



## Legal Developments: Third Quarter, 2021

### Order Issued Under Bank Holding Company Act

First Bank Corp.  
Fort Smith, Arkansas

*Order Approving the Acquisition of a Bank Holding Company*  
*FRB Order No. 2021-09 (July 9, 2021)*

First Bank Corp. (“FBC”), Fort Smith, Arkansas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to acquire Central Bancshares of Poteau, Inc. (“CBP”), a bank holding company, and thereby indirectly acquire The Central National Bank of Poteau (“Central”), both of Poteau, Oklahoma.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (86 *Federal Register* 22205 (April 27, 2021)).<sup>3</sup> The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

FBC, with consolidated assets of approximately \$2.3 billion, is the 451st largest insured depository organization in the United States. FBC controls approximately \$2.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>4</sup> FBC controls First National Bank of Fort Smith (“First National”), Fort Smith, Arkansas, which operates branches in Arkansas and Oklahoma, and Citizens Bank & Trust Company (“Citizens”), Van Buren, Arkansas, which operates branches in Arkansas only. First National has total assets of \$1.8 billion and Citizens has total assets of \$492.1 million.<sup>5</sup> First National is the 129th largest insured depository institution in Oklahoma, controlling deposits of approximately \$115.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>6</sup>

CBP, with total assets of approximately \$305.7 million, is the 2471st largest insured depository organization in the United States. CBP controls approximately \$280.7 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Central operates in Oklahoma only. Central is the 83rd largest insured depository institution in Oklahoma, controlling

<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> 12 CFR 262.3(b).

<sup>4</sup> Consolidated asset and national deposit, ranking, and market share data are as of December 31, 2020.

<sup>5</sup> Total assets are as of March 31, 2021.

<sup>6</sup> State deposit ranking and deposit data are as of June 30, 2020.

deposits of approximately \$250.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, FBC would become the 406th largest insured depository organization in the United States, with consolidated assets of approximately \$2.6 billion, which would represent less than 1 percent of the total assets of insured depository organizations in the United States. FBC would control total consolidated deposits of approximately \$2.3 billion, which would represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Oklahoma, First National would become the 52nd largest insured depository institution, controlling deposits of approximately \$365.3 million, which would represent less than 1 percent of the total 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 is prohibited under state law.<sup>7</sup> 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;<sup>8</sup> (2) must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 (“CRA”)<sup>9</sup> and the applicant’s record of compliance with applicable state community reinvestment laws;<sup>10</sup> 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.<sup>11</sup>

For purposes of the BHC Act, the home state of FBC is Arkansas. Central is located only in Oklahoma. FBC is well capitalized and well managed under applicable law. First National and Citizens each have a “Satisfactory” rating under the CRA, and neither of the jurisdictions in which FBC operates has a state community reinvestment law that applies to this proposal. There are no minimum age requirements under the laws of Oklahoma that apply to FBC’s acquisition of Central. Central has been in existence for more than five years.

On consummation of the proposed transaction, FBC would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Oklahoma, the only state in which FBC and CBP have overlapping banking opera-

<sup>7</sup> 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).

<sup>8</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>9</sup> 12 U.S.C. § 2901 *et seq.*

<sup>10</sup> 12 U.S.C. § 1842(d)(3).

<sup>11</sup> 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).

tions, imposes a 20 percent limit on the total amount of in-state deposits that a single banking organization may control.<sup>12</sup> The combined organization would control less than 1 percent of the total amount of in-state deposits of insured depository institutions in Oklahoma. 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.

### 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.<sup>13</sup> 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.<sup>14</sup>

FBC and CBP have subsidiary banks that compete directly in the Fort Smith, Arkansas, banking market (“Fort Smith market”).<sup>15</sup> 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 FBC would control;<sup>16</sup> 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”);<sup>17</sup> 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 Fort Smith market. On consummation, the Fort Smith market would remain moderately concentrated as measured by the

<sup>12</sup> Okla. Stat. tit. 6, § 502(C).

<sup>13</sup> 12 U.S.C. § 1842(c)(1)(A).

<sup>14</sup> 12 U.S.C. § 1842(c)(1)(B).

<sup>15</sup> The Fort Smith market is defined, in Arkansas, as Crawford, Franklin, and Sebastian counties, as well as the city of Mansfield, and, in Oklahoma, as Le Flore and Sequoyah counties, as well as the Keota Census County Division (“CCD”), McCurtain CCD, and Stigler CCD of Haskell County.

<sup>16</sup> 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).

<sup>17</sup> 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](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

HHI, according to the DOJ Bank Merger Guidelines, and numerous competitors would remain in the market.<sup>18</sup>

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 Fort Smith 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.<sup>19</sup> 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.

FBC, CBP, and their respective 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.<sup>20</sup> The capital, asset quality, earnings, and liquidity of FBC and CBP are consistent with approval, and FBC and CBP appear to have adequate resources to absorb the

<sup>18</sup> FBC is the largest depository organization in the Fort Smith market, controlling approximately \$1.6 billion in deposits, which represent 26.4 percent of market deposits. CBP is the 6th largest depository organization in the market, controlling deposits of approximately \$249.9 million, which represent 4.1 percent of market deposits. On consummation of the proposed transaction, FBC would remain the largest depository organization in the market, controlling deposits of approximately \$1.9 billion, which would represent 30.5 percent of market deposits. The HHI for the Fort Smith market would increase by 214 points to 1446, and 24 competitors would remain in the market.

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

<sup>20</sup> FBC would effect the holding company acquisition by merging CBP with and into CNBP Acquisition, Inc., a newly formed subsidiary of FBC ("Merger Sub"), with Merger Sub surviving the merger as a subsidiary of FBC. At the time of the merger, each share of CBP common stock would be canceled and converted into a right to receive cash from FBC. Following the holding company acquisition, Merger Sub would merge with and into FBC, with FBC surviving the merger as the parent of Central. FBC would continue to operate Central as a separate standalone bank. FBC has the financial resources to effect the proposed acquisition and mergers.

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 FBC, CBP, and their respective subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by FBC; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and the public comment received on the proposal.

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

The Board also has considered FBC's plans for implementing the proposal. FBC has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. In addition, FBC'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 FBC'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 FBC and CBP 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.<sup>21</sup> 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,<sup>22</sup> 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.<sup>23</sup>

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

---

<sup>21</sup> 12 U.S.C. § 1842(c)(2).

<sup>22</sup> 12 U.S.C. § 2901(b).

<sup>23</sup> 12 U.S.C. § 2903.



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 First National, Citizens, and Central; the fair lending and compliance records of these banks; the supervisory views of the Office of the Comptroller of the Currency ("OCC") and the Federal Reserve Bank of St. Louis ("Reserve Bank"); confidential supervisory information; information provided by FBC; 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, alleging that in 2019, as a result of the bank's disparate marketing, First National made fewer home loans in Arkansas to African American individuals as compared to white individuals. The commenter also alleged that in 2019, as a result of the bank's marketing, Central made no home loans in Oklahoma to African American individuals but made some loans to white individuals.<sup>24</sup> In addition, the commenter asserted that the proposal has no public benefit.

#### *Businesses of the Involved Institutions and Response to the Public Comment*

Through its branches in Arkansas and Oklahoma, First National offers consumer and commercial loan and deposit products, individual retirement accounts, and business banking products. These products and services include a wide range of checking, savings, and money market deposit accounts, as well as credit products, such as home equity, automobile, construction, and commercial loans. Through its branches in Oklahoma, Central offers a variety of commercial and consumer loan products, including commercial and home mortgage loans. Central 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 services. Both banks offer internet banking and mobile banking services.

In response to the comment, FBC asserts that First National and Central each have a history of supporting and servicing their entire market areas, including minority communities. FBC represents that neither First National nor Central considers racial makeup when determining the medium or location of their respective advertisements. FBC represents that the reasons for denials of loan applications submitted by African American customers were credit- or eligibility-related, were consistent with standard underwriting procedures, and were not the result of disparate or other marketing practices. FBC represents that each bank regularly undergoes fair lending reviews by external auditors.

According to FBC, First National demonstrates extensive involvement in lower-income geographies. FBC represents that First National promotes and contributes to a program in area schools, including low-income schools, to improve the fiscal and economic literacy of young students. FBC also represents that First National's 2020 CRA examination noted that the bank had provided numerous qualified grants and donations to community development organizations. In addition, FBC represents that Central provides leadership and

---

<sup>24</sup> The data cited by the commenter appears to correspond to publicly available 2019 data reported by First National and Central under the Home Mortgage Disclosure Act of 1975 ("HMDA"). 12 U.S.C. § 2801 *et seq.*

monetary support for community organizations and activities and that the majority of the bank's community involvement activities benefit underprivileged citizens.

#### *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 and the supervisory views of relevant federal supervisors, which in this case are the OCC with respect to First National and Central and the Reserve Bank with respect to Citizens.<sup>25</sup> 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.<sup>26</sup> 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 First National, 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;<sup>27</sup> (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.<sup>28</sup> 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.<sup>29</sup>

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

<sup>26</sup> 12 U.S.C. § 2906.

<sup>27</sup> 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).

<sup>28</sup> See 12 CFR 228.22(b).

<sup>29</sup> See 12 CFR 228.21 *et seq.*

Federal financial supervisors apply a Lending Test and a community development test (“Community Development Test”) to evaluate the performance of an intermediate small bank, such as Citizens, in helping to meet the credit needs of the communities it serves. 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.<sup>30</sup> Small banks, such as Central, are subject only to a Lending Test.<sup>31</sup>

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.<sup>32</sup> Consequently, the Board evaluates such disparities in the context of other information regarding the lending record of an institution.

#### *CRA Performance of First National*

First National was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the OCC, as of April 27, 2020 (“First National Evaluation”).<sup>33</sup> The bank received “High Satisfactory” ratings for the Lending Test, the Investment Test, and the Service Test.<sup>34</sup>

With respect to the Lending Test, examiners found that First National’s lending levels reflected good responsiveness to the Fort Smith AR-OK AA’s credit needs. Examiners also found that First National exhibited a good and adequate geographic distribution of loans, respectively, in the Fort Smith AR-OK AA and more broadly in the state of Arkansas. Examiners determined that First National exhibited an adequate and poor distribution, respectively, of loan amounts among individuals of different income levels and businesses of different sizes in the Fort Smith AR-OK AA and the state of Arkansas. Examiners found that First National made a relatively high level of community development loans in the Fort Smith AR-OK AA and the state of Arkansas.

With respect to the Investment Test, examiners found that First National had a significant and adequate level, respectively, of qualified community development investments in the Fort Smith AR-OK AA and the state of Arkansas. With respect to the Service Test, examiners found that First National provided a relatively high and adequate level, respectively, of community development services in the Fort Smith AR-OK AA and the state of Arkansas.

<sup>30</sup> See 12 CFR 228.26(c).

<sup>31</sup> 12 CFR 228.26(a).

<sup>32</sup> 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.

<sup>33</sup> The First National 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 January 1, 2017, through December 31, 2019.

<sup>34</sup> The First National Evaluation involved a full-scope review of the bank’s activities in the Fort Smith, Arkansas-Oklahoma multi-state metropolitan statistical area (“MMSA”) AA (“Fort Smith AR-OK AA”). In addition, the First National Evaluation involved a full-scope review of the bank’s performance in Arkansas, which was based primarily on the bank’s Fayetteville-Springdale-Rogers, Arkansas metropolitan statistical area (“MSA”) AA. Examiners noted that the Fort Smith AR-OK AA rating carried greater weight because this AA represented the bank’s most significant market in terms of deposit concentration, branch distribution, and reportable loans.



### *CRA Performance of Citizens*

Citizens was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the Reserve Bank, as of July 9, 2018 (“Citizens Evaluation”).<sup>35</sup> The bank received a “Satisfactory” rating on the Lending Test and an “Outstanding” rating on the Community Development Test.<sup>36</sup>

With respect to the Lending Test, examiners found that a majority of Citizens’ loans were made in the bank’s AA. Examiners also found that the bank’s LTD ratio was reasonable given Citizens’ size, financial condition, and the credit needs of the bank’s AA. In addition, examiners found that the bank’s geographic distribution of loans reflected reasonable dispersion throughout the bank’s AA and that the bank’s loan distribution by borrower profile reflected excellent penetration among businesses of different revenue sizes and individuals of different income levels, including LMI individuals.

With respect to the Community Development Test, examiners determined that Citizens’ overall community development performance demonstrated excellent responsiveness to the community development needs of the bank’s AA, when considering the bank’s capacity and the need and availability of such opportunities for community development. Examiners found that Citizens’ community development activities were spread throughout the AA. Examiners noted that the bank had responded to the community development needs of its AA through community development loans, qualified investments, and community development services.

### *CRA Performance of Central*

Central received an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the OCC, as of February 11, 2019 (“Central Evaluation”).<sup>37</sup> The bank received a “Satisfactory” rating for the Lending Test.<sup>38</sup>

Examiners determined that a substantial majority of Central’s residential real estate and commercial loans were made in the bank’s AA. Examiners found that Central’s LTD ratio was reasonable, based on the bank’s performance context and lending opportunities within its designated AA. Examiners determined that Central’s distribution of residential real estate and commercial loans reflected a reasonable penetration among borrowers of different income levels and businesses with different revenue levels. Examiners also determined that the geographic distribution of the bank’s residential real estate and commercial loans reflected a reasonable dispersion throughout the bank’s AA.

### *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 First National and Central. The Board

---

<sup>35</sup> The Citizens Evaluation was conducted using Intermediate Small Institution CRA Examination Procedures. Examiners reviewed loan data from January 1, 2016, through December 31, 2016; loan-to-deposit (“LTD”) ratio data from September 30, 2014, through March 31, 2018; and responses to written CRA complaints and community development activities from July 14, 2014, through July 8, 2018.

