and a limited-scope review was conducted of the remaining 102 AAs.

PNC Bank's Efforts since the PNC Bank CRA Evaluation

PNC represents that PNC Bank has continued to support its local communities, including LMI individuals, families, and neighborhoods, since the PNC Bank Evaluation. PNC represents that, between 2017 and September 2020, PNC Bank originated numerous home mortgage loans, small loans to businesses, and community development loans, and made a number of qualified investments and grants. In addition, PNC notes that, in the same period, PNC Bank employees engaged in substantial community development service activities within their local communities. PNC represents that, in 2018, PNC Bank created the role of LMI Territory Advisor to help increase its support to small businesses in LMI communities. PNC further represents that PNC Bank has used community development products and programs to support affordable housing and economic development, including through sponsorship and investment in Affordable Rental Housing Preservation funds. PNC reports that PNC Bank has provided financial education classes tailored to the needs of LMI individuals. Finally, PNC represents that PNC Bank took several actions to assist its customers and communities in response to the impact of the COVID-19 pandemic, including originating loans under the Paycheck Protection Program.

CRA Performance of BBVA Bank

BBVA Bank was assigned an overall “Outstanding” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta, as of April 2, 2018 (“BBVA Bank Evaluation”).³⁶ BBVA Bank received “Outstanding” ratings for the Lending and Investment Tests and a “High Satisfactory” rating for the Service Test.

With respect to the Lending Test, examiners found that BBVA Bank’s overall geographic distribution of HMDA-reportable loans reflected good penetration in LMI geographies, and the overall geographic distribution of small business loans reflected excellent penetration in LMI geographies. Examiners also found that the overall distribution of HMDA-reportable loans among borrowers of different income levels was good and that the overall distribution of small business loans among businesses of different sizes was excellent. Examiners noted that BBVA Bank made an excellent level of community development loans and was often in a leadership position.

With respect to the Investment Test, examiners found that BBVA Bank made an excellent level of qualified community development investments in response to the community development needs of its AAs and was often in a leadership position. Examiners identified BBVA Bank as a leader in financing affordable housing through investments in low-income housing tax credits. Examiners also identified BBVA Bank as a national leader in providing support for community development financial institutions.

With respect to the Service Test, examiners found that BBVA Bank’s retail delivery systems were reasonably accessible to geographies and individuals of different income levels in the bank’s AAs. Examiners also found that BBVA Bank provided an excellent level of community development services in the bank’s AAs. Examiners noted that BBVA Bank’s record of opening and closing of branches had not adversely affected the accessibility of banking services to LMI geographies throughout the bank’s footprint. Examiners found that BBVA

³⁶ At the time of the BBVA Bank Evaluation, BBVA Bank was known as Compass Bank. The BBVA Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA-reportable loans, CRA small business loans, and retail banking services from January 1, 2015, to December 31, 2016, as well as community development activity from April 1, 2015, to December 31, 2017. The BBVA Bank Evaluation covered 78 AAs located in the following seven states: Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas. The BBVA Bank Evaluation included a full-scope review of 12 of these AAs, and a limited-scope review of the remaining 66 AAs.

Bank's services and business hours did not vary in a way that inconvenienced the bank's AAs, particularly LMI individuals and LMI geographies.

BBVA Bank's Efforts since the BBVA Bank CRA Evaluation

PNC represents that, during 2017 through September 30, 2020, BBVA Bank originated numerous home mortgage and small business loans. In addition, PNC represents that BBVA Bank continued to engage in community development lending and made a number of qualified investments and grants. PNC notes that, in the same period, BBVA Bank employees engaged in a number of volunteer service hours across BBVA Bank's AAs. PNC further represents that BBVA Bank has taken a number of actions to assist its customers affected by the COVID-19 pandemic, including originating Paycheck Protection Program loans.

Additional Supervisory Views

In connection with its review of the proposal, the Board consulted the OCC as the primary federal supervisor of PNC Bank. The Board considered the views of the OCC regarding PNC Bank's CRA and consumer compliance records, record of compliance with fair lending laws and regulations, and policies and procedures relating to fair lending and other consumer protection laws and regulations. The Board also considered the views of the Federal Reserve Bank of Atlanta regarding BBVA Bank's CRA and consumer compliance records, record of compliance with fair lending laws and regulations, and policies and procedures relating to fair lending and other consumer protection laws and regulations. In addition, the Board considered the views of the CFPB regarding the consumer compliance records of both PNC Bank and BBVA Bank.

The Board has taken the views of the OCC, Federal Reserve Bank of Atlanta, and CFPB, as well as all of the information discussed above, into account in evaluating this proposal. The Board has considered whether PNC has the experience and resources to ensure that the combined organization effectively implements policies and programs that would allow the combined organization 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. PNC represents that existing customers of both PNC Bank and BBVA Bank would have access to a more extensive branch and ATM network. PNC also represents that customers of BBVA Bank would benefit from PNC Bank's broader selection of products across multiple lines of business, including home equity products and commercial lending, and that customers of PNC Bank would benefit from certain services of BBVA that PNC intends to retain, such as BBVA's money transmission services. PNC asserts that employees of both banking organizations would benefit from new growth and development opportunities at the combined organization. PNC contends that the communities served by BBVA Bank would benefit from PNC's charitable initiatives, including a program that supports early childhood education for LMI children and communities. PNC also contends that PNC Bank would extend its community reinvestment program to the communities currently served by BBVA Bank, while integrating the successful local strategies and programs of BBVA Bank where appropriate.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA; the institutions' records of compliance with fair lending and other consumer protection laws; the views of the OCC, Federal Reserve Bank of Atlanta, and CFPB; confidential supervisory information; information provided by PNC; 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.”³⁷

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the combined organization and the incremental effect of the transaction on the systemic footprint of the acquiring institution. These metrics include measures of the size of the combined organization, the availability of substitute providers for any critical products and services offered by the combined organization, the interconnectedness of the combined organization with the banking or financial system, the extent to which the combined organization contributes to the complexity of the financial system, and the extent of the cross-border activities of the combined organization.³⁸ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the combined organization. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁹

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The Board also has considered the relative degree of difficulty of resolving the combined organization. The Board reviewed publicly available data, comments received from the public, data compiled through the supervisory process, and data obtained through information requests to the institutions involved in the proposal, as well as qualitative information.

Size. An organization's size is one important indicator of the risk that the organization may pose to the U.S. banking or financial system. Congress has imposed specific size-based limitations on the amount of deposits and liabilities a banking organization may control.⁴⁰ In addition, section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (“EGRRCPA”), requires the Board to apply enhanced prudential standards to bank holding companies with \$250 billion or more in total consolidated

³⁷ 12 U.S.C. § 1842(c)(7).

³⁸ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³⁹ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

⁴⁰ 12 U.S.C. §§ 1842(d)(2)(A) & 1852 (imposing a 10 percent nationwide deposit limit and a 10 percent nationwide liabilities limit on potential combinations by banking organizations).

assets.⁴¹ Size also is among the factors that the Board must take into consideration in differentiating among banking organizations under section 165.⁴²

In this case, the Board has considered measures of the combined organization's size relative to the U.S. financial system, including the combined organization's consolidated assets, consolidated liabilities,⁴³ total exposures, and U.S. deposits. As a result of the proposed acquisition, the combined organization would become the seventh largest U.S. financial institution⁴⁴ based on total assets. Its total exposures would account for 2.54 percent of the total for institutions that file the FR Y-15 form.⁴⁵ Based on deposits, the combined organization would become the fifth largest U.S. financial institution, with 2.77 percent of the total deposits. These measures suggest that, although the combined organization would be large on an absolute basis, its shares of United States financial system assets, liabilities, total exposures, and deposits would remain moderate, and its shares of national deposits and liabilities would fall well below the 10 percent limitations set by Congress.

Although the proposed transaction would increase PNC's size, the combined organization's larger size must be viewed in conjunction with other metrics. Accordingly, the Board has considered other factors, both individually and in combination with size, to evaluate the likely impact of this transaction on the stability of the U.S. banking or financial system.⁴⁶

Substitutability. The Board has considered whether PNC or BBVA Bancshares engage in any activities that are critical to the functioning of the U.S. financial system and whether there would be adequate substitute providers that could quickly perform such activities should the combined organization suddenly be unable to do so as a result of severe financial distress. The Board primarily evaluated the roles of PNC and BBVA Bancshares in payments activities, assets under custody activities, and underwriting activities. Neither PNC nor BBVA Bancshares is a major provider of these services. The combined organization would account for approximately 0.30 percent of payments activities, 0.08 percent of assets under custody, and 0.92 percent of underwriting activities of the total reported by institutions that file the FR Y-15 form. Repurchase agreement activity by PNC and BBVA

⁴¹ See 12 U.S.C. § 5365.

⁴² See EGRRCPA § 401(a)(1)(B)(i) (codified at 12 U.S.C. § 5365(a)(2)(A)). The Board has previously used size as a simple measure of a banking organization's potential systemic impact and risk and has differentiated the stringency of capital and liquidity requirements based on total consolidated asset size.

⁴³ The Board has considered both consolidated liabilities on the combined organization's pro forma balance sheet and liabilities as computed under the limitations on consolidated liabilities in section 622 of the Dodd-Frank Act. See 12 U.S.C. § 1852.

⁴⁴ In this context, a U.S. financial institution includes all insured depository institutions, insured depository institution holding companies, nonbank financial companies supervised by the Board under Title I of the Dodd-Frank Act, and any foreign bank or company treated as a bank holding company. See 12 U.S.C. § 1852(a)(2).

⁴⁵ The FR Y-15 form collects data on systemic importance indicators, including total exposures, which the Board used in its assessment of the financial stability implications of the proposal. For this reason, this Order often discusses the financial stability metrics of the combined organization relative to institutions that file the FR Y-15 form. The panel of institutions that file the FR Y-15 form consists of U.S. bank holding companies ("BHCs") and covered savings and loan holding companies with total consolidated assets of \$100 billion or more; foreign banking organizations ("FBOs") with combined U.S. assets of \$100 billion or more, including, if applicable, any U.S. intermediate holding company ("IHC") of the FBO regardless of the size of the IHC; and U.S.-based organizations designated as Global Systemically Important Banks ("G-SIBs") that do not otherwise meet the consolidated assets threshold.

⁴⁶ In addition, the Board also considered the G-SIB method 1 score of the combined organization. The G-SIB method 1 score is a measure of an institution's systemic importance and is a weighted sum of an institution's indicators of size, interconnectedness, complexity, cross-jurisdictional activity, and substitutability. See 80 Fed. Reg. 49082 (August 14, 2015). On consummation of the proposal, the combined organization would have a G-SIB method 1 score of 42 points, well below the threshold (130 basis points) that identifies a financial institution as a G-SIB. Finally, this score is close to PNC's current method 1 score, indicating that the transaction would not increase materially PNC's systemic importance.

Bancshares is also modest. For most of these activities, the combined organization would have a small share on a nationwide basis, and numerous competitors would remain.

Interconnectedness. The Board has reviewed data to determine whether financial distress experienced by the combined organization could create financial instability by being transmitted to any other institutions or markets within the U.S. banking or financial system. Specifically, the Board considered measures of interconnectedness between the combined organization and the rest of the financial system during financial distress, such as potential direct losses to counterparties, asset-price declines due to fire sales, and contagion effects.

PNC and BBVA Bancshares do not engage in business activities or participate in markets to a degree that would pose significant risk to other institutions in the event of financial distress of the combined organization. The combined organization's ratio of short-term wholesale funding to average risk-weighted assets would be approximately 10 percent, which is low relative to FR Y-15 filers. The combined organization's shares of United States financial system intra-financial system assets and liabilities would also be less than 0.25 percent of the total for FR Y-15 filers.

Complexity. The Board has considered the extent to which the combined organization would contribute to the overall complexity of the U.S. banking or financial system. In this analysis, the Board considered PNC's and BBVA Bancshares' over-the-counter derivatives exposures ("OTC derivatives"), holdings of Level 3 assets,⁴⁷ and volume of trading book and available-for-sale securities. The combined organization's level of notional OTC derivatives exposures would represent less than 1 percent of the total for institutions that file the FR Y-15 form. The combined organization's Level 3 assets represent approximately 3.35 percent of the total for the same group of institutions. Finally, the combined organization's amount of trading and available-for-sale securities would account for less than 2 percent of the total for that group as well.

The Board also has considered whether the complexity of the combined organization's assets and liabilities would hinder the organization's timely and efficient resolution in the event the organization were to experience financial distress. PNC and BBVA Bancshares do not engage in complex activities, such as being a core clearing and settlement organization for critical financial markets, that might complicate the resolution process by increasing the complexity, costs, or timeframes involved in a resolution. Also, PNC would not acquire any foreign institution as part of the proposal. Under the circumstances, resolving the combined organization would not appear to involve a level of cost, time, or difficulty such that it would cause a significant increase in risk to the stability of the U.S. banking or financial system.

Cross-Border Activity. The Board has reviewed the cross-border activities of PNC and BBVA Bancshares to determine whether the cross-border presence of the combined organization would create difficulties in coordinating any resolution, which could significantly increase the risk to stability of the U.S. banking or financial system. At consummation, the combined organization would engage in limited activities outside the United States. In particular, the combined organization would account for less than 0.25 percent of either total cross-border claims or total cross-border liabilities of institutions filing the FR Y-15.

⁴⁷ Level 3 assets are defined in the Statement of Financial Accounting Standards No. 157 ("Fair Value Measurements") as assets whose accounting valuations are derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable. These assets are deemed complex to evaluate and cannot be measured at fair value because there is not a clear market price or a standard valuation model. A higher share of these assets could lead to disorderly resolution of an entity in case of failure.

Financial Stability Factors in Combination. The Board has assessed the foregoing factors individually and in combination to determine whether interactions among them might mitigate or exacerbate risks suggested by looking at them individually. The Board also has considered whether the proposed transaction would provide any stability benefits and whether prudential standards applicable to the combined organization would offset any potential risks.⁴⁸

For instance, concerns regarding the combined organization's size would be greater if PNC or BBVA Bancshares also were highly interconnected to many different segments of the U.S. banking or financial system through counterparty relationships or other channels or if the combined organization were to participate to a larger extent than PNC or BBVA Bancshares does in short-term funding and capital markets. The Board's level of concern also would be greater if the structure and activities of the combined organization were sufficiently complex that, if the combined organization were to fail, it would be difficult to resolve the organization without causing significant disruptions to other financial institutions or markets.

As discussed, the combined organization would not be highly interconnected. Furthermore, the organizational structure and operations of the combined organization would be centered on a commercial banking business, and in the event of distress, the resolution process would be handled in a predictable manner by relevant authorities. The Board also has considered other measures that are suggestive of the degree of difficulty with which the combined organization could be resolved in the event of a failure, such as the organizational and legal complexity and cross-border activities of the combined organization. These measures suggest that the combined organization would be significantly less complicated to resolve than the largest U.S. financial institutions.

In addition, both PNC and BBVA Bancshares are predominately engaged in banking relationships with individuals and nonfinancial institutions.⁴⁹ The combined organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the institution in the event of financial distress. In addition, the combined organization would not be a critical services provider or so interconnected with other institutions or the markets that it would pose significant risk to the financial system in the event of financial distress.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. 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

⁴⁸ See 12 U.S.C. § 5365.

⁴⁹ The combined organization would primarily offer retail and commercial deposit products; consumer and commercial loan products; commercial lease financing and related services; securities brokerage and underwriting; insurance agency and brokerage; capital markets services; investment advisory, asset management, wealth management, trust operations and fiduciary services; risk-management and asset management services; community development investment; payments; merchant services; and treasury management services. In each of its activities, the combined organization would have a small market share on a nationwide basis, and numerous competitors would remain for these services.

BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by PNC with all the conditions imposed in this order and on any commitments made to the Board in connection with the proposal. The Board's approval also is conditioned on receipt by PNC of all required regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective May 14, 2021.

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

Ann E. Misback
Secretary of the Board

Appendix

PNC/BBVA Bancshares Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines						
Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Auburn/Opelika Area, Alabama – Lee County, Alabama (minus the portion that is within 12 road miles of Phenix City, Alabama, or Columbus, Georgia).						
PNC Pre-Consummation	10	\$166.4M	4.7			
BBVA Bancshares	2	\$494.4M	13.9			
PNC Post-Consummation	2	\$660.8M	18.6	1212	130	16
Birmingham, Alabama – Bibb, Blount, Chilton, Jefferson, Saint Clair, Shelby, Talladega, and Walker Counties, Alabama.						
PNC Pre-Consummation	9	\$903.1M	1.7			
BBVA Bancshares	2	\$13.8B	25.5			
PNC Post-Consummation	2	\$14.7B	27.2	1815	85	52
Decatur Area, Alabama – Morgan and Lawrence Counties, Alabama.						
PNC Pre-Consummation	7	\$164.4M	6.2			
BBVA Bancshares	4	\$224.0M	8.5			
PNC Post-Consummation	3	\$388.4M	14.7	1364	105	12
Gulf Shores Area, Alabama – The towns of Elberta, Foley, Gulf Shores, Lillian, Magnolia Springs, and Orange Beach in Baldwin County, Alabama.						
PNC Pre-Consummation	7	\$124.2M	6.2			
BBVA Bancshares	11	\$42.3M	2.1			
PNC Post-Consummation	4	\$166.5M	8.3	1212	26	16
Huntsville Area, Alabama – Madison County, Alabama; and Limestone County, Alabama (minus the town of Ardmore).						
PNC Pre-Consummation	11	\$303.2M	2.9			
BBVA Bancshares	2	\$1.2B	11.8			
PNC Post-Consummation	2	\$1.5B	14.7	1084	68	31

(continued on next page)

Appendix—continued

PNC/BBVA Bancshares Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—continued						
Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Mobile Area, Alabama – Mobile County, Alabama; and the towns of Bay Minette, Daphne, Fairhope, Loxley, Point Clear, Robertsdale, Silverhill, Spanish Fort and Summerdale in Baldwin County, Alabama.						
PNC Pre-Consummation	4	\$1.1B	9.2			
BBVA Bancshares	2	\$1.4B	12			
PNC Post-Consummation	2	\$2.5B	21.2	1515	222	31
Montgomery Area, Alabama – Autauga, Elmore, Lowndes and Montgomery Counties, Alabama; and the town of Tallassee in Tallapoosa County, Alabama.						
PNC Pre-Consummation	12	\$150.7M	1.6			
BBVA Bancshares	2	\$1.6B	17			
PNC Post-Consummation	2	\$1.7B	18.6	1146	54	23
Tuscaloosa Area, Alabama – Tuscaloosa County, Alabama; and the city of Moundville in Hale County, Alabama.						
PNC Pre-Consummation	9	\$160.9M	3.9			
BBVA Bancshares	8	\$227.1M	5.5			
PNC Post-Consummation	4	\$388.0M	9.5	1206	44	21
Gainesville Area, Florida – Alachua, Gilchrist, and Levy Counties, Florida.						
PNC Pre-Consummation	13	\$80.8M	1.4			
BBVA Bancshares	3	\$589.4M	9.9			
PNC Post-Consummation	3	\$670.2M	11.3	1343	27	17
Ocala Area, Florida – Marion County, Florida.						
PNC Pre-Consummation	16	\$32.5M	0.5			
BBVA Bancshares	4	\$775.9M	12.1			
PNC Post-Consummation	4	\$808.4M	12.6	1252	13	18
Tampa Bay Area, Florida – Hernando, Hillsborough, Pinellas, and Pasco Counties, Florida.						
PNC Pre-Consummation	11	\$1.7B	1.7			
BBVA Bancshares	28	\$349.0M	0.4			
PNC Post-Consummation	10	\$2.1B	2.1	1250	1	54
Dallas, Texas – Dallas and Rockwall Counties, Texas; the southeastern quadrant of Denton County, Texas, including Denton and Lewisville; the southwestern quadrant of Collin County, Texas, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County, Texas; and Midlothian, Waxahachie, and Ferris in Ellis County, Texas.						
PNC Pre-Consummation	104	\$37.3M	0			
BBVA Bancshares	5	\$9.0B	2.9			
PNC Post-Consummation	5	\$9.0B	2.9	1927	0	140
Fort Worth, Texas – Tarrant, Johnson, and Wise Counties, Texas; Parker County, Texas (minus Mineral Wells); and the southwestern quadrant of Denton County, Texas, including Roanoke.						
PNC Pre-Consummation	68	\$24.0M	0			
BBVA Bancshares	6	\$3.6B	1.9			
PNC Post-Consummation	6	\$3.6B	1.9	4975	0	84
Houston, Texas – Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller Counties, Texas.						
PNC Pre-Consummation	94	\$4.9M	0			
BBVA Bancshares	4	\$16.1B	5.4			
PNC Post-Consummation	4	\$16.1B	5.4	2558	0	95
Data are as of June 30, 2020. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted in each market includes thrift institutions.						

Huntington Bancshares Incorporated Columbus, Ohio

Order Approving the Acquisition of a Bank Holding Company FRB Order No. 2021-07 (May 25, 2021)

Huntington Bancshares Incorporated (“Huntington”), Columbus, Ohio, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire TCF Financial Corporation (“TCF”), Detroit, Michigan, a financial holding company, and thereby indirectly acquire TCF National Bank (“TCF Bank”), Sioux Falls, South Dakota. Following the proposed acquisition, TCF Bank would be merged with and into Huntington’s subsidiary national bank, The Huntington National Bank (“Huntington Bank”), Columbus, Ohio.³

Notice of the proposal, affording interested persons an opportunity to comment has been published (86 *Federal Register* 5196 (January 19, 2021)).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.

Huntington, with consolidated assets of approximately \$123.0 billion, is the 35th largest insured depository organization in the United States.⁵ Huntington controls approximately \$98.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ Huntington controls Huntington Bank, which operates in Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia.

TCF, with consolidated assets of approximately \$47.8 billion, is the 55th largest insured depository organization in the United States. TCF controls approximately \$39.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. TCF controls TCF Bank, which operates in Colorado, Illinois, Michigan, Minnesota, Ohio, South Dakota, and Wisconsin.

On consummation of this proposal, Huntington would become the 25th largest insured depository organization in the United States, with consolidated assets of approximately \$170.8 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Huntington would control consolidated deposits of approximately \$138.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the United States.⁷

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of TCF Bank into Huntington Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”). 12 U.S.C. § 1828(c).

⁴ 12 CFR 262.3(b).

⁵ Consolidated asset and asset ranking data are as of December 31, 2020. Consolidated deposit and deposit market share data are as of June 30, 2020, unless otherwise noted.

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

⁷ See [Appendix I](#) for asset and deposit data by state, for states in which Huntington Bank and TCF Bank both have banking operations.

Factors Governing Board Review of the Transaction

The BHC Act sets forth the factors that the Board is required to consider when reviewing the merger of bank holding companies or the acquisition of banks.⁸ These factors include the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the effectiveness of the involved institutions in combatting money-laundering activities; the convenience and needs of the communities to be served, including the records of performance under the Community Reinvestment Act of 1977 (“CRA”)⁹ of the insured depository institutions involved in the transaction; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the U.S. banking or financial system. For proposals involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits as a percentage of the total deposits controlled by insured depository institutions in the United States and in relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act.¹⁰

Interstate and Deposit Cap Analyses

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company 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.¹¹ 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;¹² (2) must take into account the record of the applicant bank under the CRA and the applicant’s record of compliance with applicable state community reinvestment laws;¹³ 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 10 percent of the total deposits of insured depository institutions in the United States 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 the target bank’s home state or in any state in which the acquirer and target have overlapping banking operations.¹⁴

For purposes of the BHC Act, the home state of Huntington is Ohio. TCF Bank is located in Colorado, Illinois, Michigan, Minnesota, Ohio, South Dakota, and Wisconsin. Huntington is well capitalized and well managed under applicable law, and Huntington

⁸ See 12 U.S.C. § 1842.

⁹ 12 U.S.C. § 2901 *et seq.*

¹⁰ 12 U.S.C. § 1842(d).

¹¹ 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 such 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).

¹² 12 U.S.C. § 1842(d)(1)(B).

¹³ 12 U.S.C. § 1842(d)(3).

¹⁴ 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 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).

Bank has an “Outstanding” rating under the CRA.¹⁵ Minnesota and Wisconsin have minimum age requirements that apply to Huntington’s acquisition of TCF.¹⁶ Colorado, Illinois, Michigan, and South Dakota do not have minimum age requirements. TCF Bank has been in existence for more than five years.