<sup>36</sup> The Citizens Evaluation involved a full-scope review of the bank’s activities in its sole AA: Crawford and Sebastian counties, both in northwestern Arkansas, which comprised the Arkansas side of the Fort Smith AR-OK MMSA.

<sup>37</sup> The Central Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed all residential real estate loan originations and a random sample of commercial loan originations from January 2, 2016, through December 31, 2018.

<sup>38</sup> The Central Evaluation reviewed the bank’s activities in the bank’s sole AA: Le Flore (Fort Smith AR-OK MMSA) and Haskell (non-MSA) counties, both of Oklahoma.

also considered the results of the most recent consumer compliance examinations of First National, Citizens, and Central, 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 FBC has the experience and resources to ensure that First National, Citizens, and Central 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. FBC represents that First National and Central would work closely with members of their respective communities to offer products and services tailored to the needs of these communities. FBC represents that consummation of the proposal would provide customers of Central with access to ATMs at all of the locations within the FBC organization. FBC also represents that, within one to two years, Central would be able to offer the same ancillary products and services as those currently offered by First National and customers would be able to utilize all of the locations of FBC. FBC represents that FBC, First National, and Central do not anticipate significant changes in their respective product offerings or branch networks 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 FBC, 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.”<sup>39</sup>

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.<sup>40</sup> 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

---

<sup>39</sup> 12 U.S.C. § 1842(c)(7).

<sup>40</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

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.<sup>41</sup>

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.<sup>42</sup>

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.<sup>43</sup> 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.<sup>44</sup> 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

---

<sup>41</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

<sup>42</sup> 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.

<sup>43</sup> FBC and CBP offer a range of retail and commercial banking products and services. FBC has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

<sup>44</sup> The commenter requested that the Board hold public hearings on the proposal. Under section 3(b) of the BHC Act, the Board must hold a public hearing on a proposal if 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); see also 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also, in its discretion, may hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and would be clarified by a public hearing. In addition, the request does not demonstrate why written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for public hearings on the proposal is denied.

compliance by FBC 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 FBC 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective July 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*

## Order Issued Under Bank Holding Company Act, Bank Merger Act, and Federal Reserve Act

SmartFinancial, Inc.  
Knoxville, Tennessee

*Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches*  
*FRB Order No. 2021-10 (August 17, 2021)*

SmartFinancial, Inc. (“SmartFinancial”), Knoxville, Tennessee, a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to merge with Sevier County Bancshares, Inc. (“Sevier”) and thereby indirectly acquire its subsidiary state nonmember bank, Sevier County Bank, both of Sevierville, Tennessee. In addition, SmartFinancial’s subsidiary state member bank, SmartBank, Pigeon Forge, Tennessee, has requested the Board’s approval to merge with Sevier County Bank pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”),<sup>3</sup> with SmartBank as the surviving entity. SmartBank also has applied under section 9 of the Federal Reserve Act (“FRA”)<sup>4</sup> to establish and operate branches at the locations of the main office and branches of Sevier County Bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (86 *Federal Register* 26515 (May 14, 2021)) in accordance with the Board’s Rules of Procedure.<sup>5</sup> The time for submitting comments has expired, and no comments on the proposal were received. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

SmartFinancial, with consolidated assets of approximately \$3.6 billion, is the 337th largest insured depository organization in the United States, controlling approximately \$3.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>6</sup> SmartFinancial controls SmartBank, which operates in Tennessee, Alabama, and Florida. SmartBank is the 15th largest insured depository institution in Tennessee, controlling deposits of approximately \$1.8 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Sevier, with consolidated assets of approximately \$452.4 million, is the 1969th largest insured depository organization in the United States, controlling approximately \$410 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sevier controls Sevier County Bank, which operates in Tennessee and Virginia. Sevier County Bank is the 71st largest insured depository institution in Tennessee, controlling deposits of approxi-

<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> 12 U.S.C. § 1828(c).

<sup>4</sup> 12 U.S.C. § 321. These locations are listed in the [Appendix](#).

<sup>5</sup> 12 CFR 262.3(b).

<sup>6</sup> Consolidated asset and national deposit, ranking, and market-share data are as of March 31, 2021, and state deposit, ranking, and market-share data are as of June 30, 2020, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.



mately \$336 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, SmartFinancial would become the 313th largest insured depository organization in the United States, with consolidated assets of approximately \$4.0 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. SmartFinancial would control consolidated deposits of approximately \$3.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the United States. SmartBank would become the 14th largest insured depository organization in Tennessee, controlling deposits of approximately \$2.2 billion, which represent approximately 1.1 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.<sup>11</sup>

<sup>7</sup> 12 U.S.C. § 1842(d)(1)(A).

<sup>8</sup> 12 U.S.C. § 1831u(a)(1).

<sup>9</sup> 12 U.S.C. § 1842(d)(1)(B); 12 U.S.C. § 1831u(a)(5).

<sup>10</sup> 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.

<sup>11</sup> 12 U.S.C. § 1828(c)(13).

For purposes of these provisions, the home state of SmartFinancial is Tennessee.<sup>12</sup> The home state of SmartBank also is Tennessee.<sup>13</sup> The home state of Sevier County Bank is Tennessee, and Sevier County Bank is located in Tennessee and Virginia. SmartFinancial, SmartBank, and Sevier County Bank are well capitalized and well managed under applicable law, and SmartBank also would be well capitalized and well managed upon consummation of the proposal. Sevier County Bank has been in existence for more than five years, and SmartBank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).<sup>14</sup>

On consummation of the proposed transaction, SmartFinancial would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Tennessee imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.<sup>15</sup> The combined organization would control approximately 1.1 percent of the total amount of deposits of insured depository institutions in Tennessee. 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.<sup>16</sup> 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.<sup>17</sup>

SmartFinancial and Sevier have subsidiary banks that compete directly in the Knoxville Area, Tennessee, banking market (“Knoxville market”) and the Sevierville Area, Tennessee, banking market (“Sevierville market”).<sup>18</sup> The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) that SmartFinancial would control,<sup>19</sup> the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 12 U.S.C. § 2901 *et seq.* The states in which SmartBank operates do not have community reinvestment laws.

<sup>15</sup> Tenn. Code Ann. § 45-2-1404.

<sup>16</sup> 12 U.S.C. § 1842(c)(1)(A); 12 U.S.C. § 1828(c)(5)(A).

<sup>17</sup> 12 U.S.C. § 1842(c)(1)(B); 12 U.S.C. § 1828(c)(5)(B).

<sup>18</sup> The Knoxville market is defined as Anderson, Blount, Knox, Loudon, Morgan, Roane, and Union counties; Grainger County excluding District 5 in eastern Grainger County; Jefferson County excluding Districts 3, 8, and 9 in northern and eastern Jefferson County; and Districts 6 and 9 in western Sevier County; all in Tennessee. The Sevierville market is defined as Cocke County, District 8 in eastern Jefferson County, and Sevier County excluding Districts 6 and 9 in western Sevier County; all in Tennessee.

<sup>19</sup> 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.

Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”),<sup>20</sup> 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 Knoxville market. On consummation of the proposal, the Knoxville 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.<sup>21</sup>

#### *Banking Market Warranting Special Scrutiny*

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

SmartBank is the second largest depository institution in the Sevierville market, controlling approximately \$661.5 million in deposits, which represent 19.9 percent of market deposits. Sevier County Bank is the fourth largest depository institution in the market, controlling approximately \$296.5 million in deposits, which represent 8.9 percent of market deposits. On consummation of the proposal, SmartBank would become the largest depository institution in the Sevierville market, controlling approximately \$957.9 million in deposits, which would represent approximately 28.8 percent of market deposits. The HHI in this market would increase 354 points, from 1620 to 1974.

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 Sevierville market.<sup>22</sup> In particular, three credit unions exert a competitive influence in the Sevierville market. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that

---

*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).*

<sup>20</sup> In applying the DOJ Bank Merger Guidelines issued in 1995 ([see https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995](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](https://www.justice.gov/atr/horizontal-merger-guidelines-08192010)), the DOJ has confirmed that its Bank Merger Guidelines 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](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>21</sup> SmartFinancial operates the 11th largest depository institution in the Knoxville market, controlling deposits of approximately \$390 million, which represent approximately 2.0 percent of market deposits. Sevier operates the 32nd largest depository institution in the market, controlling deposits of approximately \$39 million, which represent approximately 0.2 percent of market deposits. On consummation of the proposed transaction, SmartFinancial would remain the 11th largest depository organization in the market, controlling deposits of approximately \$429 million, which represent approximately 2.2 percent of market deposits. The HHI for the Knoxville market would increase by 1 point to 1113, and 41 competitors would remain in the market.

<sup>22</sup> 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).*

include almost all of the residents in the relevant banking market.<sup>23</sup> The Board finds that the deposits of credit unions that exhibit these characteristics should be included at a 50-percent weight in calculating an estimate of the credit union's market influence (each a "qualifying credit union"). This weighting considers the limited lending done by credit unions to small businesses relative to commercial banks' lending levels. After including qualifying credit unions, SmartFinancial would control approximately 27.7 percent of market deposits, and the HHI would increase by 329 points, from 1509 to 1838.

The Board has also examined other aspects of the structure of the Sevierville market that could mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Sevierville market. After consummation of the proposal, thirteen depository institutions, including the qualifying credit unions, would remain in the market. These include, apart from SmartBank, one depository institution that would control more than 25 percent of market deposits and one depository institution that would control more than 15 percent of market deposits. The Sevierville market is also an attractive market for banking service providers. Compared to similar markets, the Sevierville market has above average deposits per branch, and since 2016 has experienced above average growth in deposits, income, and population. Banks have either entered or opened branches in the market each year since 2018. The presence of numerous competitors and attractiveness of the market for entry and expansion suggest that SmartFinancial would have limited ability unilaterally to offer less attractive terms to consumers and that competitors would be able to exert competitive pressure on SmartFinancial in the Sevierville market.

#### *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 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 banking markets in which SmartFinancial and Sevier compete directly, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

#### **Financial, Managerial, and Other Supervisory Considerations**

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, the effectiveness of the institutions in combatting money laundering.<sup>24</sup> 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,

<sup>23</sup> 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).

<sup>24</sup> 12 U.S.C. § 1842(c)(2), (5), and (6); 12 U.S.C. § 1828(c)(5) and (11). Where applicable, the Board also considers any timely substantive comments on the proposal and, in its discretion, may consider any untimely substantive comments on the proposal.

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.

SmartFinancial, Sevier, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary banks.<sup>25</sup> The capital, asset quality, earnings, and liquidity of SmartFinancial and Sevier are consistent with approval, and SmartFinancial and Sevier 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 SmartFinancial, Sevier, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by SmartFinancial; 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.

SmartFinancial, Sevier, and their subsidiary depository institutions are each 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 SmartFinancial's plans for implementing the proposal. SmartFinancial 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, SmartFinancial's management has the experience and resources to ensure that the combined organization would operate in a safe and sound manner.

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

---

<sup>25</sup> SmartFinancial would effect the holding company acquisition by merging Sevier with and into SmartFinancial, with SmartFinancial as the surviving entity. At the time of the merger of Sevier into SmartFinancial, each share of Sevier common stock would be converted into a right to receive SmartFinancial common stock. Each holder of fewer than 20,000 shares of Sevier common stock may elect to receive cash. Immediately following the holding company merger, Sevier County Bank would merge with and into SmartBank, with SmartBank as the surviving entity. SmartFinancial has the financial resources to effect the proposed transaction.



### 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.<sup>26</sup> 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,<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup> 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 SmartBank and Sevier County Bank, the fair lending and compliance records of both banks, the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") with respect to SmartBank and the FDIC with respect to Sevier County Bank, confidential supervisory information, and information provided by SmartFinancial.

#### *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 information and supervisory views provided by the appropriate federal supervisors.<sup>30</sup> The Board also considers information provided by the applicant and, where applicable and as appropriate, 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.<sup>31</sup> 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.

<sup>26</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 1828(c)(5).

<sup>27</sup> 12 U.S.C. § 2901(b).

<sup>28</sup> 12 U.S.C. § 2903.

<sup>29</sup> As noted above, where applicable, the Board also considers any timely substantive comments on the proposal and, in its discretion, may consider any untimely substantive comments on the proposal.

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

<sup>31</sup> 12 U.S.C. § 2906.

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 SmartBank, 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,<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> Small institutions, such as Sevier County Bank, are subject only to the Lending Test.<sup>35</sup>

#### *CRA Performance of SmartBank*

SmartBank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the Reserve Bank, as of August 5, 2019 (“SmartBank Evaluation”).<sup>36</sup> SmartBank received a “Satisfactory” rating for both the Lending and Community Development Tests.

Examiners found that the majority of SmartBank’s loans were made in the bank’s AAs. Examiners noted that the bank’s geographic distribution of loans reflected reasonable dispersion throughout the bank’s AAs. Examiners also found that given the product lines offered by the bank, its lending to borrowers reflected reasonable penetration among retail customers of different income levels and business customers of different sizes. In addition, examiners found that the bank demonstrated adequate responsiveness to community development needs through community development loans, qualified investments, contributions, and community development services.

<sup>32</sup> 12 U.S.C. § 2801 *et seq.*

<sup>33</sup> See 12 CFR 228.26(b).

<sup>34</sup> See 12 CFR 228.26(c).

<sup>35</sup> See 12 CFR 228.26(a).

<sup>36</sup> The SmartBank Evaluation was conducted using the Interagency Intermediate Small Institution CRA Examination Procedures. Reserve Bank examiners reviewed small business and home mortgage lending from January 1, 2016, through December 31, 2017, and reviewed community development lending, investment, and service activities from January 1, 2016, through December 31, 2017. The SmartBank Evaluation covered SmartBank’s seven AAs located in the states of Tennessee and Florida. A full-scope review was conducted in both the Chattanooga, Tennessee AA, and the Panama City, Florida AA.