On consummation of the proposed transaction, Huntington would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Of the states in which Huntington and TCF have overlapping banking operations, Colorado imposes a 25 percent limit on the total amount of in-state deposits that a single banking organization may control, and Illinois, Ohio, and Wisconsin each impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.¹⁷ The combined organization would control approximately 0.7 percent of the total amount of deposits of insured depository institutions in Colorado, 1.5 percent in Illinois, 14.4 percent in Ohio, and 0.6 percent in Wisconsin. Accordingly, in light of all the facts of record, the Board is not precluded under section 3(d) of the BHC 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.¹⁸ 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.¹⁹

Huntington and TCF have subsidiary banks that compete directly in 20 banking markets in Illinois, Indiana, Michigan, and Ohio. 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 the markets (“market deposits”) that Huntington would control;²⁰ the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the DOJ Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²¹

¹⁵ 12 U.S.C. § 2901 *et seq.* Only one of the jurisdictions in which Huntington operates—West Virginia—has a state community reinvestment law. *See* W. Va. Code §§ 31A-8B-1 to 31-8B-5. However, the law does not apply to Huntington.

¹⁶ *See* Minn. Stat. Ann. § 49.411 (5 years); Wis. Stat. Ann. § 221.0901(8) (5 years).

¹⁷ *See* Colo. Rev. Stat. §§ 11-104-202(4) and 11-105-603(5); 205 Ill. Comp. Stat. Ann. § 10/3.09; Ohio Rev. Code Ann. § 1115.05(B)(1)(a); Wis. Stat. Ann. § 221.0901(7).

¹⁸ 12 U.S.C. § 1842(c)(1)(A).

¹⁹ 12 U.S.C. § 1842(c)(1)(B).

²⁰ Local deposit and market share data are as of June 30, 2020, and unless otherwise noted, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *see, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in market share calculations on a 50-percent weighted basis. *See, e.g., Hancock Whitney Corporation*, FRB Order No. 2019-12 at 6 (September 5, 2019).

²¹ In applying the DOJ Bank Merger Guidelines issued in 1995 (*see* <https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995>), the Board looks to the DOJ’s Horizontal Merger Guidelines issued in 1992 and amended in 1997, for the characterization of a market’s concentration. *See* <https://www.justice.gov/atr/horizontal-merger-guidelines-0>. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisition generally would not be chal-

the number of competitors that would remain in each market; other characteristics of the markets; and, as discussed below, commitments made by Huntington to divest branches in certain markets.²² The Board also has considered the public comments on the competitive effects of the proposal.²³

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 12 banking markets. On consummation, one banking market would become highly concentrated; two banking markets would remain highly concentrated; and nine banking markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in these markets generally would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in most of these banking markets.²⁴

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Alpena, Bay City–Saginaw, Cadillac, Gaylord, Gladwin–Midland, Ludington, Roscommon, and Traverse City banking markets, all in Michigan, warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines or would result in the market deposit share of Huntington equaling or exceeding 35 percent when using initial competitive screening data. In three of these markets, Huntington has committed to divest deposits equal to or exceeding its current market share and, therefore, the levels of concentration as measured by the HHI would decrease slightly on consummation of the merger and proposed divestitures.²⁵

Markets Without Divestitures

Alpena, Michigan, Banking Market. Huntington Bank is the third largest insured depository institution²⁶ in the Alpena banking market, controlling approximately \$77.3 million in deposits, which represent 13.6 percent of market deposits.²⁷ TCF Bank is the second largest insured depository institution in the market, controlling approximately \$152.1 million in deposits, which represent 26.7 percent of market deposits. On consumma-

lenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (see <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>), 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 In connection with the transaction, Huntington has committed to divest 14 branches, representing approximately \$943.5 million in deposits, all in Michigan.

²³ A commenter expressed concern that the proposal would reduce competition and raise prices for banking products and services in the Detroit, Michigan banking market, which is moderately concentrated with a pre-merger HHI of 1527. The proposed transaction would increase the HHI of that banking market by 61 points to 1588, and the market would remain moderately concentrated. This change would be consistent with Board precedent and within the established guidelines. In addition, Huntington has committed to divest two TCF Bank branches in the Detroit banking market to a competitively suitable institution. See [Appendix II](#).

²⁴ These banking markets and the competitive effects of the proposal in these markets are described in [Appendix II](#).

²⁵ The three markets are the Cadillac, Gladwin–Midland, and Roscommon banking markets.

²⁶ In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

²⁷ The Alpena banking market is defined as Alpena County; Presque Isle County; Mitchell, Caledonia, Alcona, and Haynes townships of Alcona County; and Montmorency, Hillman, Avery, Loud, and Rust townships of Montgomery County; all in Michigan.

tion, Huntington Bank would be the largest insured depository institution in the market, controlling approximately \$229.4 million in deposits, which would represent approximately 40.2 percent of market deposits. The HHI in this market would increase 723 points, from 2222 to 2945.

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 Alpena banking market.²⁸ In particular, six credit unions exert a competitive influence in the Alpena banking market. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.²⁹ The Board finds that the deposits of credit unions that exhibit these characteristics should be included at a 50-percent weight in calculating its estimate of market influence (each a “qualifying credit union”). This weighting takes into account the limited lending done by credit unions to small businesses relative to commercial banks’ lending levels.

This adjustment suggests that the resulting market concentration in the Alpena banking market is less significant than would appear from the initial competitive screening data. After consummation and adjusting to reflect competition from credit unions in the market, the level of concentration in the Alpena banking market as measured by the HHI would increase by 375 points, from 1299 to 1674, and the market share of Huntington would increase to 29.0 percent. Eleven other depository institutions, including the qualifying credit unions, would remain in the market, including one depository institution with a market share of more than 20.0 percent.

Ludington, Michigan, Banking Market. Huntington Bank is the sixth largest insured depository institution in the Ludington banking market, controlling approximately \$64.0 million in deposits, which represent 6.6 percent of market deposits.³⁰ TCF Bank is the third insured largest depository institution in the market, controlling approximately \$152.0 million in deposits, which represent 15.7 percent of market deposits. On consummation, Huntington Bank would be the second largest insured depository institution in the Ludington banking market, controlling approximately \$216.0 million in deposits, which would represent approximately 22.3 percent of market deposits. The HHI in this market would increase 208 points, from 1980 to 2208.

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 Ludington banking market. In particular, four qualifying credit unions exert a competitive influence in the Ludington banking market.

This adjustment for the qualifying credit unions suggests that the resulting market concentration in the Ludington banking market is less significant than would appear from the initial competitive screening data. After consummation and adjusting to reflect competition from the four qualifying credit unions, the level of concentration in the Ludington banking

²⁸ 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).

²⁹ The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *Huntington Bancshares Incorporated*, FRB Order No. 2016-13 (July 29, 2016); *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

³⁰ The Ludington banking market is defined as Mason County; Elk, Eden, Sauble, Peacock, Sweetwater, Webber, Lake, and Pleasant Plains townships of Lake County; and Onekama, Bear Lake, Manistee, Brown, Dickson, Filer, Stronach, and Norman townships of Manistee County; all in Michigan.

market as measured by the HHI would increase by 156 points, from 1557 to 1714, and the market share of Huntington would increase to 19.4 percent. Ten other depository institutions, including the qualifying credit unions, would remain in the market, including three depository institutions each with a market share of more than 10.0 percent.

Traverse City, Michigan, Banking Market. Huntington Bank is the third largest insured depository institution in the Traverse City banking market, controlling approximately \$677.3 million in deposits, which represent 16.0 percent of market deposits.³¹ TCF Bank is the second largest insured depository institution in the market, controlling approximately \$735.4 million in deposits, which represent approximately 17.4 percent of market deposits. On consummation, Huntington Bank would become the largest insured depository institution in the Traverse City banking market, controlling approximately \$1.4 billion in deposits, which would represent approximately 33.4 percent of market deposits. The HHI in this market would increase 556 points, from 1363 to 1919.

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 Traverse City banking market. In particular, six qualifying credit unions exert a competitive influence in the Traverse City banking market.

This adjustment for the qualifying credit unions suggests that the resulting market concentration in the Traverse City banking market is less significant than would appear from the initial competitive screening data. After consummation and adjusting to reflect competition from the six credit unions referenced above, the level of concentration in the Traverse City banking market as measured by the HHI would increase by 453 points, from 1133 to 1586, and the market share of Huntington would increase to 30.1 percent. Seventeen other depository institutions, including the qualifying credit unions, would remain in the market, including two depository institutions each with a market share of more than 10.0 percent.

*Markets with Divestitures*³²

Bay City–Saginaw, Michigan, Banking Market. Huntington Bank is the second largest insured depository institution in the Bay City–Saginaw banking market, controlling approximately \$859.7 million in deposits, which represent 19.8 percent of market

³¹ The Traverse City banking market is defined as Antrim County (except Banks, Central Lake, Echo, Jordan, and Warner townships); Benzie County; Grand Traverse County; Kalkaska County; Leelanau County; and Arcadia, Pleasanton, Springdale, Cleon, Maple Grove, and Marilla townships of Manistee County; all in Michigan.

³² As a condition of consummation of the proposed merger, Huntington has committed that it will execute, before consummation of the proposed merger, a sales agreement with a competitively suitable banking organization. Huntington has provided a similar commitment to the DOJ. Huntington also has committed to complete the divestiture of branches within 180 days after consummation of the proposed transaction. In addition, Huntington has committed that if the proposed divestiture is not completed within the 180-day period, Huntington would transfer the unsold branches to an independent trustee, who would be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. *See, e.g., Bank America Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).*

For each branch to be divested, the amount of deposits to be divested has been determined through a householding methodology approved by the DOJ. This householding methodology assigns particular customers to a household and then assigns certain households to the divested branch, generally where the customers execute teller transactions most frequently. Therefore, subject to certain limited exceptions, the proposed divestitures include all deposits of customers that are householded to the divested branches, which is intended to minimize the chance that those customers would revert to the combined organization following the divestitures. Because of this householding methodology, there may be de minimis changes in the HHI of markets with proposed divestitures.

deposits.³³ TCF Bank is the largest insured depository institution in the market, controlling approximately \$931.7 million in deposits, which represent 21.5 percent of market deposits. On consummation, Huntington Bank would become the largest insured depository institution in the Bay City–Saginaw banking market, controlling approximately \$1.8 billion in deposits, which would represent approximately 41.3 percent of market deposits. The HHI in this market would increase 852 points, from 1321 to 2173.

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 Bay City–Saginaw banking market. In particular, 14 qualifying credit unions exert a competitive influence in the Bay City–Saginaw banking market. In addition, Huntington has committed to divest two TCF Bank branches in the Bay City–Saginaw banking market, accounting for a total of approximately \$89.3 million in deposits, to a competitively suitable institution.³⁴

The adjustment for the qualifying credit unions and accounting for the divestiture of the two TCF Bank branches in the market suggests that the resulting market concentration in the Bay City–Saginaw banking market is less significant than would appear from the initial competitive screening data. After consummation and adjusting to reflect competition from the 14 credit unions referenced above, as well as the divestiture of the two TCF Bank branches, the combined organization would control approximately 28.7 percent of market deposits, and the HHI would increase by 369 points to a level of 1166. Thirty other depository institutions, including the qualifying credit unions, would remain in the market, including two depository institutions each with a market share of more than 10.0 percent.

Cadillac, Michigan, Banking Market. Huntington Bank is the second largest insured depository institution in the Cadillac banking market, controlling approximately \$197.4 million in deposits, which represent 26.1 percent of market deposits.³⁵ TCF Bank is the largest insured depository institution in the market, controlling approximately \$277.6 million in deposits, which represent 36.7 percent of market deposits. On consummation, Huntington Bank would be the largest insured depository institution in the Cadillac market, controlling approximately \$475.0 million in deposits, which would represent approximately 62.7 percent of market deposits. The HHI in this market would increase 1910 points, from 2469 to 4379.

To mitigate the potentially adverse competitive effects of the proposal in the Cadillac banking market, Huntington has committed to divest three TCF Bank branches in the banking market, accounting for a total of approximately \$224.0 million in deposits, to a competitively suitable institution.³⁶ Other factors also mitigate the competitive effects of the proposal in the Cadillac banking market. Four qualifying credit unions exert a competitive influence in the Cadillac banking market.