### *CRA Performance of Sevier County Bank*

Sevier County Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of February 10, 2020 (“Sevier County Bank Evaluation”).<sup>37</sup> Sevier County Bank received a “Satisfactory” rating for the Lending Test.

Examiners found that Sevier County Bank’s loan-to-deposit ratio was reasonable given the bank’s size and financial condition as well as the credit needs of the bank’s AA. Examiners noted that the bank made a majority of its home mortgage and small business loans, by number and dollar volume, 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 and that the geographic distribution of loans reflected reasonable dispersion throughout the 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. SmartFinancial represents that, following consummation of the proposal, it does not expect any significant changes to the products and services currently offered to customers of either SmartBank or Sevier County Bank. SmartFinancial also represents that the transaction would enable the combined bank to benefit from certain operating efficiencies, enabling the bank to better serve its communities following the proposed merger. In addition, SmartFinancial notes that customers of both banks would benefit from an expanded branch network.

### *Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions’ records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by SmartFinancial, 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 convenience and needs considerations, as well as the parties’ performance records under the CRA, 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.”<sup>38</sup> In addition, the Bank Merger Act requires the Board to consider “risk to the stability of the United States banking or financial system.”<sup>39</sup>

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

<sup>37</sup> The Sevier County Bank Evaluation was conducted using the Interagency Small Institution CRA Examination Procedures. Examiners reviewed lending data from February 21, 2017, through February 10, 2020. The Sevier County Bank Evaluation reviewed the bank’s activities in its sole AA, consisting of Sevier County, Tennessee.

<sup>38</sup> 12 U.S.C. § 1842(c)(7).

<sup>39</sup> 12 U.S.C. § 1828(c)(5).

the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup>

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that has less than \$10 billion in 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.<sup>43</sup> 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 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**

SmartBank has applied under section 9 of the FRA to establish branches at the current locations of Sevier County Bank.<sup>44</sup> The Board has assessed the factors it is required to

---

<sup>40</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

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

<sup>42</sup> 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.

<sup>43</sup> SmartFinancial and Sevier both offer a range of retail and commercial banking products and services. SmartFinancial 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.

<sup>44</sup> 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 was in operation on

consider when reviewing an application under that section, including SmartBank'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.<sup>45</sup> For the reasons discussed in this order, the Board determines that those factors are consistent with approval.

### **Conclusion**

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

By order of the Board of Governors, effective August 17, 2021.

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

Ann E. Misback  
*Secretary of the Board*

### **Appendix**

#### *Tennessee Branches to Be Established*

1. 111 East Main Street, Sevierville, Tennessee
2. 3605 South Parkway, Pigeon Forge, Tennessee
3. 11403 Chapman Highway, Seymour, Tennessee
4. 3260 Parkway, Pigeon Forge, Tennessee
5. 720 Dolly Parton Parkway, Sevierville, Tennessee
6. 961 East Parkway, Gatlinburg, Tennessee
7. 242 Wears Valley Road, Pigeon Forge, Tennessee

#### *Virginia Branch to Be Established*

8. 4421 Cox Road, Glen Allen, Virginia

---

February 25, 1927, as a branch of any bank. See 12 U.S.C. §§ 36(b)(2) and (c). Upon consummation, SmartBank's branches would be permissible under applicable state law. See Tenn. Code Ann. § 45 2-614; Va. Code Ann. § 6.2-859 (2010).

<sup>45</sup> 12 CFR 208.6. Upon consummation of the proposed transaction, SmartBank's investments in bank premises would remain within the legal requirements of section 208.21(a) of the Board's Regulation H, 12 CFR 208.21(a).





## Legal Developments: Fourth Quarter, 2021

### Orders Issued Under Bank Holding Company Act

First Citizens BancShares, Inc.  
Raleigh, North Carolina

*Order Approving the Acquisition of a Bank Holding Company*  
*FRB Order No. 2021-12 (December 17, 2021)*

First Citizens BancShares, Inc. (“BancShares”), Raleigh, North Carolina, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to indirectly acquire CIT Group, Inc. (“CIT”), New York, New York, and thereby indirectly acquire CIT Bank, National Association (“CIT Bank”), Pasadena, California. BancShares also has filed a notice under sections 4(c)(8) and (j) of the BHC Act<sup>3</sup> to indirectly acquire CIT’s and CIT Bank’s ownership interests in certain nonbanking companies engaged in extending credit and servicing loans. In addition, BancShares’ state nonmember bank subsidiary, First-Citizens Bank & Trust Company (“FCB”),<sup>4</sup> Raleigh, North Carolina, has requested approval under the Board’s Regulation K to establish FC International, Inc. (“FC International”), Raleigh, North Carolina, as a corporation organized under section 25A of the Federal Reserve Act (“Edge corporation”) and for FC International to make an initial investment.<sup>5</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published.<sup>6</sup> The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act and the Board’s Regulation K.

<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> 12 U.S.C. §§ 1843(c)(8) and (j).

<sup>4</sup> In connection with BancShares’ acquisition of CIT, CIT and CIT Bank would each merge with and into FCB, with FCB as the surviving entity. The mergers of CIT and CIT Bank into FCB are subject to approval by the Federal Deposit Insurance Corporation (“FDIC”), pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”). 12 U.S.C. § 1828(c). The FDIC approved the Bank Merger Act application on July 13, 2021. FCB would become a bank holding company for a moment in time under the proposal; however, no regulatory purpose would be served by requiring FCB to file an application under section 3 of the BHC Act in connection with that aspect of the transaction.

<sup>5</sup> 12 U.S.C. § 611 *et seq.*; 12 CFR 211.5(b); 12 CFR 211.9(a)(5). The section 3 application, section 4 notice, and Regulation K requests are collectively referred to as the “proposal.”

<sup>6</sup> 85 *Federal Register* 80788 (December 14, 2020) (section 3 application); 86 *Federal Register* 7292 (January 27, 2021) (extension of comment period for section 3 application); 86 *Federal Register* 7382 (January 28, 2021) (section 4 notice); 85 *Federal Register* 86566 (December 30, 2020) (Edge corporation establishment). *See also* 12 CFR 262.3(b).

BancShares, which is part of the Holding, Frank B. and Lewis R. Family Chain (“Holding F&L Family Chain”),<sup>7</sup> has consolidated assets of approximately \$56.9 billion, and is the 51st largest insured depository organization in the United States, controlling approximately \$50.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>8</sup> BancShares controls FCB, which operates in Arizona, California, Colorado, Florida, Georgia, Kansas, Maryland, Missouri, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin.

CIT, with consolidated assets of approximately \$54.4 billion, is the 53rd largest insured depository organization in the United States, controlling approximately \$40.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. CIT Bank operates in Arizona, California, Colorado, Florida, Hawaii, Kansas, Nebraska, Nevada, and Texas.

On consummation of the proposal, BancShares would become the 38th largest insured depository organization in the United States, with consolidated assets of approximately \$111.3 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. BancShares would control consolidated deposits of approximately \$90.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>9</sup>

### Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction would be prohibited under state law.<sup>10</sup> Section 3(d) also provides that the Board (1) may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the target bank has not been in existence for the lesser of the state statutory minimum period of time or five years;<sup>11</sup> (2) must take into account the record of the applicant under the Community Reinvestment Act of 1977 (“CRA”)<sup>12</sup> and the applicant’s record of compliance with applicable state community reinvestment laws;<sup>13</sup> and (3) may not approve an application pursuant to section 3(d) if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States, 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 bank have overlapping banking operations.<sup>14</sup>

<sup>7</sup> In addition to BancShares, the Holding F&L Family Chain controls two other bank holding companies, Southern BancShares (N.C.), Inc., Mount Olive, and Fidelity BancShares (N.C.), Inc., Fuquay-Varina, both of North Carolina, and their respective subsidiary banks.

<sup>8</sup> Consolidated asset and national deposit, ranking, and market share data are as of September 30, 2021.

<sup>9</sup> See [Appendix I](#) for deposit data by state, for states in which FCB and CIT both have banking operations.

<sup>10</sup> 12 U.S.C. § 1842(d)(1)(A).

<sup>11</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>12</sup> 12 U.S.C. § 2901 *et seq.*

<sup>13</sup> 12 U.S.C. § 1842(d)(3).

<sup>14</sup> 12 U.S.C. § 1842(d)(2)(A)-(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

For purposes of the BHC Act, the home state of BancShares is North Carolina.<sup>15</sup> CIT Bank is located in Arizona, California, Colorado, Florida, Hawaii, Kansas, Nebraska, Nevada, and Texas. BancShares is well capitalized and well managed under applicable law, and FCB has a “Satisfactory” rating under the CRA. There are no state community reinvestment laws or state minimum-age requirements that apply to the proposal. CIT Bank has been in existence for more than five years.

On consummation of the proposed transaction, BancShares would control less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Arizona, Colorado, Florida, Kansas, Nebraska, and Texas each impose a limit on the total amount of in-state deposits that a single banking organization may control.<sup>16</sup> The combined organization would control approximately 0.3 percent of the total amount of deposits of insured depository institutions in Arizona, 2.7 percent in California, 0.1 percent in Colorado, 0.3 percent in Florida, 0.1 percent in Kansas, 0.3 percent in Nebraska, and 0.03 percent in Texas. The Board has considered all other requirements under section 3(d) of the BHC Act. Accordingly, considering 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 banking in any relevant market.<sup>17</sup> 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.<sup>18</sup> In addition, under section 4 of the BHC Act, the Board must consider the competitive effects of a proposal to acquire a nonbank company under the balancing test of section 4(j) of the BHC Act.<sup>19</sup>

BancShares and CIT have subsidiary banks that compete directly in eight banking markets in the states of Arizona (Phoenix and Tucson), California (Los Angeles and San Diego), Colorado (Denver-Boulder), Florida (Naples Area), Missouri (Kansas City), and Texas (Dallas). 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 BancShares would control;<sup>20</sup> the concentration level of market deposits and the increase in this level, as meas-

---

acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in any state in which the bank is chartered, headquartered, or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7).

<sup>15</sup> *See* 12 U.S.C. § 1841(o)(4). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of each company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A national bank’s home state is the state in which the bank’s main office is located.

<sup>16</sup> *See* Ariz. Rev. Stat. § 6-328(A) (30 percent); Colo. Rev. Stat. § 11-104-202(4) (25 percent); Fla. Stat. § 658.2953(5)(b) (30 percent); Kan. Stat. Ann. § 9-520(a) (15 percent); Neb. Rev. Stat. § 8-2106 (22 percent); and Tex. Fin. Code § 203.004(a) (20 percent). California, Hawaii, and Nevada do not impose limits on the total amount of deposits an insured depository institution may control in those jurisdictions.

<sup>17</sup> 12 U.S.C. § 1842(c)(1)(A).

<sup>18</sup> 12 U.S.C. § 1842(c)(1)(B).

<sup>19</sup> 12 U.S.C. § 1843(j)(2)(A). The Board also considers the effects of the proposal on competition when acting on a proposal under Regulation K to organize an Edge corporation. *See* 12 CFR 211.5(b)(4)(iv). As discussed in the section on Establishment of Edge Corporation, *infra*, the proposed establishment of an Edge corporation does not appear to have any negative effects on competition.

<sup>20</sup> Deposit and market share data are as of June 30, 2021, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. Data are not yet available for 2021. The Board previously has indi-

ured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>21</sup> the number of competitors that would remain in the markets; and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in all eight of the banking markets. On consummation, two banking markets would remain highly concentrated; three banking markets would remain moderately concentrated; and three banking markets would remain unconcentrated, as measured by the HHI. The change in the HHI in these markets generally would be de minimis, 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.<sup>22</sup>

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

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

### Financial, Managerial, and Other Supervisory Considerations

In reviewing proposals under sections 3 and 4 of the BHC Act, the Board considers the financial and managerial resources and future prospects of the institutions involved, as well as the effectiveness of the institutions in combatting money laundering.<sup>23</sup> 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

---

ated 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).*

<sup>21</sup> 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](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>22</sup> These banking markets and the competitive effects of the proposal in these markets are described in [Appendix II](#).

<sup>23</sup> 12 U.S.C. §§ 1842(c)(2), (5), and (6).

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 effectively complete the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

BancShares, CIT, 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 primarily as a share exchange, with a subsequent merger of the bank holding company and subsidiary depository institution into FCB.<sup>24</sup> The capital, asset quality, earnings, and liquidity of BancShares are consistent with approval, and BancShares appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects of the resulting institution 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 BancShares, CIT, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by BancShares; 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 public comments on the proposal.<sup>25</sup>

The combined organization would be considered well managed. BancShares' and CIT's directors and senior executive officers have knowledge of and experience in the banking and financial service sectors, and BancShares' risk-management program appears consistent with approval of this expansionary proposal.

---

<sup>24</sup> To effect the transaction, each share of CIT common stock would be converted into a right to receive shares of BancShares common stock, based on an exchange ratio. Any fractional shares of CIT common stock that would result from this conversion would be exchanged for cash. In addition, each share of CIT's two series of preferred stock would be converted into the right to receive one share of a newly created series of preferred stock of BancShares. BancShares has the financial resources to effect the proposed transaction.

<sup>25</sup> The Board received three comment letters on the proposal, two of which were identical in content. All three comment letters claimed that FCB does not possess the managerial resources necessary to effectively integrate the two banking organizations, particularly considering the increased regulatory requirements on the combined organization and the acquisition of new lines of business, combined with the departure of CIT management and employees who currently oversee and perform those activities. In addition, the two identical comment letters alleged that BancShares has exerted significant operational and decision-making influence over certain of CIT's day-to-day operations. One of the three comment letters also disputed the viability of certain business lines. The Board considered these allegations and comments in its evaluation of the proposal.

One comment letter also objected to executive compensation and lack of board diversity. While the Board encourages all firms to promote diversity in their management and workforce, the statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act are limited and specifically defined. *See, e.g., Sandy Spring Bancorp, Inc., FRB Order No. 2017-32 at 10 n.26 (November 22, 2017).* *See also Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). Other provisions of law authorize the Board, together with the other federal financial supervisory agencies, to monitor the efforts of regulated entities to promote diversity and inclusion. Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, 80 *Federal Register* 33016 (June 10, 2015); 12 U.S.C. § 5452.



The Board also has considered BancShares' plans for implementing the proposal, including additional information provided by BancShares. BancShares and CIT have conducted comprehensive due diligence and are devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. BancShares has indicated that it would implement a combination of its and CIT's risk-management policies, procedures, and controls at the combined organization. BancShares also detailed its efforts to develop and implement enhancements to its enterprise-wide risk management program to ensure compliance with Category IV standards.<sup>26</sup> In addition, management of BancShares and CIT have the experience and resources to operate the combined organization in a safe and sound manner, and BancShares plans to integrate CIT's existing management and personnel in a manner that augments BancShares' management.<sup>27</sup>

Based on all of the facts of record, including BancShares' supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of BancShares and CIT 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.<sup>28</sup> 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 operations,<sup>29</sup> 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.<sup>30</sup>

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

---

<sup>26</sup> Following consummation of the proposal, based on average total consolidated assets, the combined organization likely would become subject to Category IV standards. *See generally* 12 CFR Part 252.

<sup>27</sup> Following consummation of the proposal, the board of directors of the resulting holding company would be composed of 14 directors, with 11 directors designated by BancShares and 3 by CIT.

<sup>28</sup> 12 U.S.C. § 1842(c)(2). As discussed in the section on Establishment of Edge Corporation, *infra*, the convenience and needs of the community to be served with respect to international banking and financial services are also consistent with approval of FCB's proposed establishment of the Edge corporation.

<sup>29</sup> 12 U.S.C. § 2901(b).

<sup>30</sup> 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 FCB and CIT Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC with respect to FCB, the Office of the Comptroller of the Currency (“OCC”) with respect to CIT Bank, and the Consumer Financial Protection Bureau (“CFPB”) with respect to both banks; confidential supervisory information; and information provided by FCB.

#### *Records of Performance under the CRA*

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution’s most recent CRA evaluation, as well as other information and supervisory views from the relevant federal financial supervisors.<sup>31</sup> 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.<sup>32</sup> 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 FCB and CIT 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 (“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;<sup>33</sup> (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.<sup>34</sup> 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 effective-

---

<sup>31</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

<sup>32</sup> 12 U.S.C. § 2906.

<sup>33</sup> 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).

<sup>34</sup> See 12 CFR 228.22(b).

ness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.<sup>35</sup>

### *CRA Performance of FCB*

FCB was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 26, 2019 ("FCB Evaluation").<sup>36</sup> The bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.

With respect to the Lending Test, examiners found that FCB originated a substantial majority of its loans inside its AAs and that the bank's overall lending levels reflected good responsiveness to the credit needs of the bank's AAs.<sup>37</sup> Examiners noted that the geographic distribution of FCB's loans reflected good penetration throughout FCB's AAs and among borrowers of different incomes, as well as businesses and farms of different sizes. In addition, examiners found that FCB used flexible lending practices to serve the credit needs of its AAs and had increased its originations of community development loans since the prior evaluation.

With respect to the Investment Test, examiners found that FCB made a significant level of qualified community development investments and donations, particularly those that are not routinely provided by private investors. Examiners also noted FCB's good responsiveness to the credit and community development needs of the bank's AAs. In addition, examiners noted that FCB occasionally used innovative and complex investments to support community development initiatives.

With respect to the Service Test, examiners found that FCB's delivery systems were accessible to essentially all geographies and individuals of different income levels. Examiners also found that FCB's services and business hours did not vary in a way that inconvenienced geographies or individuals, including LMI geographies and individuals.<sup>38</sup> In addition, examiners noted that the bank provided a relatively high level of community development services within most of its AAs.

### *FCB's Efforts Since the FCB CRA Evaluation*

BancShares represents that FCB has continued to build on its CRA performance by strengthening its commitment to serve the needs of LMI geographies, individuals, and businesses in all of its communities. BancShares notes that FCB has committed significant funding to community development investments and that FCB's staff have performed extensive financial outreach and volunteer engagements. In addition, BancShares notes that, in early 2021, FCB announced a \$16 billion community benefits plan developed in collaboration with representatives of community reinvestment organizations. Under this five-year plan, FCB has committed \$6.9 billion for community development lending and

<sup>35</sup> 12 CFR 228.21 *et seq.*

<sup>36</sup> The FCB Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage lending activity under HMDA and small business and small farm loans originated from 2016 through 2017. Examiners reviewed community development loans, community development investments, community development services, and delivery systems for the bank's products and services from June 6, 2016, through March 26, 2019 (except for community development activities, which were only evaluated through December 31, 2018). The FCB Evaluation focused on FCB's operations in 77 AAs, 4 multistate metropolitan statistical area ("MSA") AAs, 4 non-MSA AAs, and 17 states.

<sup>37</sup> The number and dollar volume of loans originated within the AAs as a percent of total loans originated by FCB Bank were 93.6 and 92.3 percent, respectively.

<sup>38</sup> Examiners also found that FCB's opening and closing of branches throughout the bank's AAs did not adversely affect the accessibility of the bank's delivery systems. During the evaluation period, FCB opened and/or acquired 60 branches and closed 62 branches, primarily in connection with mergers and acquisitions.

investments, \$5.9 billion for lending to small businesses, and \$3.2 billion for home purchase mortgage loans following completion of the proposed merger of BancShares and CIT.<sup>39</sup>

#### *CRA Performance of CIT Bank*

CIT Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the OCC, as of August 6, 2018 (“CIT Bank Evaluation”).<sup>40</sup> The bank received a “Low Satisfactory” rating for the Lending Test and the Service Test and an “Outstanding” rating for the Investment Test.<sup>41</sup>

With respect to the Lending Test, examiners found that CIT Bank originated an adequate amount of loans inside its AAs and that the bank’s overall lending levels reflected adequate and good responsiveness, respectively, to the credit needs of the Los Angeles-Long Beach CSA and the San Diego-Carlsbad MSA. Examiners found that the overall geographic distribution of CIT Bank’s loans was good, with excellent geographic distribution of small business lending and good distribution of home mortgage lending in LMI geographies.

Examiners found that CIT Bank’s loan program reflected adequate distribution of loans among borrowers of different income levels. Examiners also found that CIT Bank used flexible lending practices in its small loans to businesses. Examiners noted that CIT Bank’s community development lending had a neutral impact on the bank’s overall rating for the Lending Test.

With respect to the Investment Test, examiners found that CIT Bank’s level of qualified investments reflected excellent responsiveness to community development needs in the bank’s AAs.<sup>42</sup> Examiners noted that CIT Bank was one of the first banks in Los Angeles to provide a grant to expand homeownership down-payment assistance and education programs for LMI homeowners in the area.

With respect to the Service Test, examiners found that CIT Bank’s delivery systems were reasonably accessible to essentially all geographies in the bank’s AAs. However, with respect to the Los Angeles-Long Beach CSA, examiners noted that CIT Bank did not have any branches in low-income geographies and that the bank’s distribution of branches in moderate-income geographies was well below the percentage of the population living within those geographies.<sup>43</sup> With respect to the San Diego-Carlsbad MSA, examiners noted that CIT Bank did not have any branches in middle-income geographies; however, examiners also noted that CIT Bank’s distribution of branches in low-income geographies in the MSA exceeded the percentage of the population living within those geographies. In both

<sup>39</sup> The Board consistently has found that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g.*, CIT Group, Inc., FRB Order No. 2015–20 at 24 n.54 (July 19, 2015); Citigroup Inc., 88 *Federal Reserve Bulletin* 485 (2002); Fifth Third Bancorp, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to help serve the credit needs of its CRA AAs.

<sup>40</sup> The CIT Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage lending activity under HMDA and small business loans originated from July 1, 2015, through December 31, 2017. Examiners reviewed community development loans, community development investments, community development services, and delivery systems for the bank’s products and services from August 3, 2015, through December 31, 2017.

<sup>41</sup> The CIT Bank Evaluation included full-scope evaluations of the Los Angeles-Long Beach, California, Combined Statistical Area (“CSA”) and the San Diego-Carlsbad, California, MSA AAs. The CIT Bank Evaluation did not include any limited-scope evaluations.

<sup>42</sup> CIT Bank’s qualified investments totaled 7.75 percent of the bank’s tier 1 capital.

<sup>43</sup> Examiners noted that, when considering customer data located in middle- and upper-income branches adjacent to moderate-income geographies within the Los Angeles-Long Beach CSA, the distribution of customer income was closer to the percentage of population living in moderate-income geographies.

AAs, examiners found that CIT Bank maintained standard business hours and offered traditional banking products and services at all of its branch locations. In addition, examiners noted that CIT Bank provided an adequate level of community development services within its AAs.

On February 14, 2017, a complaint was filed with the U.S. Department of Housing and Urban Development (“HUD”), alleging that CIT and CIT Bank, as the successor to OneWest Bank, had engaged in discriminatory residential housing lending practices from 2011 until 2017, in violation of the Fair Housing Act (“FHA”). On July 26, 2019, HUD approved a conciliation agreement (“HUD Conciliation Agreement”) between CIT and the complainant that resolved the allegations. Although CIT denied violating the FHA or engaging in any discrimination on a prohibited basis, it committed as part of the HUD Conciliation Agreement to expand CIT Bank’s efforts and opportunities to serve the banking and credit needs of majority-minority and LMI neighborhoods in the bank’s AAs.<sup>44</sup> The CRA performance rating assigned to CIT Bank was not lowered as a result of this complaint or the HUD Conciliation Agreement. BancShares has confirmed that BancShares and FCB will be the successors to CIT for purposes of the HUD Conciliation Agreement and will be bound by CIT’s obligations under the agreement.

#### *CIT Bank’s Efforts Since the CIT Bank Evaluation*

BancShares contends that CIT Bank has continued to build on its CRA performance. BancShares represents that CIT Bank has fulfilled the majority of the commitments under the HUD Conciliation Agreement. In addition, BancShares notes that CIT Bank established a four-year community benefits plan in collaboration with representatives of community groups, in advance of the bank’s 2020 acquisition of Mutual of Omaha Bank. BancShares represents that, under this community benefits plan, CIT Bank committed to make small business, affordable housing, and community development investments in LMI diverse neighborhoods. BancShares notes that CIT Bank has made progress toward fulfilling the financial and nonfinancial commitments made as part of the plan. BancShares represents that CIT Bank also has committed to fund additional community development investments and, since January 2018, has made significant local grants and contributions and funded sponsorships.

#### *Additional Supervisory Views*

In its review of the proposal, the Board consulted with the FDIC regarding the CRA, consumer compliance, and fair lending records of FCB and consulted with the OCC regarding the CRA, consumer compliance, and fair lending records of CIT Bank. The Board considered the results of the most recent consumer compliance examinations of FCB and CIT Bank, which included a review of the banks’ compliance management programs and compliance with consumer protection laws and regulations. The Board also considered FCB’s and CIT Bank’s supervisory records with the CFPB.

The Board has taken the foregoing consultations and examinations into account in evaluating the proposal, including in considering whether BancShares has the experience and resources to ensure that FCB and CIT Bank would help meet the credit needs of the communities to be served following consummation of the proposed transaction.

<sup>44</sup> These commitments include investing \$5 million in a loan subsidy fund to increase credit opportunities for residents of majority-minority neighborhoods; devoting \$1.3 million toward advertising and community outreach; and providing \$1 million in grants for homebuyer education, credit counseling, community revitalization, and homeless programs. CIT Bank also committed to originate \$100 million in home purchase, home improvement, and home refinance loans to borrowers in majority-minority areas and to open a full-service branch to serve the banking and credit needs of residents in a majority-minority and LMI neighborhood.

### *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. BancShares represents that, following the proposed transaction, the combined bank would retain the full range of products and services currently offered by FCB and CIT Bank. BancShares notes that customers of CIT Bank would gain access to enhanced products and services, including expanded treasury, merchant, and international banking services. BancShares also notes that customers of FCB would benefit by receiving access to, among other products and services, CIT Bank's commercial equipment lending and leasing offerings, factoring services, expanded asset-based-lending offerings, and capital markets expertise. BancShares represents that customers of both banks would benefit from a more extensive branch and ATM network and the combined bank's greater capital resources.

BancShares represents that the combined bank would utilize the current products, programs, and procedures of FCB, in addition to those adopted from CIT Bank, to meet the combined bank's obligations under the CRA. BancShares further represents that it would work with existing partners of FCB and CIT Bank, including community groups, to achieve the combined bank's CRA and fair lending goals.

### *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 BancShares; 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."<sup>45</sup> In addition, section 4 of the BHC Act requires the Board to balance the expected public benefits of the proposal with the "risk to the stability of the United States banking or financial system."<sup>46</sup>

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.<sup>47</sup> 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

<sup>45</sup> 12 U.S.C. § 1842(c)(7).

<sup>46</sup> 12 U.S.C. § 1843(j)(2)(A).

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



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.<sup>48</sup>

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The Board reviewed publicly available data, data compiled through the supervisory process, and data obtained through information requests to the institutions involved in the proposal, as well as qualitative information.

The pro forma organization scores low on nearly all systemic importance indicators. The proposed acquisition would increase BancShares' size by approximately 125, 106, and 132 percent as measured by total assets, deposits, or total exposures, respectively, but the combined organization would still hold well below 1 percent of total U.S. financial system assets. The combined 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 combined organization would have limited 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.