After accounting for the divestiture of three TCF Bank branches in the market and weighting the deposits of the qualifying credit unions at 50 percent, the combined organization would control approximately 29.6 percent of market deposits, and the HHI would decrease by 41 points to a level of 1979. Nine other depository institutions, including the

³³ The Bay City–Saginaw banking market is defined as Bay County; Saginaw County; Tuscola County except Elmwood and Elkland townships; and Arenac County except Mason, Turner, and Whitney townships; all in Michigan.

³⁴ See *supra* note 322.

³⁵ The Cadillac banking market is defined as Missaukee County; Wexford County; and Osceola County except Richmond, Hersey, Ewart, and Orient townships; all in Michigan.

³⁶ See *supra* note 32.

qualifying credit unions, would remain in the market, including three depository institutions each with a market share of more than 10.0 percent.

Gaylord, Michigan, Banking Market. Huntington Bank is the third largest insured depository institution in the Gaylord banking market, controlling approximately \$121.7 million in deposits, which represent 18.3 percent of market deposits.³⁷ TCF Bank is the second largest insured depository institution in the market, controlling approximately \$192.6 million in deposits, which represent 29.0 percent of market deposits. On consummation, Huntington Bank would be the largest insured depository institution in the Gaylord banking market, controlling approximately \$314.3 million in deposits, which would represent approximately 47.3 percent of market deposits. The HHI in this market would increase 1060 points, from 2356 to 3416.

To mitigate the potentially adverse competitive effects of the proposal in the Gaylord banking market, Huntington has committed to divest one TCF Bank branch in the banking market, accounting for a total of approximately \$117.8 million in deposits, to a competitively suitable institution.³⁸ Other factors also mitigate the competitive effects of the proposal in the Gaylord banking market. Four qualifying credit unions exert a competitive influence in the Gaylord banking market.

After accounting for the divestiture of one TCF Bank branch in the Gaylord banking market and weighting the deposits of the qualifying credit unions at 50 percent, the combined organization would control approximately 22.4 percent of market deposits, the HHI would increase by 8 points to a level of 1632. Nine other depository institutions, including the qualifying credit unions, would remain in the market, including one depository institution with a market share of more than 20.0 percent.

Gladwin–Midland, Michigan, Banking Market. Huntington Bank is the fifth largest insured depository institution in the Gladwin–Midland banking market, controlling approximately \$92.0 million in deposits, which represent 4.0 percent of market deposits.³⁹ TCF Bank is the largest insured depository institution in the market, controlling approximately \$1.5 billion in deposits, which represent 66.9 percent of market deposits. On consummation, Huntington Bank would be the largest insured depository institution in the Gladwin–Midland banking market, controlling approximately \$1.6 billion in deposits, which would represent approximately 70.9 percent of market deposits. The HHI in this market would increase 537 points, from 4697 to 5234.

To mitigate the potentially adverse competitive effects of the proposal in the Gladwin–Midland banking market, Huntington has committed to divest one TCF Bank branch in the banking market, accounting for a total of approximately \$101.8 million in deposits, to a competitively suitable institution.⁴⁰ Other factors also mitigate the competitive effects of the proposal in the Gladwin–Midland banking market. Four qualifying credit unions exert a competitive influence in the Gladwin–Midland banking market.

After accounting for the divestiture of the TCF branch in the market and weighting the deposits of the qualifying credit unions at 50 percent, the combined organization would control approximately 45.6 percent of market deposits, less than TCF Bank controlled

³⁷ The Gaylord banking market is defined as Otsego County; Oscoda County; and Vienna, Briley, and Albert townships of Montmorency County; all in Michigan.

³⁸ See *supra* note 322.

³⁹ The Gladwin–Midland banking market is defined as Gladwin County, Michigan, and Midland County, Michigan.

⁴⁰ See *supra* note 32.

prior to the transaction, and the HHI would increase by 21 points to a level of 2877. Ten other depository institutions, including the qualifying credit unions, would remain in the market, including one depository institution with a market share of more than 20.0 percent.

Roscommon, Michigan, Banking Market. Huntington Bank is the third largest insured depository institution in the Roscommon banking market, controlling approximately \$67.2 million in deposits, which represent 12.9 percent of market deposits.⁴¹ TCF Bank is the largest insured depository institution in the market, controlling approximately \$218.5 million in deposits, which represent 41.9 percent of market deposits. On consummation, Huntington Bank would be the largest insured depository institution in the Roscommon banking market, controlling approximately \$285.7 million in deposits, which would represent approximately 54.8 percent of market deposits. The HHI in this market would increase 1079 points, from 3611 to 4690.

To mitigate the potentially adverse competitive effects of the proposal in the Roscommon banking market, Huntington has committed to divest two TCF Bank branches in the banking market, accounting for a total of approximately \$112.2 million in deposits, to a competitively suitable institution.⁴² Other factors also mitigate the competitive effects of the proposal in the Roscommon banking market. Two qualifying credit unions exert a competitive influence in the Roscommon banking market.

After accounting for the divestiture of two TCF Bank branches in the market and weighting the deposits of the qualifying credit unions at 50 percent, the combined organization would control approximately 30.9 percent of market deposits, less than TCF Bank controlled prior to the transaction, and the HHI would decrease by 304 points to a level of 2842. Five other depository institutions, including the qualifying credit unions, would remain in the market, including one depository institution with a market share of more than 30.0 percent.

Conclusion Regarding Competitive Effects

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal with the proposed divestitures of branches in the banking markets, as discussed above, would not likely have a significantly adverse effect on competition in those markets or in any other relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, including the proposed divestitures, and for the reasons explained above, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which Huntington and TCF compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evalu-

⁴¹ The Roscommon banking market is defined as Crawford County, Michigan, and Roscommon County, Michigan.

⁴² See *supra* note 322.

ation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the 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.

Huntington, TCF, and their subsidiary depository institutions are each well capitalized, and the combined organization would remain so on consummation of the proposed merger.⁴³ The proposed transaction is a bank holding company merger that is structured as a share exchange.⁴⁴ The asset quality, earnings, and liquidity of both Huntington Bank and TCF Bank are consistent with approval, and Huntington and TCF appear 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 combined organization are considered consistent with approval.

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

Huntington, TCF, and their subsidiary depository institutions are each considered to be well managed.⁴⁵ The combined organization's proposed directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and the proposed risk-management program for the combined organization appears consistent with approval of this expansionary proposal.

⁴³ Because Huntington determined that the proposed acquisition of TCF would result in a material change in Huntington's risk profile and corporate structure, Huntington submitted an updated capital plan to reflect the proposed acquisition. See 12 CFR 225.8(e)(4)(i).

⁴⁴ At the time of the proposed acquisition, each share of TCF common stock would be converted into a right to receive shares of Huntington common stock based on an exchange ratio. In addition, each share of certain noncumulative perpetual preferred TCF stock would be converted into a right to receive substantially similar newly issued preferred Huntington stock.

⁴⁵ One commenter expressed concerns about the diversity of Huntington's management. Huntington represents that it would promote a diverse workforce across the combined organization under its Diversity and Inclusion and Operating Plan and noted the recent elevation of its Chief Diversity, Equity, and Inclusion Officer to Huntington's executive team. Although the Board encourages all firms to promote diversity and inclusion in their management and workforce, the statutory factors the Board is required to consider do not include consideration of a firm's record of diversity and inclusion. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). See also *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445 (1996); *Community Bank System, Inc.*, FRB Order No. 2015-34 (November 18, 2015); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); and *BB&T Corporation*, FRB Order No. 2019-16 (November 19, 2019).

The Board also has considered Huntington's plans for implementing the proposal. Huntington has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Huntington represents that the combined organization would employ its existing enterprise-wide risk management policies, procedures, and systems. Huntington's existing risk-management policies, procedures, and controls are considered acceptable from a supervisory perspective. In addition, Huntington's management has the experience and resources to operate the combined organization in a safe and sound manner, and the combined organization would integrate existing management and personnel from both Huntington and TCF.⁴⁶ Similarly, Huntington represents that an experienced team of management and other personnel is overseeing the integration planning process of both Huntington and TCF.

Based on all the facts of record, including Huntington's supervisory records, managerial and operational resources, and plans for operating the combined organization 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 Huntington and TCF in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.⁴⁷ 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 operation,⁴⁸ 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.⁴⁹

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Huntington Bank and TCF Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC and the Consumer Financial Protection Bureau

⁴⁶ On consummation of the proposal, Huntington would increase the size of its board by five directors and appoint five directors of TCF to its Board. The combined organization would have a board of 18 directors, 13 from Huntington and 5 from TCF.

⁴⁷ 12 U.S.C. § 1842(c)(2).

⁴⁸ 12 U.S.C. § 2901(b).

⁴⁹ 12 U.S.C. § 2903.

(“CFPB”), confidential supervisory information, information provided by Huntington, and the public comments received on the proposal.

Summary of Public Comments

As noted above, the Board received 113 public comments on the proposal from community groups, nonprofit organizations, customers of the two banking organizations, and other interested organizations and individuals. A majority of commenters supported the proposal.⁵⁰ Many of these commenters contended that the proposal would benefit communities and community organizations throughout the footprints of Huntington and TCF through increased resources and services provided by the combined organization. Commenters also suggested that the proposal would expand opportunities for community groups, LMI persons, and small businesses. Commenters generally commended Huntington and TCF for their involvement in their communities and described positive experiences related to small business, community development, and charitable contribution and investment programs of both organizations. In addition, commenters praised both organizations for their corporate cultures, which encourage officers and employees to volunteer their time and resources and to provide services to community organizations.

The Board also received five comments opposing the proposal. Several commenters expressed concern that branch closures or changes in customer accounts could adversely affect communities served by Huntington and TCF, especially in the Detroit, Michigan banking market.⁵¹ One commenter also expressed concern that the branch closures could result in job losses, particularly in Detroit.⁵² Another commenter alleged that Huntington is not meeting the credit needs of minority and LMI communities and borrowers, particularly in Detroit. The commenter also criticized the diversity of Huntington’s management and suppliers.⁵³

Businesses of the Involved Institutions and Response to Comments

Huntington and Huntington Bank offer financial products and services to individual customers and businesses, primarily through Huntington Bank’s branch network in Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia. Huntington offers a broad range of banking products and services to its customers, including full-service commercial and consumer banking services; mortgage banking; automobile, recreational vehicle, marine, and equipment financing; investment management, trust, and, brokerage services; and insurance products and services.

⁵⁰ The Board received approximately 108 comments in support of the proposal.

⁵¹ One commenter representing a community organization located in Detroit expressed specific concern with Huntington’s proposal to close legacy TCF branches located in Meijer supermarkets across Michigan.

⁵² Huntington represents that the combined organization would take a number of steps to minimize job losses. For example, Huntington has indicated that it plans to employ approximately 1,000 employees of the combined company at the new headquarters of its commercial banking operations in Detroit. Nevertheless, the potential for job losses resulting from a merger is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). See also *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445 (1996); *Community Bank System, Inc.*, FRB Order No. 2015-34 (November 18, 2015); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); and *BB&T Corporation*, FRB Order No. 2019-16 (November 19, 2019).

⁵³ Huntington represents that it is committed to employing a diverse and inclusive workforce. Huntington has highlighted as examples of this commitment the racial and gender diversity of its workforce; the recent elevation of its Chief Diversity, Equity, and Inclusion Officer to its executive leadership team; and its spending with diverse suppliers, which Huntington represents substantially exceeds the industry average. Nevertheless, the diversity of Huntington’s management and suppliers is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act.

TCF and TCF Bank offer financial products and services to individual customers and businesses, primarily through TCF Bank's branch network in Colorado, Illinois, Michigan, Minnesota, Ohio, South Dakota, and Wisconsin. TCF Bank also conducts business through its specialty lending and leasing businesses in all 50 states and in Australia, Canada, and New Zealand. TCF offers a broad range of banking products and services, including consumer and commercial banking, trust and wealth management, and specialty leasing and lending products and services to consumers, small businesses, and commercial customers.

Huntington disputes that branch closures in the Detroit banking market would reduce access to banking products and services for minority and LMI individuals and businesses. Specifically, Huntington notes that all but one of the branches that Huntington proposes to close in the Detroit banking market are less than four miles from a surviving Huntington Bank Branch and that only two planned branch closures are in LMI locations—both less than 3 miles from the closest surviving branch. Huntington also notes, with respect to the comment regarding closure of the Meijer supermarket branches, that a substantial majority of closed branches would be within five miles of a surviving Huntington Bank branch.