#### **Acquisition of Nonbanking Companies**

BancShares also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire voting shares in nonbank companies held by CIT and CIT Bank and thereby engage in extending credit and servicing loans.<sup>49</sup> The Board previously has determined by regulation that the proposed activities are closely related to banking for purposes of section 4(c)(8) of the BHC Act.<sup>50</sup> BancShares has stated that it would conduct these activities in accordance with the Board's regulations governing these activities for bank holding companies.

Section 4(j)(2)(A) of the BHC Act requires the Board to "consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."<sup>51</sup>

Under the proposal, BancShares would acquire a noncontrolling interest in each nonbank company and thereby engage in extending credit and servicing loans. There are public benefits to be derived from permitting bank holding companies to make potentially profit-

<sup>48</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

<sup>49</sup> The nonbank companies are CIT Strategic Credit Partner Holdings, LLC, and CIT Northbridge Credit, LLC, both of New York, New York. BancShares represents that it would rely on its authority as a financial holding company to acquire the outstanding equity interests of other nonbank companies currently held by CIT Group. See 12 U.S.C. § 1843(k)(6).

<sup>50</sup> See 12 CFR 225.28(b)(1).

<sup>51</sup> 12 U.S.C. § 1843(j)(2)(A).



able investments in financial companies and to allocate their resources in the manner they consider to be most efficient when such investments and actions are consistent, as in this case, with the relevant considerations under the BHC Act.<sup>52</sup>

The Board concludes that the performance of the proposed nonbanking activities, as assessed under Regulation Y, Board precedent, and this order, is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the U.S. banking or financial system. Based on the entire record, and for the reasons discussed above, the Board concludes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience to the public, financial stability, and other factors weigh in favor of approval of the proposal. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

### **Establishment of Edge Corporation**

Separately, FCB has requested approval under sections 211.5(b) and 211.9(a)(5) of the Board's Regulation K to establish an Edge corporation, FC International, and for FC International to make an initial investment in certain foreign entities owned by CIT.<sup>53</sup> CIT currently holds interests in several foreign entities that engage in equipment leasing, equipment financing, and incidental activities. After consummation of the proposed merger, FC International, through the foreign entities, would engage in these activities.<sup>54</sup>

The factors considered by the Board in acting on a proposal to organize an Edge corporation include (i) the financial condition and history of the applicant, (ii) the general character of its management, (iii) the convenience and needs of the community to be served with respect to international banking and financial services, and (iv) the effects of the proposal on competition.<sup>55</sup> The Board has considered these factors and concludes that each of these factors is consistent with approval of FCB's proposed establishment of FC International. In addition, the Board finds that FC International's proposed initial investment is consistent with approval.

### **Conclusion**

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act

<sup>52</sup> See, e.g., *The Toronto-Dominion Bank*, FRB Order No. 2020-04 (September 30, 2020); *Morgan Stanley*, 94 *Federal Reserve Bulletin* C103 (2008); *Arvest Bank Group*, 89 *Federal Reserve Bulletin* 439 (2003); *The Charles Schwab Corporation*, 86 *Federal Reserve Bulletin* 494 (2008).

<sup>53</sup> CIT holds interests in Barbados (Worrell Capital Limited and CIT Holdings (Barbados) SRL); Brazil (The Capita Corporation do Brasil Ltda); Canada (555566 Alberta Ltd., CIT Financial (Alberta) ULC, Services Financiers CIT (Alberta) ULC, CIT Financial Ltd./Services Financiers CIT Ltee., CIP VIII Trust, CIT Canadian VFN Funding Trust, CIP VII Trust, CIT Canadian Funding Trust, Capita Canadian Trust, CIT Financial (Canada) ULC, CIT Mezzanine Partners of Canada Limited); China (CIT Finance & Leasing Corporation); Mexico (MEX CIT SERVICIOS, S. de R.L. de C.V.); the Netherlands (CIT Holdings B.V.); and the United Kingdom (CIT Group Holdings (UK) Limited and CIT Group (UK) Limited) (together, the "foreign entities"). The foreign entities would be held by FC International through an intermediate holding company, C.I.T. Leasing Corporation, Delaware, United States, which initially would not directly engage in any activities except for serving as an intermediate holding company of the foreign entities.

<sup>54</sup> Under the proposal, FC International would operate as a direct subsidiary of FCB. FCB's proposed investments in FC International and the foreign entities are also subject to applicable requirements under North Carolina state law, the Federal Deposit Insurance Act, and FDIC regulations at 12 CFR part 347.

<sup>55</sup> 12 CFR 211.5(b)(4).

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

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

By order of the Board of Governors, effective December 17, 2021.

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

Ann E. Misback  
*Secretary of the Board*

## Appendix I

Deposit Data in States where FCB and CIT Bank Both Operate									
State / District <sup>1</sup>	FCB			CIT Bank			Combined Organization		
	Rank of Insured Depository Institution by Deposits	Deposits Controlled (in billions)	Percent of Total Deposits	Rank of Insured Depository Institution by Deposits	Deposits Controlled (in billions)	Percent of Total Deposits	Rank of Insured Depository Institution by Deposits	Deposits Controlled (in billions)	Percent of Total Deposits
Arizona	32 <sup>nd</sup>	0.3	0.2	36 <sup>th</sup>	0.3	0.2	22 <sup>nd</sup>	0.7	0.3
California	52 <sup>nd</sup>	2.5	0.1	12 <sup>th</sup>	41.1	2	12 <sup>th</sup>	43.7	2.1
Colorado	56 <sup>th</sup>	0.3	0.1	126 <sup>th</sup>	<0.1	<0.1	56 <sup>th</sup>	0.3	0.1
Florida	37 <sup>th</sup>	2.3	0.3	151 <sup>st</sup>	0.1	<0.1	36 <sup>th</sup>	2.4	0.3
Kansas	174 <sup>th</sup>	0.1	0.1	268 <sup>th</sup>	<0.1	<0.1	174 <sup>th</sup>	0.1	0.1
Texas	185 <sup>th</sup>	0.4	<0.1	444 <sup>th</sup>	<0.1	<0.1	172 <sup>nd</sup>	0.5	<0.1

<sup>1</sup> State deposit, ranking, and market share data are as of June 30, 2021.

## Appendix II

BancShares/CIT Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<b>Phoenix, AZ</b> – Phoenix metropolitan area in Northwestern Pinal County and Maricopa County						
BancShares Pre-Consummation	29	\$319.1M	0.2			
CIT	35	\$211.4M	0.1			
BancShares Post-Consummation	21	\$530.5M	0.4	1615	0	60
<b>Tucson, AZ</b> – Tucson metropolitan area in Pima County						
BancShares Pre-Consummation	18	\$24.6M	0.1			
CIT	16	\$96.6M	0.5			
BancShares Post-Consummation	14	\$121.2M	0.6	1801	0	18
<b>Los Angeles, CA</b> – Los Angeles metropolitan area in Los Angeles and Orange Counties, the western portions of San Bernardino and Ventura Counties, and the southernmost edge of Kern County						
BancShares Pre-Consummation	46	\$839.6M	0.1			
CIT	6	\$39.7B	5.1			
BancShares Post-Consummation	6	\$40.5B	5.1	905	1	116
<b>San Diego, CA</b> – San Diego metropolitan area in San Diego County						
BancShares Pre-Consummation	21	\$666.8M	0.5			
CIT	23	\$538.6M	0.4			
BancShares Post-Consummation	15	\$1.2B	0.9	1167	1	47
<b>Denver-Boulder, CO</b> – Denver, CO Ranally Metro Area ("RMA"); Boulder County, CO; the non-RMA portions of Adams and Arapahoe Counties, CO; and the towns of Frederick and Keenesburg in Weld County, CO						
BancShares Pre-Consummation	32	\$268.2M	0.2			
CIT	66	<\$0.1M	<0.1			
BancShares Post-Consummation	32	\$268.2M	0.2	1232	0	74
<b>Naples Area, FL</b> – Collier County, FL (minus the town of Immokalee)						
BancShares Pre-Consummation	21	\$108.0M	0.5			
CIT	22	\$105.4M	0.5			
BancShares Post-Consummation	17	\$213.4M	1	873	0	29
<b>Kansas City, MO</b> – Cass, Clay, Jackson, Lafayette, Platte, and Ray Counties, MO; the towns of Trimble and Holt in Clinton County, MO; the towns of Chilhowee, Holden, and Kingsville in Johnson County, MO; the towns of Adrian, Amsterdam, and Butler in Bates County, MO; Franklin, Johnson, Leavenworth, Linn, Miami, and Wyandotte Counties, KS						
BancShares Pre-Consummation	53	\$146.1M	0.2			
CIT	110	<\$0.1M	<0.1			
BancShares Post-Consummation	53	\$146.1M	0.2	1021	0	114
<b>Dallas, TX</b> – Dallas and Rockwall Counties, TX; the southeastern quadrant of Denton County, TX, including Denton and Lewisville; the southwestern quadrant of Collin County, TX, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County, TX; and Midlothian, Waxahachie, and Ferris in Ellis County, TX						
BancShares Pre-Consummation	96	\$65.6M	<0.1			
CIT	105	\$44.8M	<0.1			
BancShares Post-Consummation	86	\$110.4M	<0.1	1962	0	140
Data are as of June 30, 2021. 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.						

## Webster Financial Corporation Waterbury, Connecticut

### *Order Approving the Merger of Bank Holding Companies FRB Order No. 2021-13 (December 17, 2021)*

Webster Financial Corporation (“WFC”), Waterbury, Connecticut, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to merge with Sterling Bancorp, and thereby indirectly acquire Sterling National Bank (“Sterling Bank”), both of Pearl River, New York. Following the proposed merger, Sterling Bank would be merged with and into WFC’s subsidiary bank, Webster Bank, N.A. (“Webster Bank”), Waterbury, Connecticut.<sup>3</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (86 *Federal Register* 30462 (June 8, 2021)).<sup>4</sup> 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.

WFC, with consolidated assets of approximately \$35.4 billion, is the 68th largest insured depository organization in the United States.<sup>5</sup> WFC controls approximately \$30.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>6</sup> WFC controls Webster Bank, which operates in Connecticut, Massachusetts, New York, and Rhode Island. Webster Bank is the 123rd largest insured depository organization in New York, controlling deposits of approximately \$333 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>7</sup>

Sterling Bancorp, with consolidated assets of approximately \$30.0 billion, is the 76th largest insured depository organization in the United States. Sterling Bancorp controls approximately \$24.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sterling Bancorp controls Sterling Bank, which operates in New York only. Sterling Bank is the 17th largest insured depository organization in New York, controlling deposits of approximately \$23.3 billion, which represent approximately 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, WFC would become the 46th largest insured depository organization in the United States, with consolidated assets of approximately \$65.4 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. WFC would control total consolidated deposits of approximately \$54.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, WFC would

<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> The merger of Sterling Bank into Webster Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the merger on August 2, 2021.

<sup>4</sup> 12 CFR 262.3(b).

<sup>5</sup> Consolidated asset and national deposit, ranking, and market share data are as of September 30, 2021.

<sup>6</sup> In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

<sup>7</sup> State deposit ranking and deposit data are as of June 30, 2021.

remain the 17th largest insured depository organization, controlling deposits of approximately \$23.7 billion, which would represent approximately 1.0 percent of the total 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.<sup>8</sup> 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;<sup>9</sup> (2) must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 (“CRA”)<sup>10</sup> and the applicant’s record of compliance with applicable state community reinvestment laws;<sup>11</sup> 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 bank have overlapping banking operations.<sup>12</sup>

For purposes of the BHC Act, the home state of WFC is Connecticut. Sterling Bank is located solely in New York. WFC is well capitalized and well managed under applicable law. Webster Bank has a “Outstanding” rating under the CRA. New York does not have a minimum age requirement applicable to the proposal,<sup>13</sup> and Sterling Bank has been in existence for more than five years.

On consummation of the proposed transaction, WFC would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. New York, the only state in which Webster Bank and Sterling Bank have overlapping operations, does not impose a limit on the total amount of in-state deposits that a single banking organization may control. 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.

### 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

<sup>8</sup> 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).

<sup>9</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>10</sup> 12 U.S.C. § 2901 *et seq.*

<sup>11</sup> 12 U.S.C. § 1842(d)(3).

<sup>12</sup> 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).

<sup>13</sup> N.Y. Banking Law §§ 142-a.1; 143-b.

banking in any relevant market.<sup>14</sup> 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.<sup>15</sup>

Webster Bank and Sterling Bank compete directly in the Metro New York City, NY-NJ-CT-PA banking market (“Metro New York banking market”).<sup>16</sup> 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 WFC would control;<sup>17</sup> 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”);<sup>18</sup> 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 Metro New York banking market. On consummation of the proposal, the Metro New York banking market would remain

<sup>14</sup> 12 U.S.C. § 1842(c)(1)(A).

<sup>15</sup> 12 U.S.C. § 1842(c)(1)(B).

<sup>16</sup> The Metro New York City, NY-NJ-CT-PA banking market is defined as Fairfield County, Connecticut; Bethlehem, Bridgewater, Canaan, Cornwall, Goshen, Kent, Litchfield, Morris, New Milford, North Canaan, Plymouth, Roxbury, Salisbury, Sharon, Thomaston, Warren, Washington, Watertown, and Woodbury towns in Litchfield County, Connecticut; Ansonia, Beacon Falls, Bethany, Cheshire, Derby, Hamden, Meriden, Middlebury, Milford, Naugatuck, North Haven, Orange, Oxford, Prospect, Seymour, Southbury, Wallingford, Waterbury, Wolcott, and Woodbridge in New Haven County, Connecticut; Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties, New York; Hudson City, Ancram, Clermont, Copake, Gallatin, Germantown, Greenport, Livingston, and Taghkanic towns in Columbia County, New York; Catskill, Halcott, Hunter, and Lexington towns in Greene County, New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties, New Jersey; Pemberton and Wrightstown boroughs, Bass River, New Hanover, North Hanover, Pemberton, Shamong, Southampton, Tabernacle, Washington, and Woodland Townships in Burlington County, New Jersey; Hightstown, Hopewell, Pennington, Princeton boroughs, East Windsor, Ewing, Hopewell, Lawrence, Princeton, Robbinsville, and West Windsor townships in Mercer County, New Jersey; Washington Borough, Belvidere, and Hackettstown towns, Allamuchy, Blairstown, Franklin, Frelinghuysen, Greenwich, Hardwick, Harmony, Hope, Independence, Knowlton, Liberty, Lopatcong, Mansfield, Oxford, Washington, and White townships in Warren County, New Jersey; Pike County, Pennsylvania; Delaware Water Gap, East Stroudsburg, Mount Pocono, and Stroudsburg boroughs, Barrett, Coolbaugh, Middle Smithfield, Paradise, Pocono, Price, Smithfield, and Stroud townships in Monroe County, Pennsylvania; and Hawley borough, Berlin, Damascus, Dreher, Lebanon, Manchester, Oregon, Palmyra, Paupack, Salem, and Sterling townships in Wayne County, Pennsylvania.

<sup>17</sup> 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).

<sup>18</sup> 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](https://www.justice.gov/opa/pr/2010/August/10-at-938.html).



moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines, and numerous competitors would remain in the market.<sup>19</sup>

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 Metro New York 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 and the effectiveness of the institutions in combatting money laundering.<sup>20</sup> 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.

WFC, Sterling Bancorp, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is structured as a share exchange, with a subsequent merger of the subsidiary banks.<sup>21</sup> The capital, asset quality, earnings, and liquidity of WFC and Sterling Bancorp are consistent with approval, and WFC and Sterling Bancorp appear to have adequate resources to absorb the related costs of the proposal and to complete the integra-

<sup>19</sup> WFC is the 19th largest depository organization in the Metro New York banking market, controlling approximately \$19.8 billion in deposits, which represent less than 1 percent of market deposits. Sterling Bancorp is the 18th largest depository organization in the market, controlling deposits of approximately \$23.3 billion, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, WFC would become the 11th largest depository organization in the market, controlling deposits of approximately \$43.1 billion, which would represent 1.7 percent of market deposits. The HHI for the Metro New York banking market would increase by two points to 1473, and 208 competitors would remain in the market.

<sup>20</sup> 12 U.S.C. § 1842(c)(2), (5), and (6).

<sup>21</sup> To effect the transaction, each share of Sterling Bancorp common stock and preferred stock would be converted into a right to receive shares of WFC common stock and preferred stock, respectively, based on an exchange ratio. Any fractional shares of WFC that would result from this conversion may be exchanged for cash. WFC has the financial resources to effect the transaction.

tion 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 WFC, Sterling Bancorp, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by WFC; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and the public comments received on the proposal.

WFC, Sterling Bancorp, 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 WFC's plans for implementing the proposal. WFC 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. WFC represents that the combined organization would select the strongest capabilities and systems from the existing risk-management governance, operations, and systems of WFC and Sterling Bancorp to create a firm-wide risk-management program. Both WFC's and Sterling Bancorp's existing risk-management policies, procedures, and controls are considered acceptable from a supervisory perspective. In addition, WFC's and Sterling Bancorp's management have the experience and resources to ensure that the combined organization would operate in a safe and sound manner, and WFC plans to integrate Sterling Bancorp's existing management and personnel in a manner that would augment WFC's management.<sup>22</sup>

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

### **Convenience and Needs Considerations**

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.<sup>23</sup> 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

---

<sup>22</sup> On consummation of the proposal, WFC would increase the size of its board by six directors. The combined organization would have a board of 15 directors, eight of whom would be appointed from WFC's or Webster Bank's boards, and seven of whom would be appointed from Sterling Bancorp's or Sterling Bank's boards.

<sup>23</sup> 12 U.S.C. § 1842(c)(2).

institutions' safe and sound operation,<sup>24</sup> 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.<sup>25</sup>

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 Webster Bank and Sterling Bank; the fair lending and compliance records of both banks; the supervisory views of the OCC and Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by WFC; and the public comments on the proposal.

#### *Public Comment on the Proposal*

The Board received one adverse comment on the proposal.<sup>26</sup> The commenter objected to the proposal, alleging that in 2019, as a result of disparate marketing, Webster Bank made fewer home loans in the states of Connecticut and New York to African American individuals as compared to white individuals.<sup>27</sup> The commenter also alleged that in 2019, Webster Bank denied home loans to African American individuals at a higher rate than it denied white individuals. In addition, the commenter asserted that the proposal has no public benefit.<sup>28</sup>

#### *Businesses of the Involved Institutions and Response to the Public Comment*

Webster Bank 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, money market accounts, and certificates of deposits, as well as credit products, such as mortgage home equity, student, personal, and commercial loans. Sterling Bank offers a variety of commercial and consumer loan products, including residential mortgages, home equity lines of credit, personal credit cards, small business lending, lines of credit, commercial mortgages, commercial term loans, real estate financing, and syndications. Sterling Bank also provides a variety of deposit services, including checking, savings, and money market deposit accounts; individual retirement accounts; certificates of

<sup>24</sup> 12 U.S.C. § 2901(b).

<sup>25</sup> 12 U.S.C. § 2903.

<sup>26</sup> The Board also received a comment in support of the proposal.

<sup>27</sup> The data cited by the commenter appears to correspond to publicly available 2019 data reported by Webster Bank under the Home Mortgage Disclosure Act of 1975 ("HMDA"). 12 U.S.C. § 2801 *et seq.*

<sup>28</sup> In addition, the commenter stated that Webster Bank underperformed in lending under the Paycheck Protection Program ("PPP"). In response, Webster Bank represents that it provided significant PPP funding, including more than \$2.0 billion in PPP financing for more than 18,500 PPP loans, and that approximately 88 percent of these loans were to entities with annual payrolls of \$1 million or less. The commenter also raised nonspecific and unsupported concerns about Webster Bank's health savings accounts. In addition, the commenter reiterated previously raised questions about the reliability of Sterling Bank's CRA data that have previously been addressed. See *Sterling Bancorp*, FRB Order No. 2017-21 at 9-11 (Aug. 30, 2017); *Sterling Bancorp*, FRB Order No. 2015-16 (June 15, 2015).

deposit; and private banking and wealth management accounts, as well as business checking and merchant card services. Both banks offer internet banking and mobile banking services.

In response to the comment, WFC represents that Webster Bank maintains a comprehensive fair lending program intended to ensure access to credit and financial products for all population segments and communities in its footprint. WFC further represents that Webster Bank performs regular and ongoing analysis of its lending, including its HMDA and CRA lending data. This analysis includes a review for any potential distribution issues related to Webster Bank's mortgage and small business applications and approvals. The analysis also focuses on how the bank's lending compares to market demographics and to applications received and approved by peer lenders in the same markets.

WFC further represents that Webster Bank has been developing additional partnerships in minority communities and undertaking other initiatives and outreach to ensure that its home mortgage lending, small business lending, and other banking relationships continue to reach minority communities throughout its footprint, including African American individuals and communities. WFC states that these initiatives and outreach are part of the bank's continuous efforts to enhance its lending, banking services, and relationships in such communities.

#### *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 and the supervisory views of relevant federal supervisors, which in this case is the OCC with respect to both Webster Bank and Sterling Bank.<sup>29</sup> 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.<sup>30</sup> 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 Webster Bank and Sterling 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, 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

<sup>29</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48,506, 48,548 (July 25, 2016).

<sup>30</sup> 12 U.S.C. § 2906.

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;<sup>31</sup> (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.<sup>32</sup> 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.<sup>33</sup>

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 lending may not be available solely from public HMDA data.<sup>34</sup> Consequently, the Board requests additional information not available to the public that may be needed from the institution and evaluates disparities in the context of the additional information obtained regarding the lending and compliance record of an institution.

#### *CRA Performance of Webster Bank*

Webster Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of August 3, 2020 ("Webster Bank Evaluation").<sup>35</sup> The bank received "Outstanding" ratings for the Lending, Investment, and Service Tests.<sup>36</sup>

With respect to the Lending Test, examiners found that a high percentage of Webster Bank's loans were in the bank's AAs. Examiners determined that Webster Bank exhibited excellent geographic and borrower distribution of loans. Examiners concluded that Webster Bank had excellent lending activity in all rating areas. Examiners found that Webster Bank's community development lending positively impacted the bank's performance on the Lending Test. Examiners also determined that Webster Bank originated a significant amount of innovative and flexible lending products.

In Connecticut and New York, the areas of concern for the commenter, examiners determined that Webster Bank's lending levels reflected excellent responsiveness to the credit needs of those areas. Examiners assigned Webster Bank an "Outstanding" rating for the

<sup>31</sup> 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).

<sup>32</sup> See 12 CFR 228.22(b).

<sup>33</sup> See 12 CFR 228.21 *et seq.*

<sup>34</sup> Importantly, credit scores are not available in the public HMDA data. Accordingly, when conducting fair lending examinations, examiners analyze additional information not available to the public before reaching a determination regarding an institution's compliance with fair lending laws.

<sup>35</sup> The Webster Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loan data, excluding community development loans, from January 1, 2017, through December 31, 2019. Examiners reviewed community development activities from August 8, 2017, through December 31, 2019.

<sup>36</sup> The Webster Bank Evaluation involved a full-scope review of the bank's activities in the Providence-Warwick Rhode Island-Massachusetts Multistate Metropolitan Statistical Area ("RI-MA MMSA"), Bridgeport-Stamford-Norwalk Metropolitan Statistical Area ("MSA"), Hartford-East Hartford-Middletown MSA, New Haven-Milford MSA, Boston-Cambridge-Newton MSA, and New York-White Plains-Jersey City MSA.



Lending Test in Connecticut and a “High Satisfactory” rating for the Lending Test in New York. In reaching these conclusions, examiners found that Webster Bank exhibited excellent geographic and borrower distribution of loans in Connecticut, and good geographical distribution of loans and an adequate borrower distribution of loans in New York.

With respect to the Investment Test, examiners found that Webster Bank made substantial community development qualified investments in its RI-MA MMSA and state rating areas. Examiners assigned Webster Bank an “Outstanding” rating for the Investment Test in all AAs due to the bank’s high levels of qualified community development investments compared to allocated tier 1 capital. In Connecticut, an area of concern for the commenter, examiners found that Webster Bank’s community development investments exhibited at least good responsiveness to credit and community economic development needs in the bank’s rating areas and that the bank’s qualified investments, donations, and grants were responsive to affordable housing needs and also exhibited complexity. In New York, the other area of concern for the commenter, examiners found that Webster Bank had an excellent level of qualified community development investments and grants and that these investments exhibited good responsiveness to identified community needs.

With respect to the Service Test, examiners found that Webster Bank’s branch distribution in the state of Connecticut and the RI-MA MMSA was excellent. Examiners also found that Webster Bank was a leader in providing community development services in the state of Connecticut and provided at least a good level of community development services in its other rating areas. Likewise, in New York, examiners determined that Webster Bank’s delivery systems were reasonably accessible to geographies and individuals of different income levels and that Webster Bank provided a good level of community services.

#### *Webster Bank’s Efforts Since the Webster Bank Evaluation*

WFC represents that, since the Webster Bank Evaluation, the bank has engaged in several initiatives to further expand its lending, investment, and service activities. WFC notes as an example that Webster Bank has enhanced its proprietary mortgage loan product to expand the eligibility of more LMI borrowers by reducing the interest rate, broadening the qualifying income guidelines, and including coverage for refinance opportunities. WFC also notes that the bank has developed additional partnerships to enhance its home mortgage lending, small business lending, and other banking relationships in underserved communities.

#### *CRA Performance of Sterling Bank*

Sterling Bank received an overall “Satisfactory” rating at its most recent CRA performance evaluation by the OCC, as of April 20, 2020 (“Sterling Bank Evaluation”).<sup>37</sup> Sterling Bank received a “High Satisfactory” rating for the Lending Test, an “Outstanding” rating for the Investment Test, and a “Low Satisfactory” rating for the Service Test.<sup>38</sup>

With respect to the Lending Test, examiners found that Sterling Bank’s lending levels reflected adequate responsiveness to the credit needs in the bank’s New York CSA AA.

<sup>37</sup> The Sterling Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loan data, excluding community development loans, from January 1, 2017, through December 31, 2019. Examiners reviewed community development activities from January 22, 2017, through December 31, 2019.

<sup>38</sup> The Sterling Bank Evaluation involved a full-scope review of the bank’s activities in Sullivan County, New York, and in the New York Combined Statistical Area (“CSA”), consisting of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Rockland, Suffolk, Ulster, and Westchester counties, New York, and Bergen County, New Jersey.



Examiners noted that Sterling Bank had an adequate geographic distribution of both home mortgage and small businesses loans in its AAs. Examiners found that Sterling Bank offered an excellent level of community development loans that exhibited excellent responsiveness to the needs of the New York CSA AA and had a positive impact on the Lending Test performance rating. However, examiners also found that Sterling Bank had a poor distribution of loans among individuals of different income levels and businesses of various sizes in its AAs.

With respect to the Investment Test, examiners determined that Sterling Bank had an excellent level of qualified investments that demonstrated excellent responsiveness to the community development needs in the bank's AAs. Examiners found that Sterling Bank had an excellent level of qualified community development investments and grants, occasionally in a leadership position among peers. In addition, examiners determined that Sterling Bank exhibited excellent responsiveness to credit and community economic development needs in its AAs and made significant use of innovative and/or complex investments to support community development initiatives.