Huntington asserts that Huntington Bank has a strong record of lending to minority and LMI individuals and businesses in the Detroit area. Specifically, Huntington represents that Huntington Bank's mortgage lending activity substantially exceeds that of other banks in the Detroit area relative to its market share of deposits. Huntington also represents that a significant portion of the bank's mortgage loans in the Detroit area were made to minority borrowers and borrowers in LMI census tracts relative to other banks in the market. Huntington asserts that Huntington Bank's small business lending activity is similarly strong relative to its deposit market share and that its lending to businesses in majority-minority and LMI census tracts is consistent with other banks in the Detroit area, with lending to businesses earning under \$1 million per year significantly higher than industry-wide levels in the Detroit area. Huntington notes that Huntington Bank participates in numerous lending programs designed to assist minority and LMI individuals and businesses, including affordable mortgage programs, specialty lending programs for LMI borrowers, and government-sponsored loan programs for mortgage and small business borrowers. Similarly, Huntington represents that Huntington Bank participates in free financial education and coaching programs for LMI individuals and small businesses. Huntington represents that it will continue all commitments of Huntington and TCF following the merger, including donations, sponsorships, programs, and service, as well as make new commitments to community groups in Michigan.

Records 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,⁵⁴ which in this case, are the OCC and the CFPB for both banks. 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.⁵⁵ An institution's most recent CRA performance evaluation is a particularly important consideration in the appli-

⁵⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

⁵⁵ 12 U.S.C. § 2906.

cations process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), an investment test ("Investment Test"), and a service test ("Service Test") to evaluate the performance of large insured depository institutions, such as Huntington Bank and TCF Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("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;⁵⁶ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs. 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.⁵⁷

CRA Performance of Huntington Bank

Huntington Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of December 31, 2019 ("Huntington Bank Evaluation").⁵⁸ Huntington Bank received an "Outstanding" rating for the Lending Test and Investment Test, and a "High Satisfactory" rating for the Service Test. Although Huntington Bank's overall rating was based on a blend of its state and multistate metropolitan area ratings, examiners gave the greatest weight to the Michigan and Ohio state (the "primary rating areas") ratings, because those two primary rating areas represented

⁵⁶ 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).

⁵⁷ *See* 12 CFR 228.21 *et seq.*

⁵⁸ The Huntington Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage loan products reported under the Home Mortgage Disclosure Act, small loans to businesses and small loans to farms reported under the CRA, community development loans, qualified investments, and community development and retail services from January 1, 2016, through December 31, 2019. The Huntington Bank Evaluation covered Huntington Bank's 49 AAs located in eight states and four multistate metropolitan statistical areas ("MSAs"): Florida; Illinois; Indiana; Michigan; Ohio; Pennsylvania; West Virginia; Wisconsin; Cincinnati, Kentucky–Ohio–Indiana MSA; Youngstown–Boardman–Warren, Ohio–Pennsylvania MSA; Wheeling, West Virginia–Ohio MSA; and Weirton–Steubenville, West Virginia–Ohio MSA. The Huntington Bank Evaluation included a full-scope review of 14 of these AAs, including all four multistate MSAs. A limited-scope review was conducted of the remaining 35AAs.

Huntington Bank's most significant markets in terms of its branch network and concentration of HMDA- and CRA-reportable loans.

Lending Test

Examiners concluded that Huntington Bank's lending levels reflected excellent responsiveness to AA credit needs in both primary rating areas. Examiners found the overall geographic and borrower distribution of Huntington Bank's originations and purchases of home mortgage loans, small loans to businesses, and small loans to farms were good in both primary rating areas. Examiners noted that community development loans were effective in addressing community credit needs and that Huntington Bank was a leader in making community development loans in both primary rating areas. Examiners also noted that Huntington Bank made extensive use of innovative and flexible lending practices in order to serve AA credit needs in both primary rating areas.

Areas of Concern to Commenters—In Michigan, Huntington Bank received an “Outstanding” rating for the Lending Test, including in the Detroit MSA, Huntington Bank's only AA in the state receiving a full-scope review. Examiners noted that the bank's lending reflected excellent responsiveness to AA credit needs. Examiners found that the bank exhibited a good geographic distribution of home mortgage loans, an excellent geographic distribution of small loans to businesses, and an adequate geographic distribution of small loans to farms throughout the AA. Examiners further found that the borrower profile reflected a good distribution of home mortgage loans among individuals of different income levels and a good distribution of loans to businesses and farms of different sizes. Examiners noted that the bank was a leader in making community development loans, with an excellent level of community development lending in the Detroit MSA and made extensive use of innovative and flexible lending practices in order to serve AA credit needs.

Investment Test

Examiners found that Huntington Bank had an excellent level of qualified community development investments and grants and often was in a leadership position with respect to such investments, particularly those that were not routinely provided by private investors in both primary rating areas. Examiners noted that Huntington Bank also exhibited excellent responsiveness to credit and community economic development needs and made significant use of innovative and/or complex investments to support community development initiatives in both primary rating areas.

Areas of Concern to Commenters—In Michigan, Huntington Bank received an overall “High Satisfactory” rating for the Investment Test, with excellent performance in the Detroit MSA. Examiners found that the bank provided an excellent level of qualified community development investments and grants in the Detroit MSA, often in a leadership position, particularly those that are not routinely provided by private investors. Examiners also found that Huntington Bank's investments exhibited excellent responsiveness to credit and community economic development needs and made extensive use of innovative and complex investments to support community development initiatives.

Service Test

Examiners noted that Huntington Bank's delivery systems were accessible to geographies and individuals in both primary rating areas and that Huntington Bank had several alternative delivery systems that provided additional delivery availability and access to banking services to both retail and business customers. Examiners also noted that, to the extent

changes were made, Huntington Bank's opening and closing of branches did not adversely affect the accessibility of the bank's delivery systems in the Michigan rating area and the Cleveland and Columbus MSAs in the Ohio rating area, particularly in LMI geographies or to LMI individuals. However, examiners found that, to the extent changes were made, Huntington Bank's opening and closing of branches did adversely affect the accessibility of the bank's delivery systems in the Akron MSA in the Ohio rating area, particularly in LMI geographies and to LMI individuals. Examiners noted that Huntington Bank's services did not vary in a way that inconvenienced the bank's AAs, particularly LMI geographies and individuals, in the primary rating areas. Examiners characterized Huntington Bank as providing a significant level of community development services that were responsive to the needs of its AAs in both primary ratings areas, particularly with financial education for LMI individuals and families.

Areas of Concern to Commenters—In Michigan, Huntington Bank received an overall “High Satisfactory” rating for the Service Test, and the bank's performance in the Detroit MSA was good. Examiners noted that the bank's delivery systems were accessible to all portions of the AA, and the opening and closing of branches generally had not adversely affected the accessibility of the bank's delivery systems, particularly in LMI geographies and to LMI individuals. Examiners found that Huntington Bank had several alternative delivery systems that provided additional availability and access to banking services to both retail and business customers in the AA and that services and business hours did not vary in a way that inconvenienced the AA, particularly LMI geographies and individuals. Examiners noted that Huntington Bank provided a significant level of community development services that were responsive to identified needs in the AA, particularly with financial education and homebuyer counseling and education for LMI individuals and families.

CRA Performance of TCF Bank

TCF Bank was assigned an overall “Outstanding” rating at its most recent CRA performance evaluation by the OCC, as of August 31, 2020 (“TCF Bank Evaluation”).⁵⁹ TCF Bank received an “Outstanding” rating for the Lending Test and “High Satisfactory” ratings for the Investment Test and Service Test.

Lending Test

Examiners noted that the overall geographic distribution of TCF Bank's lending reflected excellent penetration in LMI geographies. Examiners found that the overall distribution of lending among borrowers of different income levels was excellent. Examiners noted that TCF Bank's community development activities were responsive to the credit needs of the bank's AAs.

Areas of Concern to Commenters—In Michigan, TCF Bank received an “Outstanding” rating for the Lending Test, including in the Detroit–Warren–Ann Arbor Combined Statistical Area (the “Detroit CSA”), the bank's only AA in the state receiving a full-scope review. Examiners found that the bank's geographic distribution of home mortgage loans and of loans to small businesses was excellent. Examiners also found that the distribution of loans by borrower income reflected excellent penetration among home mortgage

⁵⁹ The TCF Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA-reportable and CRA small business lending data from January 1, 2017, to December 31, 2019, as well as community development loans, investments, and services from August 8, 2017, to December 31, 2019. The TCF Bank Evaluation covered TCF Bank's ten AAs located in six states and one multistate MSA: Arizona; Colorado; Michigan; Minnesota; South Dakota; Wisconsin; and the Chicago–Naperville–Elgin, Illinois–Indiana–Wisconsin MSA. The TCF Bank Evaluation included a full-scope review of eight of these AAs, including the multistate MSA. A limited-scope review was conducted in the remaining two AAs.

borrowers of different income levels and very poor penetration of small loans to businesses. Examiners noted that the bank made a relatively high level of community development loans and that the community development loans were responsive to economic development and affordable housing needs in the Detroit CSA.

Investment Test

Examiners found that TCF Bank made an overall good level of qualified community development investments in response to AA community development needs relative to the bank's tier 1 capital. Examiners noted that investments were responsive to community needs, including activities that served broader areas in addition to the bank's AAs.

Areas of Concern to Commenters—In Michigan, TCF Bank received an overall rating of “Outstanding” for the Investment Test. Examiners found that the bank provided an excellent level of qualified community development investments and grants in the Detroit CSA, particularly those that are not routinely provided by private investors and occasionally in a leadership position. Examiners also found that TCF Bank's investments exhibited excellent responsiveness to community needs and made extensive use of innovative and/or complex investments to support community development initiatives. Consideration of statewide investments in Michigan—primarily investments in mortgage-backed securities consisting of mortgage loans extended to LMI borrowers—had a positive impact on the overall Investment Test rating in the state.

Service Test

Examiners found that TCF Bank's service delivery systems were readily accessible in the Illinois-Indiana-Wisconsin multistate MSA and the state of Minnesota and were accessible in the state of Michigan.

Area of Concern to Commenters—In Michigan, TCF Bank received an overall “High Satisfactory” rating for the Service Test. Examiners found that the bank's performance in the Detroit CSA was good and that the bank's service delivery systems were accessible to all geographies and individuals of different income levels. Examiners noted that the bank provided an adequate level of community development services in the Detroit CSA.

Branch Closures

As noted above, several commenters expressed concern that the proposal could result in a significant number of branch consolidations and closures, which could negatively impact minority and LMI communities. The federal banking supervisory agencies evaluate a bank's record of opening and closing branches, particularly branches located in LMI geographies or primarily serving LMI individuals, as part of the CRA examination process.⁶⁰ Examiners noted in the Huntington Bank Evaluation that Huntington Bank's opening and closing of branches had not adversely affected the accessibility of the bank's delivery systems in the Michigan primary rating area and in two out of three AAs receiving full-scope reviews in the Ohio primary rating area. With respect to TCF Bank, examiners noted that TCF Bank's opening and closing of branches had not adversely affected the accessibility of the bank's delivery systems.

⁶⁰ See, e.g., 12 CFR 228.24(d)(2). In addition, the Board notes that the OCC, as the primary federal supervisor of Huntington Bank, would continue to evaluate the bank's branch closures in the course of conducting CRA performance evaluations of the bank.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings, including requiring that a bank provide notice to the public and the appropriate federal supervisory agency before the branch is closed.⁶¹ Huntington represents that any branch closures or consolidations would be subject to Huntington Bank's comprehensive framework for ensuring that individual branch closure and consolidation decisions comply with applicable laws and regulatory guidance. In particular, Huntington represents that any branch closures or consolidations would occur only after conducting appropriate analysis of CRA-related impacts, considering the effect on the community, the ability of the bank to provide service to the area, and the presence of other financial institutions in the area.

Additional Supervisory Views

In connection with its review of the proposal, the Board consulted the OCC as the primary federal supervisor of Huntington Bank and TCF Bank. The OCC is reviewing the bank merger underlying this proposal and, in acting on the bank merger application, must consider similar statutory factors under the Bank Merger Act, including regarding convenience and needs, that the Board must consider under the BHC Act. The OCC has been provided copies of the comments that the Board received on the BHC Act application, and the OCC has evaluated these comments in connection with its review of the Bank Merger Act application.