With respect to the Service Test, examiners found that Sterling Bank provided a significant level of community development services in the New York CSA and that such services were effective and responsive in helping the bank address community needs. Examiners determined that, in general, Sterling Bank maintained reasonably accessible service-delivery systems.

#### *Additional Supervisory Views*

In its review of the proposal, the Board consulted with the OCC as the primary federal supervisor of Webster Bank and Sterling Bank. The Board considered the views of the OCC regarding the banks' CRA and consumer compliance records, records 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 Webster Bank and Sterling Bank.

The Board has taken the views of the OCC and CFPB, as well as all information discussed above, into account in evaluating this proposal. The Board has considered whether WFC has the experience and resources to ensure that the combined organization effectively implements policies and programs that would enable 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. WFC represents that customers of both banks would benefit from the combined strength of the resulting organization, and, over time, the resulting bank would leverage the greater resources of the combined organization to enhance product offerings, customer service, and community involvement. WFC represents that the transaction would provide each bank's customers with access to the other's products and services, including consumer and commercial credit and deposit services, specialty lending products, treasury and wealth management services, and other related services and resources. WFC also represents that it does not anticipate discontinuing or making significant modifications to any existing products or services of Webster Bank or Sterling Bank as a result of the proposal.

In addition, the Board considers the impact of branch closures, consolidations, or relocations that may occur in connection with a proposal on the convenience and needs of the communities to be served by the resulting institution. The Board focuses in particular on the effect of any closures, consolidations, or relocations on LMI, distressed, or underserved nonmetropolitan middle-income communities and on majority-minority communities. Federal banking law requires a bank to provide notice to the public and the appropriate federal supervisory agency before closing a branch.<sup>39</sup> In addition, 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.<sup>40</sup> WFC represents that no branches of the combined organization would be closed, consolidated, or relocated in connection with 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, the views of the OCC and CFPB, confidential supervisory information, information provided by WFC, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that the convenience and needs factor is consistent with approval.

#### **Financial Stability 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.”<sup>41</sup>

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 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 resulting institution, the availability of substitute providers for any critical products and services offered by the resulting institution, 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 combined organization.<sup>42</sup> 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.<sup>43</sup>

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,

<sup>39</sup> See 12 U.S.C. § 1831r-1. Banks also are required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

<sup>40</sup> See, e.g., 12 CFR 228.24(d)(2). The OCC, as the primary federal supervisor of Webster Bank, would review branch closures in evaluating the CRA performance of the bank.

<sup>41</sup> 12 U.S.C. § 1842(c)(7).

<sup>42</sup> Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

<sup>43</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

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.<sup>44</sup>

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 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.<sup>45</sup> 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.<sup>46</sup> 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 WFC 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 WFC of all required regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the

---

<sup>44</sup> 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.

<sup>45</sup> Webster Bank and Sterling Bank offer a range of retail and commercial banking products and services. Webster Bank has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

<sup>46</sup> The commenter requested that the Board hold public hearings on the proposal. Under section 3(b) of the BHC Act, the Board must hold a public hearing on a proposal if 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); see also 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also, in its discretion, may hold a public hearing or 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 the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing or meeting. In addition, the request does not demonstrate why written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for public hearings on the proposal is denied.

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

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 December 17, 2021.

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

Ann E. Misback  
*Secretary of the Board*

## Order Issued Under Home Owners' Loan Act

WSFS Financial Corporation  
Wilmington, Delaware

*Order Approving the Acquisition and Merger of Savings and Loan Holding Companies  
FRB Order No. 2021-14 (December 17, 2021)*

WSFS Financial Corporation (“WSFS”), Wilmington, Delaware, a savings and loan holding company (“SLHC”), has requested the Board’s approval under section 10(e) of the Home Owners’ Loan Act, as amended (“HOLA”),<sup>1</sup> to acquire Bryn Mawr Bank Corporation (“Bryn Mawr”), and thereby indirectly acquire The Bryn Mawr Trust Company (“Bryn Mawr Bank”), both of Bryn Mawr, Pennsylvania, following the conversions of Bryn Mawr Bank from a state member bank to a federal savings association and Bryn Mawr from a bank holding company to an SLHC.<sup>2</sup> Immediately following the conversions, Bryn Mawr would merge with and into WSFS, and Bryn Mawr Bank would merge with and into WSFS’s subsidiary federal savings association, Wilmington Savings Fund Society, FSB (“WSFS Bank”), Wilmington, Delaware.<sup>3</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (86 *Federal Register* 22207 (April 27, 2021)).<sup>4</sup> The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 10(e) of HOLA.<sup>5</sup>

WSFS, with consolidated assets of approximately \$15.4 billion,<sup>6</sup> is the 131st largest insured depository organization in the United States, controlling approximately \$12.8 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>7</sup> WSFS controls WSFS Bank, which operates in Delaware, New Jersey, and Pennsylvania.

Bryn Mawr, with consolidated assets of approximately \$4.9 billion, is the 273rd largest insured depository organization in the United States, controlling approximately \$3.8 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Bryn Mawr controls Bryn Mawr Bank, which operates in Delaware, New Jersey, and Pennsylvania.

On consummation of the proposal, WSFS would become the 98th largest insured depository organization in the United States, with consolidated assets of approximately \$20.3 billion. WSFS would control deposits of approximately \$16.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the

<sup>1</sup> 12 U.S.C. § 1467a(e).

<sup>2</sup> The Federal Reserve Bank of Philadelphia (“Reserve Bank”), acting under delegated authority, has approved an application by Bryn Mawr under section 10(e) of HOLA to become an SLHC upon the conversion of Bryn Mawr Bank to a federal savings association. The Office of the Comptroller of the Currency (“OCC”) has approved an application under section 5 of HOLA (12 U.S.C. § 1464) by Bryn Mawr Bank to convert to a federal savings association.

<sup>3</sup> The OCC has approved an application under section 18(c) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c), by WSFS Bank to merge with Bryn Mawr Bank, with WSFS Bank surviving.

<sup>4</sup> 12 CFR 238.14(c)(2).

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

<sup>6</sup> National asset and deposit data are as of September 30, 2021.

<sup>7</sup> State and market deposit data are as of June 30, 2021.

United States.<sup>8</sup> In Delaware, WSFS would remain the 6th largest insured depository organization, controlling deposits of \$7.0 billion, which represent approximately 1.5 percent of the total deposits of insured depository institutions in that state. In New Jersey, WSFS would become the 37th largest insured depository organization, controlling deposits of \$1.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Pennsylvania, WSFS would become the 14th largest insured depository organization, controlling deposits of \$8.4 billion, which represent approximately 1.5 percent of the total deposits of insured depository institutions in that state.

### Interstate and Deposit Cap Analyses

Section 10(e)(2)(E) of HOLA generally provides that the Board may not approve an application by an SLHC to acquire an insured depository institution with a home state other than the SLHC's home state if the SLHC controls, or upon consummation would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.<sup>9</sup>

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

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

### Competitive Considerations

Section 10(e)(2) of HOLA prohibits the Board from approving a proposal that would result in a monopoly or that would be in furtherance of any combination or conspiracy to monopolize, or to attempt to monopolize, the savings and loan business in any part of the United States.<sup>11</sup> HOLA also prohibits the Board from approving a proposal if the proposal would substantially lessen competition, tend to create a monopoly, or in any other manner restrain trade in any section of the country, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>12</sup>

<sup>8</sup> See [Appendix I](#) for asset and deposit data by state, for states in which WSFS Bank and Bryn Mawr Bank both have banking operations.

<sup>9</sup> 12 U.S.C. § 1467a(e)(2)(E). A federal savings association's home state is the state in which its home office is located. 12 U.S.C. § 1467a(e)(7)(B)(iii). An SLHC's home state is the state in which the total deposits of all insured depository institution subsidiaries of such company were the greatest on the date on which the company became an SLHC. 12 U.S.C. § 1467a(e)(7)(B)(iv).

<sup>10</sup> 12 U.S.C. § 1467a(e)(3). A multiple SLHC is an SLHC that directly or indirectly controls two or more savings associations. 12 U.S.C. § 1467a(a)(1)(E).

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

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



WSFS and Bryn Mawr compete directly in the Wilmington, Delaware, banking market (“Wilmington market”)<sup>13</sup> and the Philadelphia, Pennsylvania, banking market (“Philadelphia market”).<sup>14</sup> The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits of insured depository institutions in the markets (“market deposits”) that WSFS would control;<sup>15</sup> the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>16</sup> the number of competitors that would remain in the markets; and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Wilmington and Philadelphia markets. On consummation of the proposal, the Wilmington market would remain highly concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines, and the Philadelphia market would remain unconcentrated.<sup>17</sup>

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

<sup>13</sup> The Wilmington market is defined as New Castle County, Delaware, and Cecil County, Maryland.

<sup>14</sup> The Philadelphia market is defined as Camden, Cumberland, Gloucester, and Salem counties, New Jersey; Beverly, Bordentown, and Burlington cities, Fieldsboro, Palmyra, and Riverton boroughs, and Bordentown, Burlington, Chesterfield, Cinnaminson, Delanco, Delran, Eastampton, Edgewater Park, Evesham, Florence, Hainesport, Lumberton, Mansfield, Maple Shade, Medford, Moorestown, Mount Holly, Mount Laurel, Riverside, Springfield, and Willingboro townships in Burlington County, New Jersey; Trenton city and Hamilton township in Mercer County, New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia counties, Pennsylvania.

<sup>15</sup> Local deposit and market share data are based on calculations in which the deposits of thrift institutions are included at 100 percent. WSFS Bank would remain a thrift institution following consummation of the proposed transaction and would face significant competition from commercial banks and other thrift institutions.

<sup>16</sup> Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>17</sup> WSFS operates the 6th largest depository institution in the Wilmington market, controlling approximately \$5.2 billion in deposits, which represent 1.3 percent of market deposits. Bryn Mawr operates the 18th largest depository institution in the market, controlling deposits of approximately \$175.4 million, which represent less than 0.1 percent of market deposits. On consummation of the proposed transaction, WSFS would remain the 6th largest depository institution in the Wilmington market, controlling deposits of approximately \$5.4 billion, which represent approximately 1.4 percent of market deposits. The HHI for the Wilmington market, 3595, would increase by less than 1 point, and 30 competitors would remain in the market. Because several depository institutions centrally book out-of-market deposits in the Wilmington market, these data may overstate the level of concentration in the Wilmington market and understate the competitive effects of the transaction. Even after accounting for out-of-market deposits, however, the competitive effects of the transaction remain minor. WSFS operates the 8th largest depository institution in the Philadelphia market, controlling deposits of approximately \$5.9 billion, which represent 2.6 percent of market deposits. Bryn Mawr operates the 13th largest depository institution in the market, controlling deposits of approximately \$3.9 billion, which represent approximately 1.7 percent of market deposits. On consummation of the proposed transaction, WSFS would become the 7th largest depository organization in the market, controlling deposits of approximately \$9.8 billion, which represent approximately 4.5 percent of market deposits. The HHI for the Philadelphia market would increase by 9 points to 889, and 86 competitors would remain in the market.

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

### **Financial, Managerial, and Other Supervisory Considerations**

In reviewing a proposal under HOLA, the Board considers the financial and managerial resources and the future prospects of the institutions involved.<sup>18</sup> In its evaluation of financial factors, the Board reviews public and supervisory information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of operations. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in light of their financial and managerial resources and the proposed business plan.

WSFS, Bryn Mawr, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a merger of holding companies that is structured as a share exchange with a simultaneous merger of the subsidiary depository institutions.<sup>19</sup> The asset quality, earnings, and liquidity of WSFS, Bryn Mawr, and their subsidiary depository institutions are consistent with approval, and WSFS appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization.<sup>20</sup> The Board has conducted an evaluation of the competence, experience, and integrity of the officers, directors, and principal shareholders of WSFS and WSFS Bank; their record of compliance with laws and regulations; and the record of WSFS and WSFS Bank of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.<sup>21</sup> The Board has reviewed the examination records of WSFS, Bryn Mawr, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by WSFS; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organiza-

<sup>18</sup> 12 U.S.C. § 1467a(e)(2).

<sup>19</sup> To effect the merger, existing holders of Bryn Mawr common stock would receive 0.90 percent of a share of WSFS common stock for each share of Bryn Mawr common stock issued and outstanding immediately prior to the merger, subject to adjustment. Holders of fractional shares of Bryn Mawr common stock would receive a cash payment in lieu of shares of WSFS common stock. WSFS has the financial resources to effect the proposed transaction.

<sup>20</sup> See 12 U.S.C. § 1467a(e)(2).

<sup>21</sup> See 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(2).

tions; the organizations' records of compliance with applicable banking, consumer protection, and anti-money laundering laws; and the public comment on the proposal.

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

The Board also has considered WSFS's plans for implementing the proposal. WSFS has conducted comprehensive due diligence and is devoting significant financial and other resources to address the post-acquisition integration process for this proposal. At the combined organization, WSFS would apply its risk-management policies, procedures, and controls, which are considered acceptable from a supervisory perspective. In addition, WSFS's management has the experience and resources to operate the combined organization in a safe and sound manner, and WSFS would integrate Bryn Mawr's existing management and personnel in a manner that augments WSFS's management.<sup>22</sup>

Based on all the facts of record, including WSFS's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal—as well as the records of effectiveness of WSFS and Bryn Mawr in combatting moneylaundering activities—are consistent with approval.

#### **Convenience and Needs Considerations**

In acting on a proposal under section 10(e) of HOLA, the Board considers the effects of the transaction on the convenience and needs of the communities to be served.<sup>23</sup> In this evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve—as well as other potential effects of the proposal on the convenience and needs of these communities—and places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act (“CRA”).<sup>24</sup> 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,<sup>25</sup> and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating expansionary proposals.<sup>26</sup>

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

---

<sup>22</sup> Three members of Bryn Mawr's board of directors would be appointed to the boards of WSFS and WSFS Bank.