The Board considered the views of the OCC regarding Huntington Bank's CRA and consumer compliance records, record of compliance with fair lending laws and regulations, and policies and procedures relating to fair lending and other consumer protection laws and regulations. This included consideration of Huntington Bank's lending record. The Board also considered the OCC's views regarding TCF Bank's CRA and consumer compliance records, record of compliance with fair lending laws and regulations, and policies and procedures relating to fair lending and other consumer protection laws and regulations. In addition, the Board considered the views of the CFPB regarding the consumer compliance records of both Huntington Bank and TCF Bank.

The Board has taken the views of the OCC and CFPB, as well as all of the information discussed above, into account in evaluating this proposal. The Board has considered whether Huntington has the experience and resources to ensure that the combined organization effectively implements policies and programs that would allow the combined organization 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. Huntington represents that the combined organization would be better able to leverage increased scale to invest further in innovation and technology and expand distribution and product offerings for the benefit of its customers. In addition, Huntington represents that existing customers of both Huntington Bank and TCF Bank would have access to a more extensive branch and ATM network and that existing customers of TCF Bank also would benefit from a broader offering of products and services. Huntington represents that, as a larger SBA lender than TCF Bank,

⁶¹ See 12 U.S.C. § 1831r-1. As federal banking law requires, a bank must provide the public with at least 30 days' notice and the appropriate federal supervisory agency with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

Huntington Bank would offer additional loan opportunities for the combined organization's small business 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; the views of the OCC and CFPB; confidential supervisory information; information provided by Huntington; public comments on the proposal; and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that the convenience and needs factor is consistent with approval. The Board expects Huntington to implement policies, programs, and procedures that are commensurate with the increased size and complexity of the institution.

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.”⁶²

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁶³ 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.⁶⁴

In this case, the Board has considered information relevant to the risks to the stability of the U.S. banking or financial system. Both Huntington and TCF predominately engage in retail and commercial banking activities, with funding largely derived from core deposits. The proposed acquisition would increase Huntington's size by approximately 40 percent as measured by total assets, deposits, or leverage exposure, but the consolidated institution would still hold well below one percent of total U.S. financial system assets.

Other measures of stability risks point to de minimis increases as a result of the acquisition. The organization would not be a critical services provider or so interconnected with other firms or markets that it would pose significant risk to the financial system in the event of financial distress. In addition, the pro forma organization would have minimal

⁶² 12 U.S.C. § 1842(c)(7).

⁶³ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁶⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.⁶⁵ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Huntington with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments and representations made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective May 25, 2021.

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

Michele Taylor Fennell
Deputy Associate Secretary of the Board

⁶⁵ 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 proposal. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also, in its discretion, may hold a public meeting 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 would be clarified by a public meeting. In addition, the request does not demonstrate why written comments do not present the commenter's views adequately or why a meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting is not required or warranted in this case. Accordingly, the request for a public meeting is denied.

Several commenters 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 commenters' requests for additional time to comment do not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend the comment period.

Appendix I

Asset and Deposit Data in States where Huntington Bank and TCF Bank Both Operate									
State / District	Huntington			TCF			Merged Entity		
	Rank of Insured Depository Institution ¹ by Assets	Deposits Controlled (in billions)	Percent of Total Deposits	Rank of Insured Depository Institution by Assets	Deposits Controlled (in billions)	Percent of Total Deposits	Rank of Insured Depository Institution by Assets	Deposits Controlled (in billions)	Percent of Total Deposits
Illinois	23rd	2.9	0.5	15th	7.1	1.2	13th	10	1.6
Michigan	7th	19.7	6.9	6th	20	7.1	2nd	39.7	14
Ohio	3rd	64.1	14.1	24th	1.6	0.3	3rd	65.7	14.4

¹ In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

Appendix II

Huntington/TCF Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines						
Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Chicago, IL – Cook County, DuPage County, Lake County, Will County, Kane County, McHenry County, Kendall County, DeKalb County, Grundy County, Kankakee County; plus, Milks Grove, Chebanse, Papineau, Beaverville, Ashkum, Martinton, and Beaver townships of Iroquois County; plus Roger, Mona, Pella, and Brenton Townships in Ford County, all in IL; and Pleasant Prairie, Bristol, Salem, and Randall townships in Kenosha County, WI.						
Huntington Pre-Consummation	17	\$2.9B	0.6			
TCF	13	\$7.4B	1.5			
Huntington Post-Consummation	12	\$10.3B	2.1	1028	2	156
Elkhart/Niles/South Bend, IN – Elkhart, St. Joseph, Kosciusko, LaGrange and Marshall Counties, Indiana; Davis, Oregon, Washington, and North Bend (including the entire city of Bass Lake) townships in Starke County, Indiana; Cass County, Michigan; Buchanan, Niles and Bertrand townships in Berrien County, Michigan; the Southern half of St. Joseph County, Michigan (Constantine, Florence, Sherman, Burr Oak, Mottville, White Pigeon, Sturgis, and Fawn River Townships).						
Huntington Pre-Consummation	17	\$114.0M	0.9			
TCF	12	\$205.5M	1.6			
Huntington Post-Consummation	10	\$319.5M	2.5	1612	3	28
Alma, MI – Gratiot County, MI						
Huntington Pre-Consummation	5	\$30.9M	4.5			
TCF	4	\$66.8M	9.7			
Huntington Post-Consummation	4	\$97.7M	14.2	3002	88	3
Coldwater, MI – Branch County, MI						
Huntington Pre-Consummation	7	\$15.0M	2			
TCF	4	\$51.8M	7			
Huntington Post-Consummation	4	\$66.8M	9	3083	28	5
Detroit, MI – Oakland County; Macomb county; Wayne County; Lapeer County; Genesee County; Washtenaw County; St. Clair County; Livingston County; Lenawee County; Shiawassee County; Monroe County (except Whiteford, Bedford, and Erie townships); Sanilac County (except Greenleaf, Austin, Argyle, Moore, Minden, Wheatland, Delaware, and Forester townships); all in Michigan						
Huntington Pre-Consummation	5	\$12.0B	6.1			
TCF	6	\$10.0B	5.1			
Huntington Post-Consummation ¹	4	\$22.0B	11.2	1588	61	49
Grand Rapids, MI – Allegan County; Barry County; Ionia County; Kent County; Mecosta County; Montcalm County; Muskegon County; Newaygo County; Oceana County; Ottawa County; Newkirk, Dover, Ellsworth, Cherry Valley, Pinona, Yates, and Chase townships of Lake County; Richmond, Evart, Hersey, and Orient townships of Osceola County; all in Michigan						
Huntington Pre-Consummation	2	\$3.7B	11.5			
TCF	3	\$3.0B	9.4			
Huntington Post-Consummation ²	2	\$6.7B	20.7	1207	206	32

(continued on next page)

Appendix II—continued

Huntington/TCF Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—continued						
Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Kalamazoo-Battle Creek, MI – Kalamazoo County; Van Buren County; Flowerfield, Park, Mendon, Leonidas, Fabius, Lockport, Nottawa, and Colon townships of St. Joseph County, MI; all in Michigan						
Huntington Pre-Consummation	12	\$140.2M	2.7			
TCF	3	\$505.8M	9.6			
Huntington Post-Consummation	3	\$646.0M	12.3	1310	52	15
Petoskey, MI – Charlevoix County; Emmet County; Cheboygan County; Banks, Central Lake, Echo, Jordan, and Warner townships of Antrim County; all in Michigan						
Huntington Pre-Consummation	4	\$217.3M	11.3			
TCF	3	\$264.4M	13.7			
Huntington Post-Consummation ³	1	431.3	22.3	1420	192	9
Calhoun County, MI – Calhoun County, MI						
Huntington Pre-Consummation	9	\$22.3M	1.9			
TCF	1	\$373.8M	31.3			
Huntington Post-Consummation	1	\$396.1M	33.2	1912	117	9
Akron, OH – Summit County, OH (minus Sagamore Hills, Northfield Center, Twinsburg, Richfield and Boston townships, the villages adjoining these townships, and the cities of Twinsburg, Macedonia and Hudson); Franklin, Ravenna, Charlestown, Paris, Brimfield, Rootstown, Edinburg, Palmyra, Suffield, Randolph, Atwater and Deerfield townships, and the city of Kent in Portage County, OH; Guilford, Wadsworth and Sharon townships, and the city of Wadsworth in Medina County, OH; Lawrence and Lake townships in Stark County, OH; and Milton and Chippewa townships, and the villages adjoining these townships, in Wayne County, OH.						
Huntington Pre-Consummation	1	\$4.7B	32.4			
TCF	19	\$56.3M	0.4			
Huntington Post-Consummation	1	\$4.7BM	32.8	1694	25	26
Cleveland, OH – Cuyahoga, Lake, Lorain and Geauga Counties, OH; Sagamore Hills, Northfield Center, Twinsburg, Richfield and Boston townships, the villages surrounding these townships, and the cities of Macedonia, Twinsburg and Hudson in Summit County, OH; Homer, Harrisville, Westfield, Spencer, Chatham, Lafayette, Montville, Litchfield, York, Medina, Granger, Liverpool, Brunswick Hills and Hinckley townships, and the cities of Medina and Brunswick in Medina County, OH; Mantua, Hiram, Nelson, Shalersville, Freedom and Windham townships, and the cities of Aurora and Streetsboro in Portage County, OH; and the city of Vermilion (not whole township) in Erie County, OH.						
Huntington Pre-Consummation	3	\$12.7B	13.2			
TCF	16	\$688.0M	0.7			
Huntington Post-Consummation	2	\$13.4B	14	1727	19	36
Youngstown-Warren, OH – Columbiana County OH; Mahoning County, OH (minus Smith township); Trumbull County, OH (minus Brookfield and Hartford townships); and Grant district in Hancock County, WV.						
Huntington Pre-Consummation	6	\$2.8B	24.9			
TCF	1	\$811.2M	7.2			
Huntington Post-Consummation	1	\$3.6B	32	1763	355	16
<p>¹ The post-consummation calculations reflect Huntington's commitment to divest two TCF Bank branches in the Detroit banking market to a competitively suitable institution.</p> <p>² The post-consummation calculations reflect Huntington's commitment to divest two TCF Bank branches in the Grand Rapids banking market to a competitively suitable institution.</p> <p>³ The post-consummation calculations reflect Huntington's commitment to divest one TCF Bank branch in the Petoskey banking market to a competitively suitable institution.</p> <p>Data are as of June 30, 2020. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted in each market includes thrift institutions.</p>						

SVB Financial Group Santa Clara, California

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2021-08 (June 10, 2021)

SVB Financial Group (“SVB Group”), Santa Clara, California, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Boston Private Financial Holdings, Inc. (“Boston Private”) and thereby indirectly acquire its subsidiary state member bank, Boston Private Bank & Trust Company (“BP Bank”), both of Boston, Massachusetts. In addition, SVB Group’s subsidiary state member bank, Silicon Valley Bank (“SVB Bank”), Santa Clara, California, has requested the Board’s approval to merge with BP Bank pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”),³ with SVB Bank as the surviving entity. SVB Bank also has applied under section 9 of the Federal Reserve Act (“FRA”)⁴ to establish and operate branches at the locations of the main office and branches of BP Bank and under section 9 of the FRA⁵ and section 208.3(d)(2) of the Board’s Regulation H⁶ to change the general character and corporate powers of SVB Bank’s business.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (86 *Federal Register* 13377 (March 8, 2021)) in accordance with the Board’s Rules of Procedure.⁷ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act, 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.

SVB Group, with consolidated assets of approximately \$116.0 billion, is the 37th largest insured depository organization in the United States, controlling approximately \$102.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁸ SVB Group controls SVB Bank, which operates in California.⁹ SVB Bank is the 5th largest insured depository institution in California, controlling deposits of approximately \$69.3 billion, which represent approximately 3.9 percent of the total deposits of insured depository institutions in that state.

Boston Private, with consolidated assets of approximately \$10.0 billion, is the 155th largest insured depository organization in the United States, controlling approximately \$8.6 billion in consolidated deposits, which represent less than 1 percent of the total

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 *Id.*

⁶ 12 CFR 208.3(d)(2).

⁷ 12 CFR 262.3(b).

⁸ Consolidated asset and deposit data are as of December 31, 2020. State deposit data are as of June 30, 2020, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

⁹ SVB Bank’s main office and branches are in California. SVB Bank also operates a loan production office in Massachusetts.

amount of deposits of insured depository institutions in the United States. Boston Private controls BP Bank, which operates in California and Massachusetts. BP Bank is the 46th largest insured depository institution in California, controlling deposits of approximately \$2.7 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. BP Bank is the 14th largest insured depository institution in Massachusetts, controlling deposits of approximately \$4.8 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, SVB Group would become the 35th largest insured depository organization in the United States, with consolidated assets of approximately \$126.1 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. SVB Group would control consolidated deposits of approximately \$111.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the United States. SVB Bank would remain the 5th largest insured depository organization in California, controlling deposits of approximately \$72.0 billion, which represent approximately 4.0 percent of the total amount of deposits of insured depository institutions in that state. SVB Bank would become the 14th largest insured depository organization in Massachusetts, controlling deposits of approximately \$4.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analyses

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company 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.¹⁰ Similarly, section 44 of the Federal Deposit Insurance Act (“FDI Act”) generally provides that, if certain conditions are met, the Board may approve an application by a bank to engage in an interstate merger transaction with a bank that has a different home state without regard to whether the transaction would be prohibited under state law, provided that the resulting bank would be well capitalized and well managed.¹¹ The Board may not approve under either provision an application that would permit an out-of-state bank holding company or out-of-state 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.¹² In addition, the Board may not approve an interstate application under these provisions if the bank holding company or resulting bank 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 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 Moreover, the Bank Merger Act includes a prohibition on approval of interstate transactions where the resulting insured depository institution, together with its insured depository institution affiliates, controls or, upon consummation of the proposed transaction, would control,

¹⁰ 12 U.S.C. § 1842(d)(1)(A).

¹¹ 12 U.S.C. § 1831u(a)(1).

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

¹³ 12 U.S.C. § 1842(d)(2)(A) and (B); 12 U.S.C. § 1831u(b)(2)(A) and (B). The acquiring and target organizations have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch.

more than 10 percent of the total amount of deposits of insured depository institutions in the United States.¹⁴

For purposes of these provisions, the home state of SVB Group is California.¹⁵ The home state of SVB Bank also is California.¹⁶ The home state of BP Bank is Massachusetts, and BP Bank is located in California and Massachusetts. SVB Group, SVB Bank, and BP Bank are well capitalized and well managed under applicable law, and SVB Bank also would be well capitalized and well managed upon consummation of the proposal. Massachusetts has a three-year minimum age requirement, and there are no minimum age requirements under the laws of California that apply to SVB Group's acquisition of Boston Private and BP Bank.¹⁷ BP Bank has been in existence for more than three years, and SVB Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").¹⁸

On consummation of the proposed transaction, SVB Group would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Massachusetts imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.¹⁹ The combined organization would control approximately 0.96 percent of the total amount of deposits of insured depository institutions in Massachusetts. Accordingly, in light of all the facts of record, the Board is not precluded from approving the proposal under section 3(d) of the BHC Act, section 44 of the FDI Act, or the interstate provisions of the Bank Merger 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.²⁰ The BHC Act and the Bank Merger Act 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.²¹

SVB Group and Boston Private have subsidiary banks that compete directly in the San Francisco-Oakland-San Jose, California, banking market ("San Francisco market").²² The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in

¹⁴ 12 U.S.C. § 1828(c)(13).

¹⁵ 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.

¹⁶ 12 U.S.C. § 1841(o)(4); 12 U.S.C. § 1831u(g)(4). A state bank's home state is the state by which the bank is chartered.

¹⁷ Mass. Gen. Laws ch. 167A, § 2; Cal. Fin. Code § 1685(a).

¹⁸ 12 U.S.C. § 2901 *et seq.* Only one of the states in which SVB Bank operates, Massachusetts, has a state community reinvestment law. Mass. Gen. Laws ch. 167, § 14. Massachusetts' state community reinvestment law does not appear to apply to SVB Bank.

¹⁹ Mass. Gen. Laws ch. 167A, § 2. California does not impose a limit on the total amount of deposits an insured depository institution may control.

²⁰ 12 U.S.C. § 1842(c)(1)(A); 12 U.S.C. § 1828(c)(5)(A).

²¹ 12 U.S.C. § 1842(c)(1)(B); 12 U.S.C. § 1828(c)(5)(B).

²² The San Francisco market is defined as the San Francisco-Oakland-San Jose metropolitan area in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties, as well as portions of Sonoma, Solano, San Benito, and Napa counties.

the market (“market deposits”) that SVB Group would control;²³ 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”);²⁴ 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 San Francisco market. On consummation, the San Francisco market would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in this market would be small, and numerous competitors would remain.²⁵

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

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, the effectiveness of the institutions in combating money laundering, and any public comments on the proposal.²⁶ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations’ significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings

²³ Deposit and market share data are as of June 30, 2020, and unless otherwise noted, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984).* Thus, the Board regularly has included thrift deposits in market share calculations on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).*

²⁴ 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/department-justice-and-federal-trade-commission-issue-revised-horizontal-merger-guidelines>.

²⁵ SVB Group operates the third largest depository institution in the San Francisco market, controlling deposits of approximately \$69.1 billion, which represent approximately 10.0 percent of market deposits. Boston Private operates the 20th largest depository institution in the market, controlling deposits of approximately \$2.0 billion, which represent approximately 0.3 percent of market deposits. On consummation of the proposal, SVB Group would remain the third largest depository organization in the market, controlling deposits of approximately \$71.1 billion, which represent approximately 10.2 percent of market deposits. The HHI for the San Francisco market would increase by 6 points to 1,773, and 79 competitors would remain in the market.

²⁶ 12 U.S.C. § 1842(c)(2), (5), and (6); 12 U.S.C. § 1828(c)(5) and (11).

performance, as well as the impact of the proposed funding of the transaction. 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.

SVB Group, Boston Private, 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 cash and share exchange, with a subsequent merger of the subsidiary banks.²⁷ The asset quality, earnings, and liquidity of SVB Group and Boston Private are consistent with approval, and SVB Group and Boston Private appear 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 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 SVB Group, Boston Private, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by SVB Group; 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.

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

The Board also has considered SVB Group's plans for implementing the proposal. SVB Group 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. SVB Group represents that its risk-management policies, procedures, and controls would be implemented at the combined organization and would be enhanced, as appropriate, by integrating best practices of Boston Private. Both SVB Group and Boston Private's existing risk-management policies, procedures, and controls are considered acceptable from a supervisory perspective. In addition, SVB Group's management has the experience and resources to ensure that the combined organization would operate in a safe and sound manner, and SVB Group plans to integrate Boston Private's existing management and personnel in a manner that augments SVB Group's management.²⁸

²⁷ To effect the transaction, each share of Boston Private common stock would be converted into a right to receive shares of SVB Group common stock based on an exchange ratio and cash. SVB Group has the financial resources to fund the transaction.

²⁸ Following consummation of the proposed transaction, Boston Private's current Chief Executive Officer would join SVB Group as the Chief Executive Officer of Private Banking & Wealth Management, reporting directly to SVB Group's Chief Executive Officer. In addition, SVB Group expects that other members of Boston Private's current senior management team would hold positions within the combined organization.

Based on all of the facts of record, including SVB Group'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 record of effectiveness of SVB Group and Boston Private in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁹ 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 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,³⁰ 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.³¹

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 any 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 SVB Bank and BP Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of San Francisco with respect to SVB Bank, the Federal Reserve Bank of Boston with respect to BP Bank, and the Consumer Financial Protection Bureau with respect to both banks; confidential supervisory information; and information provided by SVB Group.

Records of Performance under the CR

In evaluating the convenience and needs factor and CRA performance of an institution, the Board generally considers the institution's most recent CRA evaluation, as well as information and supervisory views provided by the appropriate federal supervisors.³² In addition, the Board considers information provided by the applicant and by any public commenters.

²⁹ 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 1828(c)(5).

³⁰ 12 U.S.C. § 2901(b).

³¹ 12 U.S.C. § 2903.

³² 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.³³ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply 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 SVB Bank and BP 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 of 1975 ("HMDA"),³⁴ 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;³⁵ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.³⁶ 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.³⁷

The CRA permits an insured depository institution to apply to its primary federal financial supervisor to be evaluated under a strategic plan.³⁸ The CRA performance of such an institution is assessed by evaluating the institution's record of meeting the credit needs of its AAs under its strategic plan.³⁹ The evaluation involves an assessment of the institution's performance under the lending, investment, and service goals outlined in its strategic

³³ 12 U.S.C. § 2906.

³⁴ 12 U.S.C. § 2801 *et seq.*

³⁵ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

³⁶ *See* 12 CFR 228.22(b).

³⁷ *See* 12 CFR part 228, subpart B.

³⁸ *See, e.g.*, 12 CFR 228.21(a)(4). Under the federal financial supervisory agencies' CRA regulations, the appropriate federal financial supervisory agency will assess an institution's CRA performance under a strategic plan if, among other things, the institution invites public comment on the plan and the plan is approved by the relevant supervisor. *See, e.g.*, 12 CFR 228.27.

³⁹ *See, e.g.*, 12 CFR 228.27.

plan.⁴⁰ The Federal Reserve Bank of San Francisco evaluated SVB Bank under a strategic plan.⁴¹

CRA Performance of SVB Bank

SVB Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of San Francisco, as of October 22, 2018 (“SVB Evaluation”).⁴² The SVB Evaluation was conducted pursuant to a Board-approved strategic plan, which specified measurable goals for meeting the lending, investment, and services needs of the bank’s AA. The SVB Evaluation included a review of the bank’s performance toward meeting the strategic goals in the bank’s AA.⁴³

Examiners found that SVB Bank exceeded its strategic plan goals for community development lending, investments, and services. Examiners found that the bank’s lending and investments supported affordable housing and that the bank’s community development services focused on organizations that help address the need for affordable housing and provide services targeted to LMI individuals. Examiners noted that services provided by SVB Bank employees included membership on the boards of local nonprofit organizations that provide affordable housing options for LMI individuals.

SVB Bank’s Efforts Since the SVB Evaluation

SVB Group represents that SVB Bank has continued to meet the goals of its CRA strategic plan since the SVB Evaluation. SVB Group notes that, from 2018 through 2020, SVB Bank originated a significant number of affordable housing construction and small business loans, made substantial investments in a number of low-income housing tax credit funds, provided loan capital to Community Development Financial Institutions that make micro and small business loans to underserved communities, and made several CRA-qualifying donations.

CRA Performance of BP Bank

BP Bank was assigned an overall “Outstanding” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Boston, as of April 23, 2018 (“BP Bank Evaluation”).⁴⁴ BP Bank received a “High Satisfactory” rating for the Lending Test and an “Outstanding” rating for each of the Investment and Service Tests.

With respect to the Lending Test, examiners found that BP Bank’s overall lending performance was good. Examiners noted that the overall geographic distribution of loans throughout the bank’s AAs was good, while the overall distribution among borrowers of different income levels and businesses of different sizes was adequate. Additionally, examiners found that BP Bank used flexible lending practices and originated a high level of community development loans.

⁴⁰ *Id.*

⁴¹ The Board approved SVB Bank’s strategic plan pursuant to 12 CFR 228.27. SVB Bank’s strategic plan established measurable goals for a satisfactory rating under the Lending, Investment, and Service Tests.

⁴² The SVB Evaluation was conducted using the Interagency Strategic Plan CRA Examination Procedures.

⁴³ SVB Bank’s AA consists of the San Jose-San Francisco-Oakland Combined Statistical Area, which includes Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, and Sonoma counties.

⁴⁴ The BP Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Reserve Bank examiners reviewed home mortgage and small business lending from January 1, 2015, through December 31, 2016, and reviewed community development lending from October 15, 2014, through April 23, 2018. The evaluation period for the Investment Test and the Service Test was from January 2015 through December 2017. The BP Bank Evaluation covered BP Bank’s three AAs, located in California and Massachusetts. A full-scope review was conducted in each of the AAs.

With respect to the Investment Test, examiners found that BP Bank had an excellent level of qualified community development investments and grants and often was in a leadership position with respect to such investments, particularly those that were not routinely provided by private investors. Examiners noted that BP Bank exhibited excellent responsiveness to credit and community economic development needs and made significant use of innovative and/or complex investments to support community development initiatives.

With respect to the Service Test, examiners found that BP Bank's delivery systems were readily accessible to the bank's geographies and individuals of different income levels. Examiners noted that the services and business hours offered by BP Bank did not vary in a way that inconvenienced its AAs, including LMI geographies or individuals. Examiners also noted that BP Bank was a leader in providing community development services.