<sup>23</sup> 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(3).

<sup>24</sup> 12 U.S.C. § 2901 *et seq.*

<sup>25</sup> 12 U.S.C. § 2901(b).

<sup>26</sup> 12 U.S.C. § 2903.

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of WSFS Bank and Bryn Mawr Bank, the fair lending and compliance records of both depository institutions, the supervisory views of the OCC and Reserve Bank, confidential supervisory information, information provided by WSFS, and the public comment on the proposal.

#### *Summary of Public Comment on Convenience and Needs*

A commenter objected to the proposal based on WSFS Bank's record of home purchase lending to minority and LMI borrowers based on data reported under the Home Mortgage Disclosure Act ("HMDA")<sup>27</sup> for 2017 through 2019. The commenter requested that (1) the proposed transaction include a forward-looking community benefits plan detailing how WSFS Bank would fulfill its obligations under the CRA and meet the needs of underserved populations throughout its footprint and (2) WSFS Bank make its community reinvestment targets public.<sup>28</sup>

#### *Businesses of the Involved Institutions and Response to the Public Comment*

WSFS Bank and Bryn Mawr Bank offer a variety of deposit and lending products and services to retail and business customers through their respective branch networks in Delaware, New Jersey, and Pennsylvania. WSFS asserts that the commenter overstates disparities between WSFS Bank's record of lending to minority and LMI borrowers and market averages and also contends that WSFS Bank originates a greater proportion of applications by minority and LMI borrowers than its peers. WSFS also asserts that WSFS Bank's CRA program and community reinvestment efforts have been highly successful, rendering a forward-looking community benefits plan and publication of the bank's community reinvestment targets unnecessary.

#### *Records of Performance under the CRA*

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views provided by the relevant federal financial supervisor or supervisors, which in this case are the OCC for WSFS Bank and the Reserve Bank for Bryn Mawr Bank.<sup>29</sup> The Board also 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

<sup>27</sup> 12 U.S.C. § 2801 *et seq.*

<sup>28</sup> The Board has consistently found that neither the CRA nor the federal financial supervisory agencies' CRA regulations require depository institutions to make pledges, plans, or enter into commitments or agreements with any organizations. *See, e.g.,* First Illinois Bancorp, Inc., FRB Order No. 2020-03 at 11 n.25 (August 26, 2020); First Busey Corporation, FRB Order No. 2019-01 at 11 n.30 (January 10, 2019); Sterling Bancorp, FRB Order No. 2017-21 at 10 n.24 (August 30, 2017); Huntington Bancshares, Inc., FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); CIT Group, Inc., FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002). In its evaluation of a proposal, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas ("AAs").

<sup>29</sup> *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

needs of its entire community, including LMI neighborhoods.<sup>30</sup> An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal financial supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), an investment test ("Investment Test"), and a service test ("Service Test") to evaluate the performance of large insured depository institutions, such as WSFS Bank and Bryn Mawr 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 HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;<sup>31</sup> (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.<sup>32</sup> 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.<sup>33</sup>

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 is not available from HMDA data.<sup>34</sup> Consequently, the Board evaluates HMDA data disparities in the context of other information regarding the lending record of the institution.

---

<sup>30</sup> 12 U.S.C. § 2906.

<sup>31</sup> 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).

<sup>32</sup> *See* 12 CFR 228.22(b).

<sup>33</sup> *See* 12 CFR 228.21 *et seq.*

<sup>34</sup> 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.



*CRA Performance of WSFS Bank*

WSFS Bank was assigned an overall “Outstanding” rating by the OCC at its most recent CRA performance evaluation, as of October 26, 2020 (the “WSFS Bank Evaluation”).<sup>35</sup> WSFS Bank received an “Outstanding” rating for the Lending and Investment Tests and a “Low Satisfactory” rating for the Service Test.

With respect to the Lending Test, examiners found that WSFS Bank exhibited an overall excellent level of lending activity in the primary AAs. Examiners also found the overall geographic and borrower distribution of lending activity to be good in the primary AAs. Examiners noted that WSFS Bank was a leader in making community development loans, demonstrating excellent responsiveness to AA credit needs in the Philadelphia MMSA AA. Examiners also noted that WSFS Bank made a relatively high level of community development loans, demonstrating good responsiveness to AA credit needs in the Salisbury and Dover AAs. Examiners found that WSFS Bank made use of innovative and/or flexible lending practices in order to serve AA credit needs in the primary AAs.

With respect to the Investment Test, examiners found that WSFS Bank had an excellent level of qualified community development investments and grants in the primary AAs. Examiners noted that these investments were not routinely provided by private investors, and WSFS Bank was often in a leadership position with respect to the investments. In the Philadelphia MMSA AA, examiners found that WSFS Bank exhibited excellent responsiveness to credit and community economic development needs and occasionally used innovative and/or complex investments to support community development initiatives. Examiners noted that in the Salisbury and Dover AAs, WSFS Bank exhibited good responsiveness to credit and community economic development needs, although the bank rarely used innovative and/or complex investments to support community development initiatives.

With respect to the Service Test, examiners noted that WSFS Bank’s service-delivery systems were reasonably accessible to geographies and individuals of different income levels in the Philadelphia MMSA AA and readily accessible to such geographies and individuals in the Salisbury and Dover AAs. Examiners also noted that, to the extent changes were made, WSFS Bank’s opening and closing of branches did not adversely affect the availability of the bank’s delivery systems, particularly in LMI geographies and/or to LMI individuals, in any of its AAs. Examiners found that WSFS Bank’s services did not vary in a way that inconvenienced the Salisbury or Dover AAs, particularly LMI geographies and individuals. However, examiners found that services in the Philadelphia MMSA AA varied in a way that inconvenienced portions of the AA, particularly LMI geographies and/or individuals.<sup>36</sup> Examiners noted that WSFS Bank was a leader in providing community development services in the Philadelphia MMSA AA and provided a high level of such services in the Salisbury and Dover AAs.

---

<sup>35</sup> The WSFS Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The Lending Test evaluation period was January 1, 2017, through December 31, 2019, except with respect to community development loans. For community development loans and the Investment and Service Tests, the evaluation period was August 8, 2017, to December 31, 2019. Examiners conducted full-scope reviews of designated geographic areas within two AAs (collectively, the “primary AAs”): (i) the Philadelphia-Camden-Wilmington, Pennsylvania-New Jersey-Delaware-Maryland Multistate Metropolitan Statistical Area (MMSA) (the “Philadelphia MMSA AA”), and (ii) the Salisbury, Delaware MSA (the “Salisbury AA”). In addition, examiners conducted a limited-scope review of the Dover, Delaware MSA (the “Dover AA”).

<sup>36</sup> Specifically, the proportion of WSFS Bank branches without Saturday hours was higher in LMI geographies within the Philadelphia MMSA AA than within the MMSA AA as a whole. However, examiners noted that this finding was impacted by branches that did not have Saturday hours because they operated as commercial loan origination offices or were located in a commercial district.



*WSFS Bank's Efforts Since the WSFS Bank Evaluation*

WSFS represents that WSFS Bank has provided substantial additional assistance to the communities it serves since the WSFS Bank Evaluation. WSFS notes that WSFS Bank originated a significant volume of Paycheck Protection Program loans, made substantial grants to and investments in local community development finance institutions and community lending programs, and made several other CRA-qualifying grants and donations.

*CRA Performance of Bryn Mawr Bank*

Bryn Mawr Bank was assigned an overall “Satisfactory” rating by the Reserve Bank at its most recent CRA performance evaluation, as of December 2, 2019 (the “Bryn Mawr Bank Evaluation”).<sup>37</sup> Bryn Mawr Bank received a “High Satisfactory” rating for the Lending, Investment, and Service Tests.

With respect to the Lending Test, examiners found that Bryn Mawr Bank’s lending levels reflected a good level of responsiveness to the credit needs of the bank’s AAs. Examiners also found that a high percentage of loans were made in the bank’s AAs, with the distribution of borrowers reflecting adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners noted that Bryn Mawr Bank used flexible and innovative lending programs to address specific credit needs of LMI borrowers and small businesses in its AAs and made a relatively high level of community development loans.

With respect to the Investment Test, examiners determined that Bryn Mawr Bank had a significant level of qualified community development investments and grants and noted that the bank exhibited good responsiveness to credit and community development investment needs. Examiners observed that Bryn Mawr Bank made significant use of innovative and/or complex investments to support community development initiatives when opportunities were available.

With respect to the Service Test, examiners found that Bryn Mawr Bank’s delivery systems were accessible to geographies and individuals of different income levels in the bank’s AAs and that the bank provided a relatively high level of community development services. Examiners further found that Bryn Mawr Bank’s opening and closing of branches did not adversely affect the accessibility of the bank’s delivery systems and that the bank’s services did not vary in a way that inconvenienced certain portions of the AAs, particularly LMI geographies or individuals.

*Bryn Mawr Bank's Efforts Since the Bryn Mawr Bank Evaluation*

WSFS represents that Bryn Mawr Bank has taken steps to improve its CRA programs since the Bryn Mawr Bank Evaluation. In particular, WSFS represents that Bryn Mawr Bank has expanded its CRA programs to new nonprofit and community development financial institution partners, contributed to financial education and community lending programs in its AAs, and originated a significant volume of Paycheck Protection Program loans.

---

<sup>37</sup> The Bryn Mawr Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period was February 23, 2016, through December 2, 2019. Examiners conducted a full-scope evaluation of the bank’s two AAs—the Philadelphia AA, which consists of six counties in the Philadelphia-Camden-Wilmington, Pennsylvania-New Jersey-Delaware-Maryland MMSA, and the Harrisburg AA, which consists of Dauphin County in the Harrisburg-Carlisle, Pennsylvania, MSA.

### *Branch Closures*

WSFS represents that it would close or consolidate a total of 34 WSFS Bank and Bryn Mawr Bank branches in connection with the proposed transaction, primarily because of the proximity of those branches to other branches of the combined bank. WSFS also represents that, subject to further review, the combined bank may close up to six additional branches through 2023. 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.<sup>38</sup> Examiners noted in the WSFS Bank Evaluation and the Bryn Mawr Bank Evaluation that WSFS Bank's and Bryn Mawr Bank's opening and closing of branches had not adversely affected the accessibility of the respective bank's delivery systems. 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 a branch is closed. WSFS represents that it would continue to comply with the requirements of section 42 of the Federal Deposit Insurance Act<sup>39</sup> and interagency guidance applicable to branch closures.<sup>40</sup>

### *Additional Supervisory Views*

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

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

### *Additional Convenience and Needs Considerations*

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. WSFS represents that, following consummation of the proposal, customers of both WSFS Bank and Bryn Mawr Bank would benefit from access to a larger branch network, thereby enhancing customers' access to branch banking services. WSFS further represents that the proposal would increase the access of WSFS Bank's customers to Bryn Mawr Bank's special mortgage products geared to LMI borrowers and to the bank's capital markets operations. WSFS notes that Bryn Mawr Bank's customers would likewise benefit from access to WSFS Bank's family office, corporate trustee, and Cash Connect services.

<sup>38</sup> See, e.g., 12 CFR 228.24(d)(2). In addition, the Board notes that the OCC, as the primary federal supervisor of WSFS Bank, would continue to evaluate the bank's branch closures in the course of conducting CRA performance evaluations of the bank.

<sup>39</sup> 12 U.S.C. § 1831r-1.

<sup>40</sup> See Joint Policy Statement on Branch Closings by Insured Depository Institutions, <https://www.federalreserve.gov/boarddocs/press/BoardActs/1999/19990707/r-1036.pdf>.

### *Conclusion on Convenience and Needs Considerations*

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

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

In acting on a proposal under section 10(e) of HOLA, the Board considers the likely effect of the transaction on the savings association and on the insurance risk to the Deposit Insurance Fund.<sup>41</sup> As discussed above, the financial and managerial resources and the future prospects of the combined organization are consistent with approval. The Board has considered the likely effect of the transaction on the resultant depository institution and believes that it is consistent with approval. In view of the current resources and capital of WSFS and Bryn Mawr; the future prospects of the combined organization; the significant financial and other resources being devoted to support the combined organization; the managerial resources of WSFS, Bryn Mawr, and their subsidiary depository institutions; and the likely effect of the transaction on the combined organization, the Board believes that the proposal would not appear likely to have a material impact on the insurance risk to the Deposit Insurance Fund.

### **Conclusion**

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.<sup>42</sup> In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under HOLA and other applicable statutes. The Board's approval is specifically conditioned on compliance by WSFS with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

---

<sup>41</sup> 12 U.S.C. § 1467a(e)(2).

<sup>42</sup> A commenter requested that the Board hold public hearings or meetings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 238.14(e), 262.3(e). The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing. In addition, the request does not demonstrate why written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

By order of the Board of Governors, effective December 17, 2021.

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

Ann E. Misback  
*Secretary of the Board*

## Appendix I

Deposit Data in States where WSFS Bank and Bryn Mawr Bank Both Operate									
State	WSFS Bank			Bryn Mawr Bank			Merged Entity		
	Rank of Insured Depository Institution <sup>1</sup> by Deposits	Deposits Controlled (in millions)	Percent of Total Deposits	Rank of Insured Depository Institution by Deposits	Deposits Controlled (in millions)	Percent of Total Deposits	Rank of Insured Depository Institution by Deposits	Deposits Controlled (in millions)	Percent of Total Deposits
Delaware	6	6,797.3	1.4	22	175.4	0	6	6,972.8	1.5
New Jersey	38	1,468.6	0.3	95	76	0	37	1,544.6	0.3
Pennsylvania	21	4,580.8	0.8	23	3,804.9	0.7	14	8,385.7	1.5

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