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. SVB Group represents that, following consummation of the proposal, existing customers of BP Bank would have access to additional investment products, including those focused on the innovation economy, broker-dealer capabilities, and private stock lending. SVB Group also represents that existing customers of SVB Bank would have access to an enhanced digital platform and additional products and services, including tax planning, philanthropy, estate planning, impact investment, and specialty lending services. In addition, SVB Group asserts that the customers of both banks would benefit from the broader set of products and services of the combined organization, which SVB Group expects would be enhanced by the complementary service models and expertise of SVB Bank and BP 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 SVB Group, 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."⁴⁵ In addition, the Bank Merger Act requires the Board to consider "risk to the stability of the United States banking or financial system."⁴⁶

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

⁴⁵ 12 U.S.C. § 1842(c)(7).

⁴⁶ 12 U.S.C. § 1828(c)(5).

cial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁴⁷ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁴⁸

In this case, the Board has considered information relevant to the risks to the stability of the U.S. banking or financial system. Both SVB Group and Boston Private predominately engage in commercial banking and wealth management activities, with funding largely derived from core deposits. The proposed acquisition would increase SVB Group's size by less than 9 percent as measured by total assets, deposits, or leverage exposure, and the consolidated institution would still hold well below 1 percent of total U.S. financial system assets.

Other measures of stability risks point to de minimis increases as a result of the acquisition. The organization would not be a critical services provider or so interconnected with other firms or markets that it would pose significant risk to the financial system in the event of financial distress. In addition, 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 light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Establishment of Branches

SVB Bank has applied under section 9 of the FRA to establish branches at the current locations of BP Bank.⁴⁹ The Board has assessed the factors it is required to consider when reviewing an application under that section, including SVB 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.⁵⁰ For the reasons discussed in this order, the Board determines that those factors are consistent with approval.

⁴⁷ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁴⁸ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁴⁹ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, a state member bank resulting from an interstate merger transaction may maintain and operate a branch in a state other than the home state of the bank in accordance with section 44 of the FDI Act. See 12 U.S.C. § 36(d). In addition, a state member bank may retain any branch following a merger that might be established as a new branch of the resulting bank under state law, as well as any branch that, on February 25, 1927, was in operation as a branch of any bank. See 12 U.S.C. §§ 36(b)(2) and (c). Upon consummation, SVB Bank's branches would be permissible under applicable state law. See Cal. Fin. Code § 4888(a)(1); Mass. Gen. Laws ch. 167I §3, ch. 167C, § 13.

⁵⁰ 12 CFR 208.6. Upon consummation of the proposed transaction, SVB Bank's investments in bank premises would remain within the limits under section 208.21(a) of the Board's Regulation H, 12 CFR 208.21(a).

Membership Considerations

Under section 208.3(d)(2) of the Board's Regulation H, a state member bank may not cause or permit any change in the general character of its business or in the scope of the corporate powers it exercises at the time of admission to membership in the Federal Reserve System without the permission of the Board.⁵¹ In connection with the proposal, SVB Bank has requested the Board's approval to expand its banking powers by exercising trust powers pursuant to section 208.3(d)(2) of Regulation H. SVB Bank would offer trust services that BP Bank currently provides through its Trust and Fiduciary Services business. The Board has reviewed the proposed amendment to SVB Bank's articles of incorporation and the powers the bank proposes to exercise under state law upon the proposed merger with BP Bank. In light of all the facts of record, the Board has determined that this change in the general character of SVB Bank's business is consistent with the terms of Federal Reserve System membership and that SVB Bank may retain its System membership after amending its articles of incorporation.

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 SVB Group and SVB 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 application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law. The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of San Francisco, acting under delegated authority.

By order of the Board of Governors, effective June 10, 2021.

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

Michele Taylor Fennell
Deputy Associate Secretary of the Board

Appendix

California Branches to Be Established

1. 345 South San Antonio Road, Los Altos, California
2. 420 Cowper Street, Palo Alto, California
3. 255 Battery Street, San Francisco, California
4. 60 South Market Street, San Jose, California
5. 160 Bovet Road, San Mateo, California
6. 225 North Beverly Drive, Beverly Hills, California

⁵¹ 12 CFR 208.3(d)(2).

7. 16000 Ventura Boulevard, Encino, California
8. 801 S. Figueroa Street, Los Angeles, California
9. 345 E. Colorado Boulevard, Pasadena, California
10. 520 Broadway, Santa Monica, California
11. 971 S. Westlake Boulevard, Westlake Village, California

Massachusetts Branches to Be Established

12. 10 Post Office Square, Boston, Massachusetts
13. 57 Enon Street, Beverly, Massachusetts
14. 500 Boylston Street, Boston, Massachusetts
15. 800 Boylston Street, Boston, Massachusetts
16. 157 Seaport Boulevard, Boston, Massachusetts
17. 265 Main Street, Cambridge, Massachusetts
18. 7 Central Street, Hingham, Massachusetts
19. 1666 Massachusetts Avenue, Lexington, Massachusetts
20. 1223 - 1227 Centre Street, Newton, Massachusetts
21. 336 Washington Street, Wellesley, Massachusetts

Order Issued Under International Banking Act

Adyen, N.V.
Amsterdam, The Netherlands

Order Approving Establishment of a Branch
FRB Order No. 2021-06 (May 24, 2021)

Adyen, N.V. (“Adyen”), Amsterdam, The Netherlands, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 7(d) of the IBA¹ to establish a federally-licensed branch in San Francisco, California (“San Francisco Branch”). The Foreign Bank Supervision Enhancement Act, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in San Francisco, California (*San Francisco Chronicle*, June 26, 2019). The time for submitting comments has expired, and the Board has considered all comments received.

Adyen was founded and licensed in The Netherlands in 2006 as a payment service provider and obtained a full banking license from the European Central Bank (“ECB”) in 2017. Under its ECB license, Adyen offers payment and settlement services to merchants, including offering short-term lines of credit to merchants to speed up their settlement payouts, all on a single technology platform. Through various offices and subsidiaries worldwide, Adyen competes globally with bank and nonbank payments processors, and was ranked in the top 10 worldwide based on processed volume of \$346 billion in 2020.

Temasek Holdings (Private) Limited, Republic of Singapore, owns 8.14 percent of Adyen’s outstanding shares, and Jennison Associates LLC, New York, New York, owns 5.77 percent of Adyen’s outstanding shares. No other shareholder owns more than 5 percent of the shares of Adyen.

Currently, Adyen has no branches or other offices in the United States and conducts its U.S. operations through its wholly-owned subsidiary, Adyen, Inc., a California corporation with offices in San Francisco and New York.² Because Adyen currently does not have a U.S. banking presence, Adyen’s U.S. payment processing business is conducted in reliance on third-party banks. Upon establishment of the San Francisco Branch, the operations of Adyen, Inc., would be transferred to the branch,³ and Adyen would be able to engage in a broad range of payments processing and related banking activities in the United States, thus reducing its dependence on third-party banks.⁴ Through the establishment of the San Francisco Branch, Adyen proposes to bring its U.S. activities and operations in line with those conducted under its ECB license.

¹ 12 U.S.C. § 3105(d).

² Adyen, Inc., is registered with the U.S. Department of the Treasury’s Financial Crimes Enforcement Network as a money services business and holds money transmitter licenses in every state that requires such a license for the activities in which it engages.

³ In addition, the New York office of Adyen, Inc., would be established as a representative office of Adyen under the general consent provisions of Regulation K (12 CFR 211.24(a)(3)). Adyen, Inc., would continue to exist and perform certain limited administrative services on behalf of Adyen.

⁴ Additionally, upon establishment of the proposed branch, Adyen would be a qualifying foreign banking organization as defined in section 211.23 of Regulation K. 12 CFR 211.23(a).

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.⁵ The Board also considers additional standards set forth in the IBA and Regulation K.⁶

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

Adyen is subject to supervision by the De Nederlandsche Bank (“DNB”) under the Single Supervisory Mechanism (“SSM”). The SSM is a system of financial supervision composed of the ECB and the national competent authorities of participating European Union Member states by which specific tasks are distributed between the ECB and the national competent authorities. Under the SSM framework, the ECB has direct prudential supervisory responsibility over “significant institutions,” while the national competent authorities have direct prudential supervisory responsibility over “less significant institutions,” subject to the oversight of the ECB.⁷ A common prudential regulatory framework applies to banks supervised under the SSM, including those supervised by the national competent authorities as less significant institutions. Through its oversight function, the ECB aims to ensure that the supervisory activities carried out by national competent authorities are in line with high supervisory standards, with a view toward fostering consistency of supervisory outcomes within the SSM.⁸

Under the SSM, Adyen is a “less significant institution” and is subject to direct prudential supervision by its national competent authority, the DNB, under the oversight of the ECB.

⁵ 12 U.S.C. § 3105(d)(2); 12 CFR 211.24(c)(1). Regulation K provides that a foreign bank is subject to comprehensive consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisors receive sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this supervisory standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings and relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination.

⁶ See 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3). These standards include whether the bank’s home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank, including the bank’s experience and capacity to engage in international banking; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank’s record of operation. In the case of a foreign bank that presents a risk to the stability of the United States financial system, the Board also may take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

⁷ With respect to both significant institutions and less significant institutions, the national competent authorities retain authority over supervisory matters that were not transferred to the SSM, including consumer protection and the prevention of money laundering and terrorist financing.

⁸ Where necessary, the ECB may decide to directly supervise any less significant institution to ensure that high supervisory standards are applied consistently.

The Board has previously assessed the SSM, including in determining that the ECB and DNB exercise comprehensive supervision over a Dutch bank designated as a “significant institution” under this framework.⁹ The SSM framework has not changed materially since it was last considered by the Board.¹⁰

Based on all the facts of record, including the above information, it has been determined that Adyen is subject to comprehensive supervision on a consolidated basis by the DNB acting through the SSM.

The Board has also considered the financial and managerial and other applicable factors in this case. The DNB has no objections to the establishment of the proposed branch. The ECB’s risk-based capital standards are consistent with those established by the Basel Capital Accord (“Basel Accord”). Adyen’s capital is in excess of the minimum levels that would be required by the Basel Accord and is considered equivalent to capital that would be required of a U.S. banking institution. Managerial and other financial resources of Adyen are considered consistent with approval, and Adyen appears to have the experience and capacity to support the proposed branch. In addition, Adyen has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

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

Adyen has committed to make available to the Board such information on its operations, and on those of any of its affiliates, that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Adyen has committed to cooperate with the Board to obtain any necessary exemptions or waivers that might be required from third parties for disclosure of such information. In light of these commitments and subject to the condition described below, it has been determined that Adyen has provided adequate assurances of access to any necessary information that the Board may request.

The IBA provides that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.¹¹ Information relevant to the standard regarding risk to the stability of the

⁹ See *ING Bank N.V.*, FRB Order 2017-27 (October 20, 2017).

¹⁰ See, e.g., *Abanca Corporación Bancaria, S.A.*, Board Order 2018-20 (September 28, 2018); *Nordea Bank Abp.*, FRB Order 2018-16 (August 3, 2018); *Deutsche Pfandbriefbank AG*, FRB Order 2018-01 (January 3, 2018); *ING Bank N.V.*, FRB Order 2017-27 (October 20, 2017); Board letter to Rita Milazzo dated August 1, 2017 (finding comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.); and *Unione di Banche Italiane, S.p.A.*, FRB Order 2017-11 (April 13, 2017).

¹¹ 12 U.S.C. § 3105(d)(3)(E).

United States financial system has also been reviewed. In particular, consideration has been given to (1) the relative size of Adyen in its home country; (2) the scope of Adyen's activities, including the type of activities it proposes to conduct in the United States and the potential for these activities to increase or transmit financial instability; and (3) the framework in place for supervising Adyen in its home jurisdiction. Taking into account these considerations, it has been determined that the proposal would not create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations for this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by Adyen, as well as the terms and conditions set forth in this order, Adyen's application to establish a branch in San Francisco, California, 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.¹² Should any restrictions on access to information on the operations or activities of Adyen and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Adyen and its affiliates with applicable federal statutes, the Board may require termination of any of Adyen's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Adyen with the commitments made in connection with this application and with the conditions in this order.¹³ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective May 24, 2021.

Ann E. Misback
Secretary of the Board

¹² 12 CFR 265.7(d)(12).

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